IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
MEMORANDUM OF APPEAL FROM THE ORIGINAL ORDER
APPELLATE SIDE

1. **A.S.T. No. 1862 of 2011**
+
A.S.T.A. No. 469 of 2011
Tata Motors Limited & Anr.
Vs.
The State Of West Bengal & Ors.

2. **A.S.T. No. 1863 of 2011**
+
C.O.T. 29 of 2011
Tata Motors Limited & Anr.
Vs.
The State Of West Bengal & Ors.

3. **W.P. No. 13801 (W) of 2011**
M/s. Tata Autocomp Systems Ltd.
Interiors and Plastics Division & Ors.
Vs.
The State Of West Bengal & Ors.

4. **W.P. No. 13815 (W) of 2011**
Tata Yazaki Autocomp Ltd. & Anr.
Vs.
The State Of West Bengal & Ors.

5. **W.P. No. 13803 (W) of 2011**
Tata Johnson Controls Automotive Ltd. & Anr.
Vs.
The State Of West Bengal & Ors.

6. **W.P. No. 13805 (W) of 2011**
Suprajit Engineering Ltd. & Anr.

Vs.
The State Of West Bengal & Ors.

7. **W.P. No. 13808 (W) of 2011**
Tata Ficosa Automotive Systems Ltd. & Anr.
Vs.
The State Of West Bengal & Ors.

8. **W.P. No. 13810 (W) of 2011**
Tata Toyo Radiator Ltd. & Anr.
Vs.
The State Of West Bengal & Ors.

9. **W.P. No. 13812 (W) of 2011**
Behr India Ltd. & Anr.
Vs.
The State Of West Bengal & Ors.

10. **W.P. No. 15033 (W) of 2011**
Rasandik Engineering Industries Ltd. & Anr.
Vs.
The State Of West Bengal & Ors.

11. **W.P. No. 15035 (W) of 2011**
Amul Industries Pvt. Ltd. & Anr.
Vs.
The State Of West Bengal & Ors.

12. **W.P. No. 15036 (W) of 2011**
Rane (Madras) Ltd. & Anr.
Vs.
The State Of West Bengal & Ors.

13. **W.P. No. 15038 (W) of 2011**
Faurecia Emissions Control Technologies India Pvt. Ltd. & Anr.
Vs.
The State Of West Bengal & Ors.

14. **W.P. No. 15040 (W) of 2011**
Subros Ltd. & Ors.
Vs.
The State Of West Bengal & Ors.

15. **W.P. No. 15041 (W) of 2011**
Rane NSK Steering Systems Ltd. & Anr.
Vs.
The State Of West Bengal & Ors.

16. **W.P. No. 15042 (W) of 2011**
Rane TRW Steering Systems Ltd. & Anr.
Vs.
The State Of West Bengal & Ors.

17. **W.P. No. 11743 (W) of 2011**
Sona Kayo Steering Systems Ltd. & Anr.
Vs.
The State Of West Bengal

18. **W.P. No. 11744 (W) of 2011**
Tube Investments of India Ltd. & Anr.
Vs.
The State Of West Bengal

19. **W.P. No. 11646 (W) of 2011**
Caparo Engineering India Pvt. Ltd. & Anr.
Vs.
The State Of West Bengal

20. **W.P. No. 11621(W) of 2011**
Lucas Tvs Ltd. & Anr.
Vs.
The State Of West Bengal & Ors.

21. **W.P. No. 11020 (W) of 2011**
Lumax Industries Ltd. & Anr.
Vs.
The State Of West Bengal & Ors.

22. **W.P. No. 11097 (W) of 2011**
Special Engineering Services Ltd. & Anr.
Vs.
The State Of West Bengal & Ors.

23. **W.P. No. 11544 (W) of 2011**
Imperial Auto Industries Ltd. & Anr.
Vs.
The State Of West Bengal & Ors.

24. **W.P. No. 11075 (W) of 2011**
Rico Auto Industries Ltd. & Anr.
Vs.
The State Of West Bengal & Ors.

25. **W.P. No. 11187 (W) of 2011**
JBM Auto Ltd. & Anr.
Vs.
The State Of West Bengal & Ors.

26. **W.P. No. 11455 (W) of 2011**
Star Auto Industries Pvt. Ltd.
Vs.
The State Of West Bengal & Ors.

27. **W.P. No. 11226 (W) of 2011**
Kheria Industries Pvt. Ltd. & Ors.
Vs.
The State Of West Bengal & Ors.

28. **W.P. No. 12194 (W) of 2011**
Rucha Engineering Pvt. Ltd. & Anr.
Vs.

The State Of West Bengal & Ors.

29. W.P. No. 12041 (W) of 2011
Endurance Technologies Ltd. & Anr.
Vs.
The State Of West Bengal & Ors.

30. W.P. No. 12591 (W) of 2011
Sharda Motors Industries Ltd. & Anr.
Vs.
The State Of West Bengal & Ors.

31. W.P. No. 12898 (W) of 2011
Amtek Auto Ltd. & Anr.
Vs.
The State Of West Bengal & Ors.

32. W.P. No. 12896 (W) of 2011
Amtek India Ltd. & Anr.
Vs.
The State Of West Bengal & Ors.

33. W.P. No. 13269 (W) of 2011
Tata Steel Processing & Distribution Ltd. & Anr.
Vs.
The State Of West Bengal & Ors.

34. W.P. No. 10205 (W) of 2011
Biplab Das & Ors.
Vs.
The State Of West Bengal & Ors.

P R E S E N T :

The Hon'ble Justice PINAKI CHANDRA GHOSE
A N D
The Hon'ble Justice DR. MRINAL KANTI CHAUDHURI

For the Appellant : Mr. Samaraditya Pal, Senior Advocate
Mr. Siddhartha Mitra, Senior Advocate
Ms. Vineeta Mehria, Advocate
Mr. S. Dutta, Advocate
&

Others.

For the Petitioners : Mr. S.K. Kapoor, Senior Advocate
Mr. Bikash Ranjan Bhattacharjee, Senior Advocate
Mr. Siddhartha Mitra, Senior Advocate
Mr. Ravi Kapoor, Advocate
Mr. Arindam Chandra, Advocate
Mr. Atish Ghosh, Advocate
&
Others.

For the State No. 1 : Mr. Anindya Kumar Mitra, Ld. Advocate General
Mr. Abhrotosh Majumdar, Advocate
&
Others.

For the Respondent Nos. 2 & 4 : Mr. Kalyan Bandyopadhyay, Senior Advocate
Mr. Sirsanya Bandopadhyay, Advocate
&
Others.

For the Respondent : Mr. Saktinath Mukherjee, Senior Advocate No. 3
Mr. Sakyo Sen, Advocate
Mr. Poritosh Sinha, Advocate
&
Others.

For the Respondent No. 5, 6 and 7 : Mr. Ashok Banerjee, Learned Government Pleader
Mr. Suman Sengupta, Advocate.
&
Others.

Heard on : 08.11.11, 09.11.11, 14.11.11, 15.11.11, 16.11.11, 17.11.11, 21.11.11, 22.11.11, 23.11.11, 28.11.11, 29.11.11, 19.12.11, 20.12.11, 02.01.12, 03.01.12, 04.01.12, 09.01.12, 10.01.12, 11.01.12, 17.01.12, 18.01.12, 24.01.12, 30.01.12, 31.01.12, 01.02.12, 07.02.12, 08.02.12, 13.02.12, 14.02.12, 15.02.12, 21.02.12, 22.02.12, 27.02.12, 29.02.12, 05.03.12, 06.03.12, 07.03.12, 02.03.12, 13.03.12, 14.03.12, 19.03.12, 20.03.12, 21.03.12, 26.03.12, 27.03.12, 28.03.12, 02.04.12, 03.04.12, 04.04.12, 05.04.12, 09.04.12, 10.04.12, 11.04.12, 16.04.12, 17.04.12, 18.04.12 & 02.05.12.

Judgment on : 22nd June, 2012.

PINAKI CHANDRA GHOSE, J. : This appeal is directed against a judgment and/or order dated 28th September, 2011. The appellants have challenged the Singur Land Rehabilitation & Development Act, 2011 (hereinafter referred to as the 'said Act') and the rules framed thereunder before the Hon'ble Single Judge and prayed for a declaration that the said Act and all consequences following from the Act is illegal, invalid, unconstitutional and/or void. A writ of certiorari is prayed for calling upon the Respondents to produce all Records including documents and/or decision of and/or Records of State Government in connection therewith.

The grounds for assailing the said Act the writ petitioner put forwarded the grounds are that the said Act of 2011 is a colourable piece of legislation and constitutes a fraud on the Constitution of India and violates the rights guaranteed to the petitioners under Articles 14 and 300A of the Constitution of India.

It is further stated that the said Act of 2011 is in pith and substance an Act for acquiring the land leased out to the company. The further questions that

were taken in the writ petition are that the said Act of 2011 in so far as it provides for vesting of the land in the State Government is illegal, null and void in so far as the land having already vested in the State Government as a result of proceedings taken under the Land Acquisition Act, 1894, therefore, the same cannot be re-vested with the State Government.

It is further stated that once the land has been acquired by the State Government for public purpose and vested in State Government under the Land Acquisition Act, 1894 the same cannot be returned to the land owners, at the cost of the petitioners. The said Act of 2011 fails to provide any basis or method of compensating the petitioners. The said impugned Act is repugnant to the relevant Acquisition Act and is, therefore, void.

The back ground of this case started in the year in or around 2006 when the Government of West Bengal was trying to invite the Tatas to set up an establishment for the manufacturing their small car 'Nano' in West Bengal.

It appears that the Tatas were being similarly requested by some other States in the country to set up the industry and offered them many incentives and concessions. The Tatas were willing to consider investment in West Bengal provided its government was able to outmatch these benefits. It appears that the Government was able to convince them that they would make available to them comparable if not better incentives, concessions and exemptions. The Tatas did

decide to manufacture this small car here. They announced to the world that the manufactured car would be cleared from the Singur factory in District Hooghly in October, 2008. The government promised them land at this place for setting up the said project. In 2006, it appears that the proposal for providing this land was approved by the cabinet in its meeting held on 31st May, 2006. By his letter dated 6th July, 2006, the Joint Secretary to the Government of West Bengal wrote to the West Bengal Industrial Development Corporation (hereinafter referred to as 'WBIDC'), the fourth respondent, the District Magistrate being the fifth respondent and the Land and Land Revenue Department being the third respondent to initiate acquisition proceedings.

Accordingly, Collector issued notices under Section 4 of the Land Acquisition Act, 1894. It appears from the fact that the notices were issued on different dates. Apparently, it appears that Section 4 notices were issued and gazetted more or less between 13th July, 2006 and 24th July, 2006.

In terms of such process undertaken on behalf of the respondent authorities, State, 997.11 acres of land were acquired. On 23rd September, 2006 and on 25th September, 2006 Awards of compensation were made by the Collector. On 4th October, 2006 land was handed over to the fourth respondent, WBIDC. Out of the said land 1.75 acres were set apart for setting up a power station and handed over to them on 26th October, 2006. The said respondent thereafter applied to the land department for conversion of land from agricultural

land to factory land. Accordingly, the conversion of land was made by the department. It was decided by the State that 645.67 acres would be leased out to the Tatas.

On 20th December, 2006 the fourth respondent by their letter asked the Tatas to take "permissive possession of 950 acres of land pending finalization of the lease deed and lease terms and conditions". It appears that out of 997.11 acres the said respondent proposed to lease out 950 acres of this land to the Tatas and its selected vendors. The persons who were to set up auxiliary or ancillary industries around that Tatas factory in Singur were referred to as the 'vendors'.

It was also recorded in an agreement of 9th March, 2007 between the Tatas and the government that substantial fiscal benefits were promised to be provided to the Tatas, by the State, matching the offer made to them by the State of Uttarakhand. It is further to be noticed that the said agreement provided for 47.11 acres of land to be used for rehabilitation of 'project affected persons'.

From the facts it appears that the deed of conveyance was executed by the State in favour of the WBIDC on 12th March, 2007. The formal lease was executed on 15th March, 2007.

The duration of lease was for a period of 90 years from the date of execution unless terminated earlier as provided therein. The annual rent was Rs.1 crore for the first five years, with an increase at the rate of 25% after the expiry of the first five years and thereafter at the end of every successive five years period of the of the lease till the expiry of 30 years from the date of execution.

For the next 30 years, the lease rent would be Rs. 5 crores per year for the first ten years from the commencement of the 31st year of this lease with an increase at the rate of 30% after the expiry of each successive ten years' period thereafter till the end of 60 years from the date of execution and for the remaining 30 years of this lease, rent would be Rs.20 crores per year for the 30 years from the date of commencement of the 61st years from the date of execution till the end of 90 years term.

Under clause 9 of the said lease deed it is the duty of the lessee to construct drainage and sewerage facilities on the demised land and in accordance with and in conformity with the overall master plan of drainage of the entire area inclusive of the surrounding villages prepared by the department of Irrigation of Waterways of the Government of West Bengal.

It is necessary for us to refer certain Clauses of the Lease Deed for our purpose at this stage.

The Clause 10 of the Lease reads as follows :-

*"**Clause 10.** That the Lessee shall not use or permit any other person to use the said Demised Land or any part thereof for a purpose other than for which it is leased or in a manner which renders it unfit for use for the purpose of the Lease."*

The Clause 13 which reads as follows:

*"**Clause 13.** The Lessee shall not, during the term of this Lease Deed, sublease or transfer the said Demised Land or any part thereof to any third party. However, the possession, use or enjoyment of any part of the said Demised Land by any Group company, associate company, subsidiary, joint venture, contractor for the purposes contained herein shall not be construed as a subletting for the above purpose, provided that the Lessee shall continue to be responsible for the obligations and performance under this Lease Deed."*

It would be evident from clause 13 that any company which was a subsidiary or part of the group of the lessee would be permitted to enjoy it. The said lease agreement further records in Part IV that compensation in respect of the said land has been duly paid by the lessor WBIDC to the Collector, District – Hooghly as per the requirement of the Land Acquisition Act, 1894 (hereinafter referred to as the L.A. Act).

It further appears that the entire land including the demised land except for an area of 29.53 acres of land has been converted for factory use.

Part V of the said lease deed contains clause 3 which provides as follows:-

*"**3.** That the said Demised Land will, throughout the whole lease term (and any renewed term), be classified as being for factory use".*

The said lease deed also contains a termination clause which deals in part VI of the said lease deed. It would be evident from clause I of part VI, inter alia, that if the lessee had not utilized the demised land for a period of three years or more, the lessor had the right to give notice indicating the breach and if such breach was not rectified within six months from the date of receipt of the notice, the lessor would have the right to determine the lease. But such notice of determination could not be exercised unless another notice of three months was served on the lessee. Under clause 2 the lessee had also the right to determine the lease in case of any breach of covenant by the government upon notice of six months followed by another three months' notice, similar to the determination by the government. In case of determination the lessee under clause 1(d) had one year's time to remove their plant, machinery, equipment and so on. The said acquisition process was challenged before the Division Bench.

It appears that the acquisition process was challenged before the Division Bench of this High Court. The Division Bench by judgment and order dated 18th January, 2008 rejected the writ petitions and held that the entire acquisition process is legal and valid. The Special Leave Petition (Civil) being No. 8463 of 2000 was filed before the Supreme Court from the said judgment and order dated 18th January, 2008. We have been informed on behalf of the parties that the said petition is still pending before the Supreme Court and no stay was granted.

After the decision of the Division Bench it is the case of the appellant company that the State assured the company to invest in the State and further the company accordingly had invested large sums of money to develop the land specially to avoid flooding during the monsoon season. It is stated that the company constructed the entire plant within 13 months. The company had invested over Rs.18 thousand crores in developing and leveling the land and plants and machinery are setting up thereon.

It is the case of the company that they obtained various permissions, licences, registration and made other statutory compliance to ensure consent of the project at this site. The company also set up centers in and around the concerned land for technical training and other occupational training to those whose land had been acquired in discharging of its social responsibility. The company submitted that they obtained about all assurances from the respondent/State for starting the project and started working at the site. It is further stated that along with the 13 vendors who have already constructed plant and building, while other 17 vendors are in various stages of construction and the said vendors had also invested an additional sum of Rs.338 crores at this site. In spite of such steps being taken by the company, the labourers, technicians, engineers and employees of the said company at the site were obstructed and assaulted. On 24th August, 2008 the situation was further aggravated. The Durgapur Express way was blocked to prevent vehicles of the

company as well as of those vendors from brining necessary materials and other equipments for the said project.

In the mean time, considerable number of incidents of violent protests and disruption in and around the auto plaint started. As a result whereof on 6th August, 2008 the Superintendent of Police wrote to the General Manager of the Tatas at Singur that a decision has been taken to set up 20 camps on a urgent basis within the project site to guard it. Complaints were lodged by the Tatas that their employees have been attacked by local people. The incident of blockade and violence continued to escalate.

By a letter dated 23rd September, 2008 the appellant informed the Officer-in-charge of Singur police station that they had suspended the construction and commissioning work at the project site with effect from 29th August, 2008. The letter dated 10th October, 2008 addressed to the Director General of Police, West Bengal points out that due to "Intimidating circumstances" they are compelled to suspend the work and they are unable to keep their commitment to complete the manufacture of "Nano" car from Singur plant by October, 2008. Therefore, they decided to relocate their plant and move out from Singur and withdraw from the site. The respondents were unable to develop better law and order situation at Singur. In fact, they failed to maintain peace and tranquillity at Singur, their project site. The atmosphere of continuous threat and disturbance were not conducive to the establishment and running of automobile industry including the

vendor's park. The respondents have obligation to maintain law and order and to preserve peace in Singur. Therefore, they announced that they have been compelled to shift the project out of Singur due to continuous disturbance, blockade and threat. They also informed that they are ready to move out the premises provided that they are compensated for the cost of buildings, sheds and expenses incurred for developing the infrastructure which were installed on the premises.

It is submitted that it would be evident from the annual report of Tata Motors Ltd. from 2008 to 2009 that when shifting started 95% of the work was completed.

Thereafter WBIDC on 22nd June, 2010 addressed a letter to the Tatas, appellant referring another letter of Tatas dated 31st October, 2008 they needed ten months' time to shift their articles and things from site. It was further pointed out that they were to utilize the land for manufacture of a small car within three years from the date of lease. Since the period had expired, an enquiry was made by the respondent as to whether they wanted to utilize the land for any other manufacturing activity.

Finally the appellants were asked whether they want to use the land for any other manufacturing purpose. On 28th September, 2010 their Managing Director replied the query by the letter stating that since a peaceful work

environment could not be created for normal working of the plant they closed the operation from 3rd October, 2008. If they are satisfied that the peaceful and normal condition is created for running the manufacturing plant they will consider for alternative investment in the premises, but they feel that it is not so at this stage and they would consider the option of moving out from the premises provided they and their vendors were compensated for the cost of the buildings, sheds on the premises and expenses incurred in developing the infrastructure which remain on the premises. The Tatas, therefore, removed the equipments, the machines and other materials from the site on and from 10th October, 2008. The plant was relocated at Sanand, Gujarat.

Thereafter, after the Assembly Election held on April/May, 2011 the scenario has changed. It appears from the fact that new Government introduced a Bill on 14th June, 2011 being titled the Singur Land Rehabilitation and Development Act, 2011 for taking over the land covered by the lease granted to TML for setting up the said automobile project including the land covered by the letters of allotment issued to the vendors. This is because of non-commissioning and abandoning of the project.

On 20th June, 2011 Singur Land Development and Rehabilitation Act, 2011 was passed and published in the official gazette. The appellants (Tatas & Vendors) challenged the said Bill and Act and the Rules framed thereunder

before the Hon'ble Single Judge and prayed for declaration that the said Act is unconstitutional.

The Hon'ble Single Judge held that the Act discloses public purpose in its body as well as in the statement of objects quite sufficiently. His Lordship further held that the legislature did not mention an amount or any principle for calculation of an amount. However, such action cannot make the impugned Act as invalid.

His Lordship held that the exercise of the power of eminent domain has to satisfy the twin test of being for public purpose and providing an amount of compensation to the deprived leaseholder. Thereafter His Lordship further examine the provisions of the Act and the decisions cited before His Lordship and came into conclusion that the impugned Act discloses public purpose in its body as well as in the statement of objects quite sufficiently in his opinion.

With regard to the compensation His Lordship further held as follows:

> *"..... It is possible, on the basis of the above authorities to also hold that if a mechanism is provided in the Act for grant of compensation, the Court is entitled to examine the mechanism and come to its own conclusion whether the determination of compensation by that mechanism is likely to be illusory or arbitrary. It is also entitled to examine whether the procedure provided for grant of compensation is arbitrary or is just an illusion, created by the legislature, of granting*

compensation, without any real possibility of the deprived land owner getting compensation in accordance with law.

In the impugned Act compensation is payable to the Tatas. Therefore, there is the necessary intention to pay compensation which was held to be important in the case of Rajiv Sarin & Anr. Vs. State of Uttarkhand & Ors. decided by the Supreme Court on 9th August, 2011 and which is so far unreported. I have also interpreted the use of the word compensation by the legislature to mean that there was the intention to pay compensation according to the judicial interpretation of the word. There is also a mechanism provided in the Act for determining this compensation, namely by the District Judge, Hooghly on an application made by the Tatas. I do not think that this mechanism or procedure is arbitrary or illusory or could result in such kind of determination. But there is some vagueness and uncertainty with regard to compensation receivable which defect I propose to rectify by purposive interpretation of the provisions of the Act."

His Lordship further held that there is a mechanism provided in the Act for determination the compensation by the District Judge, Hooghly.

His Lordship further pointed out that when the legislature used the word compensation, what was the amount of compensation it had in its mind? When an intention has been expressed by the legislature, to pay compensation it is permissible for the Court, using the tools of interpretation as indicated in the decisions of ***Seaford Court Estates Ltd. Vs. Asher*** reported in ***1949 (2) ALL. ER. Page 155***.

In these circumstances, His Lordship held as follows:-

".....There is no reason for striking down this Act for the reason that it does not provide the 'amount' of compensation or the 'principles' for calculation of this amount.

For the above reasons, I would declare that the legislature by using the word compensation meant compensation based on the principles mentioned in sections 23 and 24 of the Land Acquisition Act, 1894, as applicable.

In view of my findings above, I would only add that reference to land in Section 23 necessarily refers to land as defined in Section 3(a) of that Act inclusive of all interests therein. Date of notification is to be taken as date of vesting. I notice that these principles are specifically recognized in earlier statutes of the same legislature – West Bengal Land (Requisition and Acquisition) Act, 1948 and West Bengal Land Development and Planning Act, 1948 for grant of compensation.

Furthermore, to bring the payment of compensation, within the principles of the Land Acquisition Act, 1894, the State, should in its rejoinder to the application claiming compensation under Section 5(2) of the impugned Act, compute and indicate the compensation, admitted by it to be payable and offer to pay it to the Tatas immediately, pending final determination by the District Judge.

The District Judge, it is expected will make a final determination within six months from the date of filing of an application by the Tatas before it.

Thus, the argument that the impugned Act is repugnant to the Land Acquisition Act, and hence, unconstitutional does not stand."

His Lordship further held that where a ninety years lease is sought to be extinguished as argued on behalf of the State and the result of such

extinguishment the lessor gets his property, it is quite difficult to think that such an exercise is not acquisition of a substantial interest in landed property. His Lordship further held that extinguishment of a monthly tenancy which is of negligible value cannot be extinguishment of such a long lease. His Lordship further noted that West Bengal Land (Requisition and Acquisition) Act, 1948 was enacted and under the said Act requisition is a temporary taking over of possession. When land was acquired under the said Act compensation was payable under Section 7 thereof, according to the principles of Section 23 and 24 of the Land Acquisition Act, 1894. The validity of the said Act was upheld by the Supreme Court of India.

His Lordship further held that the impugned Act cannot be called as arbitrary legislation since the public purpose has been disclosed in the Act and since the Tatas admitted in the letter that the Tatas had no activity in contemplation to be undertaken at the site and held that the legislation was targeted at a particular person or corporate body to victimize it.

In these circumstances, His Lordship held as follows :

> *"……In view of the discussion above :*
>
> *(a) The Singur Land Rehabilitation and Development Act, 2011 is held to be constitutional and valid. The Singur Land Rehabilitation and Development Rules, 2011 are also held to be constitutional and valid. So is , any action taken by the state, thereunder.*
>
> *(b) The above Act was not wholly an exercise of the power of the state legislature under entry 18 of list II of the seventh schedule to the*

Constitution of India, but, was also an exercise of its power under entry 42 of list III. Hence, there was acquisition of land leased out to the Tatas.

(c) Sufficient public purpose for making such acquisition is made out in the above Act.

(d) *There is a provision in Section 5(2) of the above Act for award of compensation by the District Judge, Hooghly on an application made by the Tatas. Although, there is an intention expressed by the legislature, to pay compensation, the intention expressed is vague and uncertain. Therefore, this Court has made an interpretation of this provision in the foregoing part of this judgment. According to the interpretation made by this Court award of compensation enshrined in Sections 23 and 24 of the Land Acquisition Act, 1894, as applicable, which are deemed to be incorporated into Section 5(2) of the impugned Act, by reading land as provided in those sections with the definition section of that Act and by taking the date of notification provided in the said sections as the date of notification of the impugned Act. Furthermore, the application has to be determined by award of compensation by the District Judge, Hooghly, within six months of making such application by the Tatas. Furthermore, if the government admits any compensation in its rejoinder to the application to be filed by the Tatas, the government should pay that compensation immediately, since it has taken possession of the land."*

Being aggrieved and dissatisfied with the said judgment and/or dated 28th September, 2011 the Appellants and vendors have field this appeal.

The main challenge has been thrown to the Act, which is entitled as "The Singur Land Rehabilitation and Development Act, 2011 (hereinafter referred as

"the impugned Act") by the appellants/ writ petitioners. It is necessary for us to reproduce the necessary portion of the Act for our purpose. The statement of objects and reasons of the said impugned Act reads as follows:-

> *"1. The State Government for employment generation and socio-economic development by setting up of Small Car Project providing employment and industrial development had transferred 997.17 acres of land situated at Singur in favour of West Bengal Industrial Development Corporation Limited (hereinafter referred to as "WBIDC") after acquisition for facilitating of setting up of Small car project by Tata Motors Limited (hereinafter referred to as "TML") and factories or industries ancillary thereto for socio-economic development and generation of employment and immediately after such transfer, the WBIDC without charging any premium has granted a lease of 647 acres of land at an annual rent in favour of the TML for the sole purpose of small car production so that the object and purpose of the State could be achieved and hereafter issued letters of allotment to several ancillary Industries as recommended by the TML (for short vendor) by charging premium and at nominal annual rent.*
>
> *2. Since the grant of lease to the TML, four years have passed but no small car production industry has been commissioned for regular production of small car, which has in fact been abandoned by the TML as announced by the TML and reiterated in their letters including the letter dated 28.09.2010 and the TML have already transferred, removed the small car project and all machinery and equipment from the said and to another State. So far as letters of allotment issued to the ancillary industries recommended by TML for the purpose of setting up of the industry/factory is concerned, the object has also totally failed. None of those industrial undertakings have taken any steps for obtaining lease in terms of letters of allotment or at all have not set up*

any industry and the land has been lying unutilized for more than three years. No employment generation and socio-economic development has taken place and people in and around the are have not been benefited in any manner, whatsoever, although more or less Rs.137 core has been paid by WBIDC as compensation to landowners and the State Government has spent more than Rs.76 crore for construction drainage and other infrastructure. In addition, the State Government has incurred expenses for providing security at site.

3. The WBIDC in view of non-achievement of object, purpose of the land lease and letters of allotment, do not want to remain as owner of the land and is keen on ownership of the land being vested in the State and the State Government have agreed to reimburse WBIDC for the amount of compensation paid.

4. Several owners of the land/farmers have protested against acquisition against their wishes and have not accepted any compensation and on having realized that there is no scope of generation of employment have been clamoring for return of their land and staging agitation in that area endangering safety and security of the area which unless properly handled urgently, serious law and order problems is likely to develop.

5. In the circumstances, the State Government in public interest considers necessary to take back the ownership of those plots of land and to take over possession thereof in view of total frustration of the object and purpose of allotment/lease of land and for ameliorating ascending public dissatisfaction and agitation and to take steps urgently for return of the land to the unwilling owners of the land who have not accepted any compensation and to utilize remaining portion of

the land in public interest for benefit and socio-economic development of the State of West Bengal."

The Act has been placed by all the parties on different occasions before us. We have noted that the Act contains nine sections. It appears that the said Act came into operation on the date of its notification in the official gazette i.e. on 20th June, 2011, after receiving the assent of the Governor. We have further noted in the definition clause the "Land" has been defined as follows :

"2(b) "land" means lands leased out by West Bengal Industrial Development Corporation Limited to the Tata Motors Limited and also allotted to the vendors, on the basis of the recommendation of Tata Motors Limited and the land held by WBIDSC."

The Act further gave the definition of vendor which reads as follows :

"2(e) "vendor" means allottee of the plot of land, none of whom has obtained any deed of lease in terms of their respective letters of allotment."

We have further noted Section 3 which reads as follows :

"3. On the appointed date, the land and all right, title or interest in respect of land in relation thereto shall by virtue of this Act stand transferred to and vest in the State Government free of any lease or allotment."

Section 4 deals with the general effect of vesting and further extended the meaning of the land by including all assets, rights, leaseholds, powers, authorities, privileges and all properties movable and immovable including the land and structures, if any, standing thereon and possession, power or control of

the land and right or whatsoever nature relating thereto and shall all vest in the State Government.

Section 4(2) deals with the land as referred to in sub-section (1), which have vested in the State Government under Section 3 hereto, shall be virtue of such vesting be freed and discharged from any lease, trust, obligation, mortgage, charge, lien and any other encumbrances being affecting it and any attachment, injunction or decree or order of any Court and State shall be deemed to have been withdrawn.

In Section 4 sub-section (3) specifically stated that the Tata Motors and all vendors shall forthwith restore vacant possession of the land kept their possession in favour of District Magistrate, Hooghly. Further it has been stated that if anybody fails to restore possession of the land or any portion thereof immediately, the District Magistrate or any officer authorized by him shall be entitled to take steps and use such force as maybe necessary to take possession of the land and to enter upon such land.

Section 5 deals with compensation and it is necessary for us to quote such Section 5 which reads as follows :

> *"5. (1) For the transfer to and vesting in the State Government the land under Section 3 and right, title and interest in relation thereto, the amounts of premium paid respectively by the vendors shall be refunded after deducting the amount of arrears of rent left unpaid by*

them upon an application being made by them respectively mentioning the amount of premium paid and rent kept in arrear.

5(2) For the transfer and vesting of the land leased to the Tata Motors Limited, the amount of compensation would be adjudged and determined by the District Judge, Hooghly on an application being made by the Tata Motors Limited in due compliance with the principles of natural justice and by reasoned order.

5(3) The amount so determined in accordance with the provisions hereto, shall carry simple interest at the rate of six per centum per annum from the period commencing on the date of application made by the claimant and ending on the date of tender of the amount as may be determined and payable by the State Government.".

The Section 6 deals with transfer of land to unwilling owners and its utilization which reads as follows :

"6. The State Government shall return equivalent quantum of land to unwilling owners, who have not accepted the compensation from the land described in Part I and the Part II to the Schedule and the rest of the land shall be utilized by the Government for socio-economic development, employment generation, industry and for other public purpose of the State."

Section 7 gives the State Government the power to add by notification or amend the schedule. Section 8 has given overriding effect and Section 9 of the said Act entitled the State Government to make rules for carrying out the purposes of the said Act.

We have also considered the statements of objects and reasons bringing the impugned Act wherefrom it appears that in the statement of objects and reasons which were issued to justify the Act, it is necessary for us to place a great importance therein.

In exercise of the power conferred by Section 9 of the said Act, "The Singur Land Rehabilitation and Development Act, 2011" were framed. The rule contains the machinery for allotment and distribution of land to persons who unwillingly delivered up their land during the acquisition process of 2003.

It is pointed out that the intention of the legislature through that rule is to create a device known as "Committee" to distribute the plot of land to the "unwilling owner". The plot of the land were mentioned in the schedule to the Act.

It is necessary for our purpose to reproduce the Rule 3 hereunder:-

> *"**3. Transfer of land to unwilling owners** - The State Government shall, by way of grant under the Government Grants Act, 1895 (15 of 1895), give equivalent quantum of land to unwilling owners who have not accepted the compensation out of the land mentioned in the Schedule to the Act, which need not be the specific plot of land of any unwilling owner or award compensation, on the basis of decision taken by the High Power Committee."*

It further appears that a High Power Committee has been constituted under Rule 4 of the said Rules. It appears from the said Rule that the quorum for the meeting of the Committee shall be ten and the decision of the majority of the members present shall prevail. Under Sub-rule 4 of the said Rule 4 it has been stated as follows:-

> *"**4 (4)**. All documents/evidence in support of any claim of right or interest or objection in respect of any plot within the Schedule shall be submitted to the Committee within thirty days from the date of commencement of these rules."*

The decision of the committee with respect to grant of land and/or compensation to the unwilling owners shall be final. The said rule has came into

force from the date of their publication in the official gazettee which has been done on 20th June, 2011.

On introduction of the Bill on 14th June, 2011 in the State Legislature it was passed on the same day after receiving the assent of the Governor of West Bengal. The said Act and the Rules were notified on 20th June, 2011 and it was duly announced in the press conference on 21st June, 2011 at about 6-30 P.M.. The Joint Secretary to the Government of West Bengal directed the District Magistrate of Hooghly to take immediate possession of the land after serving a notice to the Tatas.

The facts has also been noted by the Hon'ble Single Judge which we can quote therefrom and His Lordship noted the facts which reads as follows :

> *"Now, the formalities that were observed are quite extraordinary. They become extremely relevant and assume utmost importance in this case. The noting of the District Magistrate dated 21st June, 2011 in an order sheet Records, firsts a direction to issue notice to the Tatas to deliver vacant possession of the land to the District Magistrate, Hooghly. The second endorsement on the sheet made on the same day Records that such notice had been issued and "service return" were in the Records.*
>
> *Now the notice stated 21st June, 2011 addressed to the Managing Director of Tata Motors Ltd. was said to have been posted on 22nd June, 2011 and received by the addressee on 28th June, 2011. However, a duplicate notice was received by a security officer of the Tatas on 21st June, 2011 at 8.51 in the evening.*

The third recording in the said order of the District Magistrate is also dated 21st June, 2011. It Records "failure" on the part of the Tatas to restore possession of land.

At about 8.30 p.m. in the evening of the same day the District Magistrate and the Superintendent of Police arrived at the site.

Now, the letter dated 23rd June, 2011 from the Superintendent of Police, Hooghly, to the District Magistrate refers to two Memoranda 131/C and 132/C of the District Magistrate, Hooghly both received by the Superintendent at 8.30 hours in the evening of 21st. The Memo 131/C recorded that possession had been taken and made a requisition for a "huge police arrangement" at the "Singur Site" from the night of 21st June, 2011 while Memo 132 B said that such exercise was undertaken to keep vacant possession.

It is plain that the State was in possession of the Singur land by 8.30 p.m. in the evening on 21st June, 2011. All the above documents have been disclosed in the affidavit-in-opposition of the District Magistrate, the firth respondent affirmed on 7th July, 2011

This leads very little room for doubt that possession was taken without any notice."

According to Mr. Samaraditya Pal, learned Senior Advocate appearing on behalf of the Tata Motors Limited (hereinafter referred to as the 'TML') the "Singur Act" is a law relating to acquisition. He drew our attention to Article 245 of the Constitution of India and contended that the Parliament as well as State Legislatures has power to legislate which would be evident from Article 245. But both the powers are subject to Constitution, meaning thereby that such exercise of power to legislate cannot violate any provision of the Constitution.

He further drew our attention to Article 246 of the Constitution of India which makes Article 246 the powers between Union and the State. He further drew our attention to Article 246 of the Constitution of India which is set out hereunder:-

> *"**246. Subject-matter of laws made by Parliament and by the Legislatures of States.**- (1) Notwithstanding anything in clauses (2) and (3), Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule (in this Constitution referred to as the "Union List").*
>
> *(2) Notwithstanding anything in clause (3), Parliament and, subject to clause (1), the Legislature of any State also, have power to make laws with respect to any of the matter4s enumerated in List III in the Seventh Schedule (in this Constitution referred to as the "Concurrent List").*
>
> *(3) Subject to clause (1) and (2), the Legislature of any State has exclusive power to make laws for such State or any part thereof with respect to any of the matters enumerated in List II in the Seventh Schedule (in this Constitution referred to as the 'State List').*
>
> *(4) Parliament has power to make laws with respect to any matter for any part of the territory of India not included Notwithstanding that such matter is a matter enumerated in the State List."*

Mr. Pal submitted that the parliament's filed is in List I (exclusively), States' field is in List II (exclusively) and both can legislate in relation to the fields in List III (concurrent). These lists are engrafted in the Seventh Schedule to the constitution. The entries in the 3 lists are generally referred to as the ***fields*** of

legislation. The competency of the legislature will require fulfillment of both i.e. ***power*** and ***field.*** Each entry in the three lists exhaust their area and are exclusive vis a vis other entries. If, however, a particular piece of legislation which shows that in pith and substance the legislation is traceable to a particular entry in List I or List II but **incidentally** encroaches upon an entry in List III then:

(a) Such legislation will be considered to be in relation to that entry to which it is in pith and substance traceable.

(b) After ascertaining the pith and substance if the Court finds that there is incidental encroachment into another field which is not the field in respect of which the legislature has exercised its power, then such incidental encroachment will be ignored.

(c) According to him, a legislation can be referable to multiple entries i.e. more entries than one entry, for example:-

In the case of ***Rustom Cooper Vs. Union of India*** reported in ***AIR (1970) 1 SC 248*** where the Supreme Court held that the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1969 relates to Entry 45 List I and Entry 42 of List III.

In the Case of ***Rajiv Sarin Vs. State of Uttarakhand*** reported in ***(2011) 8 SCC 708***, the Supreme Court held that Kumaun and Uttarakhand Zamindari

Abolition and Land Reforms Act 1960 (KUZALR Act) relates to Entry 18 List II read with Entry 42 List III (Para 38).

In the case of ***Jilubhai Nanbhani Khachar Vs. State of Gujarat*** reported in ***(1995) Supp. 1 SCC 596*** the Supreme Court held that the Bombay Land Revenue Code and Land Tenure Abolition Laws (Gujarat Amendment) Act 8 of 1982 fell within Entries 18 and 23 of List II read with Entry 42 of List III.

He further submitted that when the legislature (Parliament and State) acquires any property, the acquisition part must be traceable to Entry 42 as there is no other entry in any of the 3 lists of the Seventh Schedule to the Constitution which relates to the field of 'acquisition and requisitioning' of property.

He further submitted that applying these twin tests in this case, the only matter to which the impugned Act relates is taking over Tata Motor's leasehold comprising land by acquisition and the simultaneous vesting in State for returning the land to some unidentified people alleged to be unwilling owners for the purpose of conferring unencumbered title to them.

Mr. Pal further submitted that acquisition is the only mechanism or the kingpin of the mechanism by which the land can be returned to the erstwhile unwilling owners and conferring title to them overnight. He also contended that a

leasehold is an outstanding interest of the owner and can be acquired under the provisions of Land Acquisition Act when the State is the owner. This is settled by the Supreme Court judgment reported in ***AIR 55 SC 298 Para 12-15 (Nasserwanji).***

Mr. Pal further submitted that the following decisions has been applied in the following judgments:-

(a) 32 CWN 860 (Kasinath Ghose Vs. Himmat Ali Chaudhury);

(b) (1994) 5 SCC 239 Para 5 (Inder Prasad Vs. Union of India & Ors.);

(c) (1997) 6 SCC 50 pr 7-9 (Union of India Vs. Ajit Singh);

(d) (2004) 1 SCC 1 pr 20 (State of U.P. & Ors. Vs. Lalji Tandon);

(e) (1999) 1 CHN 689 pr 7 (DB).

Hence, he submitted that from these decisions it would be ample clear and beyond any doubt that the impugned Act relates wholly to Entry 42 List III read with Art 300A. Therefore, according to him, no question of pith and substance arises in this case as Entry 18 of List II which has no manner of application in this case as it does not relate to Entry 18 of List II at all.

He further submitted that the contention of the State before the Trial Court was the subject matter of the Singur Act exclusively and wholly relates to Entry

18 of List II and has nothing to do with Entry 42 of List III. Mr. Pal pointed out that the said submission is wholly misconceived for the following reasons:-

(a) Although from the inception of the Constitution till date it has been held that Entry 18 of List II does not relate to *"acquisition or requisitioning"* of property under Entry 42.

(b) Entry 18 List II relates to land and certain interests in land except 'acquisition and requisitioning' which is governed by and/or relates to Entry 42 in List III.

He further relied on Shorter Constitution of India by Durga Das Basu – 14th Edn. at page 2378 and pointed out that while commenting on Entry 18 List II says:

> *"The present Entry is thus wide enough to cover –*
> *(i) land reform and alteration of land tenures, but not 'acquisition of land which is included in Entry 42 of List III"*

He also submitted that in such event all entries in List I and List II should be read as including acquisition as ancillary to all such entries. For example, Entry 1 of List II which relates to Defence of India. Then it would be absurd as well as contrary to the Supreme Court judgments in the case of ***Cooper (supra)*** i.e. Bank Nationalization Act (11 Judges), ***Ishwari Khetan Sugar Mills (P) Ltd. Vs. State of U.P.*** reported in ***(1980) 4 SCC 136*** (5 Judges), ***State of Bihar Vs. Kameshwar Singh*** reported in ***AIR 1952 SC 252 at Page 283, Jilubhai***

Nanbhai Khachar Vs. State of Gujarat reported in ***1995 Supp (1) SCC 596***, ***Rajiv Sarin's case (supra)*** to say that List I Entry I to Schedule VII will apply for acquisition of land. According to Mr. Pal these judgments say and clearly lay down in categorical terms that Entry 42 of List III is an independent power i.e. **stand alone entry.**

We noted the decision of ***State of Bihar Vs. Kameshwar (supra) at Page 283*** where the Supreme Court held as follows:-

> *"There is no doubt that "land" in Entry 18 in List 2 has been construed in a very wide way but if "land or "land tenures" in that entry is held to cover acquisition of land also, then Entry 36 in List 2 will have to be held as wholly redundant, so far as acquisition of land is concerned, a conclusion to which I am not prepared to assent. In my opinion, to give a meaning and content to each of the two legislative heads under Entry 18 and Entry 36 in List 2 the former should be read as a legislative category or head comprising land and land tenures and all matters connected therewith other than acquisition of land which should be read as covered by Entry 36 in List 2".*

He further pointed out that Entry 36 in List II has since been replaced by Entry 42 in List III. Therefore, he submits that the Court should take note of that Entry 36 in List II as similar to Entry 42 in List III.

He submitted that in the decision of ***Rustom Cavesjee Cooper Vs. Union of India*** reported in ***(1970) 1 SCC 248 Para 38*** the Supreme Court held as follows:-

"Power to legislate for acquisition of property is exercisable only under Entry 42 of List III, and not as an incident of the power to legislate in respect of a specific head of legislation in any of the three lists..."

He relied upon the decision of ***Ishwari Khetan Sugar Mills (P) Ltd. Vs. State of U.P.*** reported in ***(1980) 4 SCC 136 Para 17, 18, 19*** where the Supreme Court held as follows:-

*"**17.** Constitution amending process bearing on the three relevant entries may be noticed. Before the Constitution (Seventh Amendment) Act, 1956, which came into force on November 1, 1956, Entry 33 in List I read:*

"Acquisition or requisitioning of property for the purpose of the Union"

Similarly, Entry 36 in List II read:

"Acquisition or requisitioning of property except for the purpose of the Union subject to the provisions of Entry 42 of List III"

At that time Entry 42 in List III read:

"Principles on which compensation for property acquired or requisitioned for the purpose of the Union or of a State or for any other public purpose is to be determined, and the form and manner in which such compensation is to be given."

*"**18.** By the Constitution (Seventh Amendment) Act, the three entries were repealed. Entry 33 in List I and Entry 36 in List II were deleted and a single comprehensive Entry 42 in List III was substituted to read:*

Acquisition and requisitioning of property". Accordingly, the power to acquire property could be exercised concurrently by the Union and the States. Even if prior to the deletion of Entry 33 in List I and Entry 36 in List II and argument could possibly have been advanced that as power of acquisition of property was conferred both on Union and the States to be exercised either for the purpose of the Union or for the State, it was incidental to any other legislative power flowing from various entries in the three lists and not an independent power, but since the deletion of Entry 33 in List I and Entry 36 in List II and substitution of a comprehensive entry in List III, ***it could hardly be urged*** *with confidence* ***that the power of acquisition and requisitioning of property was incidental to other power.*** *It is an* ***independent power*** *provided for in a specific entry. Therefore, both the Union and the State would have power of acquisition and requisitioning of property…."*

*"**19.** It thus clearly transpires that the observation in Cooper case extracted above that* ***power to legislate for acquisition of property is exercisable only under Entry 42 of List III and not as an incident of the power to legislate in respect of a specific head of legislation in any of the three lists,*** *is borne out from Rajahmundry Electric Supply Corporation case and Maharajadhiraj Sir Kameshwar Singh case."*

He relied upon the decision of **Jilubhai Nanbhani Khachar (supra)** where the Supreme Court held that the acquisition aspect of a law relating to agrarian reforms relates to Entry 42 List III.

He also relied upon the decision ***Rajiv Sarin (Supra)*** where the Supreme Court also reiterates the same position.

He further submitted that if the contention of the State that Entry 18, List II carries with it the power of acquisition, it would render Entry 42 of List III totally redundant. Moreover, all nationalization acts have been passed to acquire property and thereafter vest in the State for the purpose mentioned in the Act i.e. Coal Mines Nationalization Act. He further submitted that it would be absurd to argue that such Acts were not for acquisition of the undertakings of the owners of the coal mine.

According to him, the name or title to the Act is not conclusive and cannot be a device to take a matter covered by Entry 42 List III to Entry 18 of List II.

Mr. Pal further contended that it is not open to the State to submit that the Singur Act is not an Act for acquisition of land. He drew our attention to the statement made by the learned Advocate General in answer to the query raised by the learned Judge which is stated as follows:-

> *"At the very close of submissions I asked the learned Advocate General to take specific instruction,* ***whether the state government would prefer any appeal,*** *if the Court interpreted the word "compensation" as embodying the principles enshrined in Section 23 and 24 of the Land Acquisition Act, 1894. He replied on the next date after taking instruction*

that the State had no objections if those principles for grant of compensation were deemed to have been embodied in the impugned Act and were to be considered and applied by the District Judge, subject to admissibility of any principle, while awarding compensation. ***I have taken that statement of the learned Advocate General to be the stand of the State."***

He further submitted that if it was not a case of acquisition then it is impossible to appreciate as to why the State did not object to those principles for grant of compensation under Sections 23 and 24 of the Land Acquisition Act, 1894.

He further contended that compensation is given when land is acquired by reason of the Constitution i.e. now by reason of Article 300A as interpreted by the Supreme Court in ***Jilubhai Nanbhani Khachar Vs. State of Gujarat*** reported in ***(1995) Supp. 1 SCC 596*** where the Supreme Court held in ***Para 52*** is reproduced hereunder:-

"Para 52 at pg.629 *The constitutional history of the interpretation of the power of Parliament to amend the Constitution under Article 368 from Kameshwar Singh to Kesavananda Bharati to give effect to the directive principles in Part IV vis-à-vis the right to property in Articles 19(1)(f) and 31 as well as the interpretation of 'compensation' from Bela Banerjee to Banks Nationalisation case do establish that Parliament has ultimately wrested the power to amend the Constitution, without violating its basic features or structure. Concomitantly legislature has power to acquire the property of private person exercising the power of*

eminent domain by a law for public purpose. The law may fix an amount or which may be determined in accordance with such principles as may be laid therein and given in such manner as may be specified in such law. However, such law shall not be questioned on the grounds that the amount so fixed or amount determined is not adequate. The amount fixed must not be illusory. The principles laid to determine the amount must be relevant to the determination of the amount. The doctrine of illusory amount or fixation of the principles to be arbitrary were evolved drawing support from the language originally couched in the unamended Entry 42 of List III which stood amended by the Constitution 7th Amendment Act with the words merely "Acquisition and Requisition of Property". Nevertheless even thereafter this Court reiterated the same principles. Therefore, the amendment to Entry 42 of List III has little bearing on the validity of those principles. We are conscious that parliament omitted Article 31(2) altogether. However when the State exercises its power of eminent domain and acquires the property of private person or deprives him of his property for public purpose, concomitantly fixation of the amount or its determination must be in accordance with such principles as laid therein and the amount given in such manner as may be specified in such a law. However judicial interpretation should not be a tool to reinduct the doctrine of compensation as concomitance to acquisition or deprivation of property under Article 300-A. This would be manifest from two related relevant provisions of the Constitution itself – Article 30(1-A) and second proviso to Article 31-A as exceptions to the other type of acquisition or deprivation of the property under Article 300-A."

In the case of ***Rajiv Sarin Vs. State of Uttarakhand*** reported in ***(2011) 8 SCC 708, 735*** the Supreme Court held in ***Para 78*** is reproduced hereunder:-

*"**Para 78** When the State exercises the power of acquisition of a private property thereby depriving the private person of the property, provision is generally made in the statue to pay compensation to be fixed or determined according to the criteria laid down in the statute itself. It must be understood in this context that the acquisition of property by the state in furtherance of the directive principles of State policy is to distribute the material resources of the community incurring acquisition and taking possession of private property for public purpose. It does not require payment of market value or indemnification to the owner of the property expropriated. Payment of market value in lieu of acquired property is not a condition precedent or sine qua non for acquisition. It must be clearly understood that the acquisition and payment of amount are part of the same scheme and they cannot be separated. It is true that the adequacy of compensation cannot be questioned in a court of law, but at the same time the compensation cannot be illusory."*

In the case of ***K.T. Plantation (P) Ltd. and Anr. Vs. State of Karnataka*** reported in ***(2011) 9 SCC 1*** the Supreme Court held in ***Para 187 & 188*** is reproduced hereunder:-

*"**Para 187** The legislative field between Parliament and the legislature of any State is divided by Article 246 of the Constitution. Parliament has exclusive power to make laws with respect to any of the matters enumerated in Schedule VII List I, called the Union List and subject to the said power of Parliament, the legislature of any State has power to make laws with respect to any of the mattes enumerated in List III, called the Concurrent List. Subject to the above, the legislature of any State has exclusive power to make laws with respect to any of the matters enumerated in List II, called the State List. Under Article 248, the*

exclusive power of Parliament to make laws extends to any matter not enumerated either in the Concurrent List or State List."

*"**Para 188** We find no apparent conflict with the words used in List III Entry 42 so as to infer that the payment of compensation is inbuilt or inherent either in the words "acquisition and requisitioning" under List III Entry 42. Right to claim compensation, therefore, cannot be read into the legislative List III Entry 42."*

He further contended that compensation amount is paid only where deprivation takes place by acquisition or not by otherwise and then only Article 300A would come to play its role. He further submitted that the learned Judge however found that although there was an intention to play compensation but there is some vagueness and uncertainty and he drew our attention the impugned judgement and to the precise wording of the learned Judge is as follows:-

"But there is some vagueness and uncertainty with regard to compensation receivable which defect I propose to rectify by purposive interpretation of the provisions of the Act."

He further submitted that this line taken by the learned Judge is, with respect, to say these purposive interpretation is wholly perverse as well as certainly unfair. The learned Judge did not exercise of "purposive interpretation of the provisions of the Act." The learned Judge does not identify which are "the provisions of the Act" or otherwise which the learned Judge had in mind. It is clear that the learned Judge if was acting judicially and applying the principles of

purposive interpretation then he should have stood on his own conviction independent of the views of the government.

He also submitted that it is crystal clear that the learned Judge did not at all indulge in purposive interpretation. The learned Judge realized that since he was unable to find any principle of interpretation whether purposive or any other principle, that is why he took the unprecedented approach of asking the learned Advocate General about incorporation of Section 23 and Section 24 of the Land Acquisition Act in open court and waited for the State's consent "on the next date".

He further pointed out that even the statement which was made by the learned Advocate General on the next date was not straight or fair. The Hon'ble Single Judge recorded the same and we reproduced the same hereunder:-

> *"That the State had no objections if those principles of grant of compensation were deemed to have been embodied in the impugned Act and were to be considered and applied by the District Judge* ***subject to admissibility*** *of any principle, while awarding compensation."*

He further drew our attention to the impugned judgment and pointed out that the learned Single Judge further in the judgment held as follows:-

> *"**(d)** There is a provision in Section 5(2) of the above Act for award of compensation by the District Judge, Hooghly on an application made by*

the Tatas. Although, there is an intention expressed by the legislature, to pay compensation, the intention expressed is vague and uncertain. ***Therefore, this Court has made an interpretation of this provision in the foregoing part of this judgment. According to the interpretation made by this Court compensation is to be awarded by applying the principles for award of compensation enshrined in Section 23 and 24 of the Land Acquisition Act, 1894 as applicable, which are deemed to be incorporated into Section 5(2) of the impugned Act, by reading land as provided in those sections with the definition section of that Act and by taking the date of notification provided in*** *the said sections as the date of notification of the impugned Act. Furthermore, the application has to be determined by award of compensation by the District Judge, Hooghly, within six months of making such application by Tatas. Furthermore, if the government admits any compensation in its rejoinder to the application to be filed by the Tatas, the government should pay that compensation immediately, since it has been possession of the land."*

Hence, Mr. Pal submitted that emphasis supplied portion regarding the learned Judge's interpretation is totally belied by the query made by him as submitted above. The State's view prevailed, over any attempt to have recourse to the well settled and basic principles of rule of statutory interpretation i.e. that the interpretation exercised should be confined to four corners of the concerned statute (here the Singur Act).

His second point to challenge the said impugned Act is based on that '*no valid provision for payment for acquisition*'. In support of his such contention Mr. Pal contended that Section 5(2) of the Singur Act does not provide for payment of

any amount i.e. money. It does not provide for amount or the principles for determination of the amount. This vacuum in an acquisition statute like Singur Act cannot be cured by invoking the principles of presumption of constitutionality or by any principles of interpretation including purposive interpretation for the following reasons:

(a) He submitted that there is no dispute that even after deletion of Article 31 and insertion of Article 300A compensation has to be paid.

(b) He also submitted that further, even after the insertion of Article 300A, it has been held that the payment of an amount or the principles for determination of the amount must be laid down in an Act for acquisition of property.

In support of his contention he relied upon the decision of **Jilubhai (supra)** and ***Paschim Banga Krishak Samiti Vs. State of W.B. reported in Bhumijibi*** reported in ***1996 (2) CLJ 285.***

(c) And most importantly determination of the amount is judicially reviewable under Article 226 which has been held to be a feature of the basic structure of the Constitution. In support of his contention he relied upon the decision of **L. Chandra Kumar Vs. Union of India** reported in ***1997 (3) SCC 261.***

(d) He further submitted that an Act which is specially enacted for acquisition of property inevitably provides for handing over of possession of the property.

Section 4 (3) of the Singur Act also contains such a provision and requires Tata Motors to forthwith give vacant possession of the land immediately.

He further pointed out that in the instant case possession was taken with a large contingent of police and the district administration within 2 to 3 hours of the announcement of the Governor's assent to the Act by the Minister of Industry at about 06.00 or 06.30 p.m. to the Press in the Writers' Building. Therefore, a person when dispossessed of the property by a statue like the Singur Act, has the constitutional right to challenge the validity of the Act (here the Singur Act) so that the High Court can examine the Act providing for paying of a fair amount which is not illusory. This examination can only be done by the High Court if some amount or the principles for determining the amount are specified in the acquisition Act itself as otherwise the High Court will not be able to form any or any prima facie view and grant urgently relief to the dispossessed owner in such manner as it deems fit. This co-relation between a taking i.e. deprivation of property and constitutional right to access the High Court must be taken into account and this is the basis of the constitutional requirement of specifying the amount or the principles for determining the amount.

(e) He also submitted that a deferred decision by a delegate (whatever position he might be holding) is a sure method of denying access to the High Court at the crucial stage i.e. protection of possession and can only be seen as a device to circumvent and overreach the constitutional remedy under Article 226.

(f) He further submitted that the Trial Court has recognized the defect in Singur Act as ***"Vagueness and uncertainty with regard to compensation receivable"***

(g) He also submitted that, however, the Trial Court has attempted to rectify this defect by so called purposive interpretation by incorporating truncated provision of the Land Acquisition Act viz. Section 23 and 24 "as applicable". This phrase 'as applicable" leaves the door wide open for a controversy as to what is applicable and how? The same reasons will apply at the stage of final hearing.

(h) He contended that this is a ***casus omissus*** and cannot be supplied by Court. He relied upon the decision of ***Padmasundara Raao Vs. State of T.N*** reported in ***AIR 2002 SC 1334 Para 5, 8A, 11-14*** and submitted that the Supreme Court held that the Court cannot usurp legislative function.

(i) He further contended that rules of interpretation do not permit ***'usurpation of legislative function'.***

In support of his submission he relied upon the decision of ***Padmasundara Raao Vs. State of T.N*** reported in ***AIR 2002 SC 1334 Para 5, 8A, 11-14*** where the Supreme Court held that the Court cannot usurp legislative function.

He also relied upon the decision of ***M/s. Rishabh Agro Industried Ltd. Vs. P.N.B. Capital Services Ltd.*** reported in ***AIR 2000 SC 1583 Para 6*** where the Supreme Court held that Court cannot legislate.

He further relied upon the decision of ***Union of India & Anr. Vs. Deoki Nandan Aggarwal*** reported in ***(1992) Supp. (1) SCC 323 Para 2-5, 13, 14*** where the Court held that there can be no usurpation of legislative power by Court.

He also relied upon the decision of ***Delhi Transport Corporation Vs. DTC Mazdoor Congress & Ors.*** reported in ***(1991) Supp.(1) SCC 600 Para 241, 242, 248, 255, 256*** where the Supreme Court held that extensive additions and deletion are not within court's duty and jurisdiction.

(j) He further submitted that the rules of interpretation do not permit the 'rewriting' or 'recasting' or 'redesigning' of a statute.

In support of his submission he relied upon the decision of ***State of Kerala Vs. Mathai Verghese & Ors.*** reported in ***(1986) 4 SCC 746 Para 1, 3-6*** where the Supreme Court held that court cannot rewrite, recast, redesign the Act.

He further relied upon the decision of ***A.R. Antulay Vs. Ramdas Sriniwas Nayak & Anr.*** reported in ***(1984) 2 SCC 500 Para 18*** where the Supreme Court held that the Court cannot rewrite statue.

He also relied upon the decision of ***Sathadevi Vs. Prasanna*** reported in ***AIR 2010 SC 2777 Para 2-6, 6, 10, 13, 30, 31*** where the Supreme Court held that the Court cannot rewrite/recast/reframe legislation.

(k) He further pointed out that the Hon'ble Single Judge relied on the decision of ***Seaford Court Estates Ltd. Vs. Asher*** reported in ***(1949) 2 All ER 155*** holding that *"There is some vagueness and uncertainty with regard to compensation receivable"* under the Singur Act, for rectifying by purposive interpretation is absolutely misplaced, because according to Mr. Pal the facts and circumstances in which Lord Denning made the observation regarding purposive interpretation by *"Ironing out of creases"* is totally different from the facts and circumstances of this case. The defect in the Singur Act is not at all comparable to the defect which was before Lord Denning in ***Seaford's case (supra)*** nor does such defect have any relevance in the context of challenging to the Singur Act, i.e. constitutional validity of a statute tested against the Constitution of India.

According to him the defect in Singur Act is volatile of the provisions of the Constitution of India. The question of 'ironing out creases' can have no

application when all the provisions of a statue is challenged as violating the Constitution.

He further submitted that the observation of Lord Denning in ***Seaford's case*** regarding *"Ironing out of creases"* is a *mere flourish* and does not have Presidential value. In support of his contention he relied upon the decision of ***In Re S. Mulgaokar*** reported in ***(1978) 3 SCC 339 Para 27*** and ***Sachindanand Pandey Vs. State of W.B.*** reported in ***(1987) 2 SCC 295 at Pages 302 to 304.***

In any event the observation of Lord Denning in "***Seaford"*** regarding *"ironing out of creases"* is a *mere observation.* It *has repeatedly been held by Supreme Court that an isolated observation in a judgment without ascertaining the context* in which such observation was made *cannot be treated as a binding precedent.*

In support of his contention he relied upon the decision of ***BSEB*** reported in (***2009) 8 SCC 483 Para 2-5, 7, 13-16, 18-23*** and ***Jitendra Kumar Singh & Anr. Vs. State of Uttar Pradesh & Ors.*** reported in ***(2010) 3 SCC 119 Para 53-55.***

In the present facts and circumstances of the case further more he pointed out that such observation of Lord Denning in ***Seaford's case (supra)*** regarding 'ironing out of Creases' has subsequently been overruled by House of Lords. In

support of his contention he relied upon the decision of ***Magor and St. Mellons Rural District Council Vs. Newport Corporation*** reported in ***(1951) 2 All ER 839 at pages 841, 844-847, 850.***

Mr. Pal further submitted that the said observation cannot be applicable to a case on constitutional validity of a Statute and particularly so because in 1949 the courts in England did not even have power to declare a statue ultra vires the Constitution.

He further contended that when the word of statue are clear, the intention of the legislature is to be gathered from the words used in the statue itself and he relied upon the decision of ***Institute of Chartered Accountants of India Vs. Price Waterhouse*** reported in ***(1997) 6 SCC 312 Para 40, 51, 52*** where the Court held as follows:-

> *"**40.** Regulation 16(4) provides that the Council shall on the consideration of the report and the further report, if any, and the representation of the member, record its findings."*
>
> ***"51.** It is true that this Court in interpreting the Constitution enjoys a freedom which is not available in interpreting a statue and therefore, it will be useful at this stage to reproduce what Lord Diplock said in Dupori Steels Ltd. Vs. Sirs (All ER at p.542)*
>
> > *"It endangers continued public confidence in the political impartiality of the judiciary, which is essential to the continuance of the rule of law, **If***

> ***Judges, under the guise of interpretation, provide their own preferred amendments to statutes*** *which experience of their operation has* ***shown to have had consequences*** *that members of the court before whom the matter comes consider to be* ***injurious to public interest."***

> ***"52.*** *Where, therefore, the "language" is clear, the intention of the legislature is to be gathered from the language used. What is to be borne in mind is as to what has been said in the statue as also what has not been said. A construction which requires, for its support, addition or substitution of words or which results in rejection of words, has to be avoided, unless it is covered by the rule of exception, including that of necessity, which is not the case here.*
>
> *[See: Gwalior Rayons Silk Mfg. (Wvg.) Co. Ltd. Vs. Custodian of Vested Forests (AIR at page 1752); Shyam Kishore Devi Vs. Patna Municipal Corpn. (AIR at page 1682); A.R. Antulay Vs. Ramdas Sriniwas nayak (SCC at pp. 518, 519)]* ***Indeed,*** *the Court cannot reframe the legislation as it has no power to legislate. [See State of Kerala Vs. Mathai Verghese (SCC at p.749); Union of India Vs. Deoki Nandan Agarwal (AIR at p.101)]"*

Mr. Pal contended that though there is a presumption of constitutionality of a statute, it has been held that such presumption cannot be carried to the extent of holding that there are undisclosed or unknown reasons behind the statute. In support of his contention he relied upon the decision of ***Ram Krishna Dalmia Vs. Justice Tendolkar*** reported in ***AIR 1958 SC 538 Para 11, 12,*** where the Court held as follows:-

"(f) that while good faith and knowledge of the existing conditions on the part of a legislature are to be presumed, if there is nothing on the face of the law or the surrounding circumstances brought to the notice of the Court on which the classification may reasonably be regarded as based, the presumption of constitutionality cannot be carried to the extent of always holding that there must be some undisclosed and unknown reasons for subjecting certain individuals or corporations to hostile or discriminating legislation." (See Para 11)

He further relied upon a decision ***Deepak Sibal Vs. Punjab University & Anr.*** reported in ***(1989) 2 SCC 145 Para 15*** where the Court held as follows:-

"In support of that contention, much reliance has been placed on the decision of this Court in Shri Ram Kirshna Dalmia Vs. Justice S.R. Tendolkar. In that case, it has been observed by Das, C.J. that while good faith and knowledge of the existing conditions on the part of a legislature are to be presumed, if there is nothing on the face of the law or the surrounding circumstances brought to the notice of the court on which the classification may reasonably be regarded as based, the presumption of constitutionality cannot be carried to the extent of always holding that there must be some undisclosed and unknown reasons for subjecting certain individuals or corporations to hostile or discriminating legislation."

He further relied upon a decision ***Paschimbango Krishak Samiti Vs. State of W.B.*** reported in ***(1996) 2 CLJ 285 (DB) Para 86*** where the Court held as follows:-

*"**86.** Although there exists a presumption that an Act is constitutional and that legislature understands and appreciates needs of the people, but when the law is ex facie discriminatory or arbitrary or violative of any other provisions of the Constitution or a law laid down by*

the Supreme court, such presumption cannot stand and/or would be deemed to be rebutted, in which event that burden will shift to the State. ***But to me, it appears when the matter is thrashed out threadbare, the issue in most of the cases became academic as an unconstitutional statute cannot be held constitutional by taking recourse to the presumption.*** *Only in a marginal case, the said presumption may be of some value; but the same may have a great role to play at the time of passing interim orders."*

Mr. Pal contended that **the Act does not disclose any public purpose**. According to him, the purported or alleged public purpose disclosed in the Impugned Act:-

Return equivalent quantum of land to unwilling owners who have not accepted compensation from the described in Part I and part II of the Schedule. According to him **this so called public purpose alleged in the statement of objects and reasons** or **the text of the Act does not disclose any public purpose for following reasons**:-

According to him return of land to unwilling owners is not a public purpose at all. It is more of a 'private purpose' or 'particular interest of individuals' as opposed to 'general interest of community', hence it is not a public purpose. The identity of unwilling owners, the number of unwilling owners, the quantum of land involved, etc are not specified, hence public purpose suffers from vagueness and indefiniteness. According to him only 40 acres of land is necessary for return as stated in **Part I Page 23 Para 37 of the Paper Book** and has not been denied

by State as no affidavit in opposition was filed. According to him return of land to unwilling owners after the subject acquisition being held to be valid by reason of the judgment delivered by Division Bench in the case of ***Joydeep Mukherjee Vs. State of West Bengal & Ors.*** reported in ***(2008) 2 CHN 546*** amounts to overruling the said decision.

Therefore, according to him, this alleged public purpose is bad because it is utterly vague and uncertain. It does not disclose what the State had in mind. It does not say the agency through which the so called public purpose will be achieved unlike the specification in the ***Joydeep Mukherji*** case (supra) which specifically stated that the purpose was to manufacture automobile car and it does not even say that the State has any scheme for the implementation for which the land is needed.

To substantiate his submission he relied upon a decision of ***Somawanti Vs. State of Punjab*** reported in ***AIR 1963 SC 151Para 24, 25, 28, 29,32,40*** where the Supreme Court laid down inter alia the following principles in relation to justiciability of public purpose:-

> *"No doubt in these decisions this Court stated what, broadly speaking, the expressing "public purpose" means. But in neither case the question arose for consideration as to whether the meaning to be given to the expression "Public Purpose" is justiciable."* (Para 35) (emphasis supplied)

"Though we are of the opinion that the Courts are not entitled to go behind the declaration of the Government to the effect that a particular purpose for which the land is being acquired is a public purpose we must emphasize that the declaration of the Government must be relatable to a public purpose as distinct from a purely private purpose. If the purpose for which the acquisition is being made is not relatable to public purpose then a question may well arise whether in making the declaration there has been, on the part of the government a fraud on the power conferred upon it by the Act. In other words the question would then arise whether that declaration was merely a colourable exercise of the power conferred by the Act, and, therefore, the declaration is open to challenge at the instance of the party aggrieved. To such a declaration the protection of Section 6(3) will not extend." [Para 40] (emphasis supplied).

He also relied upon the decision of ***Gadadhar Vs. State of West Bengal*** reported in ***AIR 1963 Cal 565 Paras 3, 7, 14, 18, 24-30*** where the Calcutta High Court held that the acquisition was not for a public purpose since it appears to the Court that acquisition of land for establishment of slaughter house was not a public purpose. Calcutta High Court further held that acquisition was not for a public purpose and in doing so held as follows:-

"From the scheme of the Act it is amply clear that in arriving at the satisfaction as to whether private property must be compulsorily acquired for a public purpose, ***there must be a fixity of purpose in the mind of the Government,*** *because it is in relation to that purpose the Government* ***explores*** *and* ***arrives*** *at its satisfaction.* ***Prima facie,*** *the* ***Government is the best judge*** *as* ***to whether an acquisition is for a public purpose. But it is not the sole judge. Courts have the jurisdiction***

and it is their duty to determine whenever a question is raised whether an acquisition is or is not for a public purpose, *(vide State of Bombay vs. Nanji, 1956 SCA 308 at Page 314: ((S) AIR 1956 Sc 294 at p. 297)." [pr 25] (emphasis supplied)*

Mr. Pal further pointed out that in the instant case it is not in dispute that only 40 acres of land was required for returning land to verified erstwhile unwilling owners in terms of the verification being already done by the committee purportedly constituted under the Singur Land Rehabilitation and Development Rules, 2011. He further pointed out in the impugned Act that there is no indication in the Singur Act for the Court to be satisfied as to what and how the socio-economic interest to be achieved so far as the balance land is concerned.

In support of his contention he relied upon the decision of **The State of Karnatatka & Anr. Vs. Shri *Ranganath Reddy & Anr.*** reported in ***(1977) 4 SCC 471 pr 6, ..8, 9, 10*** where the Supreme Court held as follows:-

".....The intention of the legislature has to be gathered mainly from the Statement of Objects and Reasons of the Act and its Preamble. The matter has to be examined with reference to the various provisions of the Act, its context and set up, the purpose of acquisition has to be culled out therefrom and then it has to be judged whether the acquisition is for a public purpose within the meaning of Article 31(2) and the law providing for such acquisition."

According to him such intention is not disclosed in the Singur Act nor put forward in the affidavit.

He further relied upon the decision of **Sooraram Pratap Reddy & Ors. Vs. District Collector, Ranga Reddy District & Ors.** reported in ***(2008) 9 SCC 552 pr. 73-75, 80*** where the Supreme Court held as follows:-

> *"In State of Bombay vs. R.S. Nanji land was requisitioned for accommodating employees of Road Transport corporation. It was contended that there was no "public purpose" and hence the action was illegal. Referring to Hamabai, Ali Gulshan and State of Bombay v. Bhanji Munji, the Constitution Bench stated that* ***the expression "public purpose" must be decided in each case examining closely all the facts and circumstances of the case."*** *(pr 73) (emphasis supplied)*

In support of his contention he also relied upon the decision ***K.T. Plantation (P) Ltd. Vs. State of Karnataka*** reported in ***(2011)) 9 SCC 1 pr 221(e)*** where the Constitutional Bench of Supreme Court held as follows:-

> *"****Public purpose is a precondition for deprivation of a person from his property under Article 300-A*** *and the right to claim compensation is also inbuilt in that article and when a person is deprived of his property* ***the State has to justify to the grounds*** *which may depend on scheme of the statute, legislative policy, object and purpose of the legislature and other related factors." [pr 221(e)].*

According to him the Sate has to justify. The burden is on the State. Justification can only be adjudged by the Court if public purpose as well as compensation is stated in the Act.

He further relied upon a decision ***Joydeep Mukherjee (Supra)*** where the Division bench of Calcutta High Court has in detail, dealt with the concept of public purpose and nothing further is required to be noted.

He further relied upon a decision of ***Munshi Singh Vs. Union of India*** reported in ***(1973) 2 SCC 337 pr 2, 4-6*** where the three Judge Bench of Supreme Court held "planned development of area" as lacking particularization of public purpose and thus suffering from vagueness and indefiniteness.

He also relied upon a decision ***Madhya Pradesh Housing Board Vs. Mohd. Shafi & Ors.*** reported in ***(1992) 2 SCC 168*** where the three Judge Bench of Supreme Court held "for residential purpose" and "housing scheme of housing board" as hopelessly vague and conveying no idea of public purpose.

He further submitted that principles laid down in the decision of ***Munshi Singh Case (Supra)*** and ***MP Housing Board case*** is still good law and has not been diluted as has been alleged by State.

He further contended that the legislative declaration of facts given in the Singur Act, like *'non-commissioning'*, *'abandoning/abandoned'* and *'unutilized'* are incorrect and the Court can examine the correctness of the same.

He further relied upon a decision ***Indra Sawhney Vs. Union of India & Ors.*** reported in ***(2000) 1 SCC 168 pr 35-43*** where the Supreme Court held that legislative declaration of 'known facts' in an Act are amenable to judicial scrutiny.

Mr. Pal further contended that Tata Motors had never abandoned the Singur land and he relied upon a decision of ***Kanhiya Shanker Vs. Mohabata Sedhu*** reported in ***AIR 1960 Punjab 494*** where abandonment was defined as follows:-

> *"**Abandonment** means the act of intentionally and voluntarily relinquishing a known right absolutely and unconditionally and without reference to any particular person or persons, that is without vesting it in any other person. A person abandoning his property gives up all hope, expectation or intention of recovering his property. The property, after it is abandoned, results in complete divestiture of the title of its owner and having ceased to be his property it becomes the subject of appropriation by the first taker or by its occupant who reduces it to his possession. Abandonment is not a surrender of property because the latter term connotes its relinquishment to another. There are two primary elements of abandonment, namely the intention to abandon and the external act by which effect is given to the intention and both these elements must concur. The intention must be clear and unmistakable indicating that it is the ownership which is being relinquished and not the possession or any other subordinate right consistent with the retention of ownership. Thus a mere failure to occupy land for an indefinite time does not necessarily constitute an abandonment of title or possession, unless there is evidence sufficient to sustain a finding that the property was left without any intention to repossess it and the person abandoning was indifferent as to*

what may become of it in the future and who may take possession of it or claim title to it. Where the land had been left by a co-sharer in trust with another co-sharer non-user for a longtime by the former is not per se sufficient to establish abandonment on his part. Abandonment is not equivalent to inaction."

He further contended that Court should take judicial notice of facts regarding "non-commissioning', 'abandoning/abandoned' *and* 'unutilized'. In support of his submission he relied upon the decision of **Omkar Nath Vs. Delhi Administration** reported in **AIR 1977 SC 1108** where the Supreme Court held that Court can take judicial notice of certain facts i.e. those which compelled Tata Motors to shift the activities from Singur.

Mr. Pal's next contention is on Article 254 of the Constitution of India and submitted that even if it is assumed for argument's sake that specification of amount or principles for determination are not to be stated in the Acquisition Act, the Singur Act will still be void in of Article 254. It is necessary for us to set out the Article 254 of the Constitution of India which reads as follows:-

"**254. Inconsistency between laws made by Parliament and laws made by the Legislatures of States:**

(1) If any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament is competent to enact, or to any provision of an existing law with respect to one of the matters enumerated in the Concurrent List, the, subject to the provisions of clause (2), the law made by Parliament, whether passed before or after the law made by the Legislature of such State, or , as the case may be, the

existing law, shall prevail and the law made by the Legislature of the State shall, to the extent of the repugnancy, be void.

(2) Where a law made by the Legislature of a State with respect to one of the matters enumerated in the Concurrent List contains any provision repugnant to the provisions, of an earlier law made by Parliament or an existing law with respect to that matter, the, the law so made by the Legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent, prevail in the State:

Provided that nothing in this clause shall prevent Parliament from enacting at any time any law with respect to the same matter including a law adding to, amending, varying or repealing the law so made by the Legislature of the State."

According to Mr. Pal if **repugnancy exists between a State law and an existing law or a law made by the Parliament on a matter in the concurrent list viz. List III, the law made by Parliament will prevail and the State law to the extent of such repugnancy shall be void**. But if the law made by the State Legislature is reserved for the assent of the President and the President gives his assent to such law made by the State, then such law made by the State Legislature shall prevail in that State. Hence, he submitted that the State law could only be operative after obtaining the assent of the President and in the absence of such assent it will remain stillborn and/or void.

The word "reserved' clearly shows that the State enactment until the President (through the Council of Ministers) has seen it, duly considered it and assented to it there can be no enforceability.

He further submitted that it cannot be disputed that the Singur Act is a law wholly relating to acquisition of property and therefore relates to Entry 42 of List III. Entry 42 List III is the 'only' entry in the 3 lists which relates to acquisition as held by 11 (eleven) Judges' Bench in **Cooper's case (supra)** and other Constitutional Bench cases referred to earlier. Even if it is partially covered by Entry 42 List III, the consequence will be the same, i.e. the acquisition and compensation provisions would be repugnant to the L.A Act etc.

He submitted that even if the pith and substance test is applied, the Singur Act is an Act for acquisition. Returning land and conferring title can only take place if there is land with the Government which can be returned free from all encumbrances. Here, land including the leasehold of TML was acquired so that the land is with the government for returning it to and conferring title on the very person from whom it had been acquired.

He further submitted that the theory of incidental encroachment cannot have any application in this case, vis a vis acquisition is concerned.

He further submitted that the decision of ***Offshore Holdings Pvt. Ltd. Vs. Bangalore Development Authority & Ors.*** reported in ***(2011) 3 SCC 139*** has no application.

The Supreme Court was dealing with development scheme under the Bangalore Development Authority Act, 1976 (BDA Act).

Section 36 of the BDA Act reads as follows :

"***36.*** *Provisions applicable to the acquisition of land otherwise than by agreement.-*

(1) The acquisition of land under this Act otherwise than by agreement within or without the Bangalore Metropolitan Area shall be regulated by the provisions, so far as they are applicable, of the Land Acquisition Act, 1894.

(2) For the purpose of sub-section (2) of section 50 of the Land Acquisition Act, 1894, the Authority shall be deemed to be the local authority concerned.

(3) After the land vests in the Government under section 16 of the Land Acquisition Act, 1894, the Deputy Commissioner shall, upon payment of the cost of the acquisition, and upon the Authority agreeing to pay and further costs which may be incurred on account of the acquisition, transfer the land to the Authority, and the land shall thereupon vest in the Authority."

In the said decision the issue raised was whether by reason of the incorporation of the L.A. Act, Section 11A of the L.A. Act could apply to land acquired for the BDA's massive development schemes. The Supreme Court held that if Section 11A is also applied with the 2 years limitation then the schemes

framed which required a larger period for their implementation would be frustrated. He submitted in the instant case no such issue could arise.

Mr. Pal further drew our attention to Section 36 of the BDA Act and contended that in any event when L.A. Act was incorporated in the BDA Act it became part and parcel of the BDA Act and as such the question of repugnancy as envisaged in Article 254 could not arise. According to Mr. Pal, in the instant case, no such issue can arise. According to him, since no assent has been obtained from the President the "Singur Act" by reason of Article 254 (1) shall be void.

The expression used by Article 254(1) that "the law made by the Legislature of the State shall, to the extent of the repugnancy, be void" shows beyond any doubt that the State law becomes void by reason of the constitutional declaration in Article 254 and is rendered void and stillborn by Article 254's own and independent operation.

The word "shall" emphasizes the mandatory character of the constitutional declaration.

He further contended that no Court can by a process of interpretation cure the "void" because the cure lies in the hands of the President and the President only. The impugned judgment of the Trial Court has found repugnancy but the

learned Judge undertook the task assigned to the President by the Constitution by rectifying and usurping the power of the President.

According to him, the assent of the President is not a mere formality. He drew our attention to the shorter Constitution of India by (14th Edition) – 2009 (Durga Das Basu) and pointed out the true scope, meaning and effect of the President's role in relation to Article 254.

Mr. Pal further pointed out that the comparative table below confirms the repugnancy between Singur Act and the L.A. Act.

Table of repugnancy

Sl. No.	***L.A. Act***	***Singur Act***
1.	*S. 4,5*	*No right to object*
2.	*S.23 Market value*	*S.5(2) undefined compensation*
3.	*S.9*	*None.*
4.	*S.11 Award*	*No award or hearing before award*
5.	*S. 18 Reference*	*Nil*
6.	*S.54 Appeal*	*Nil*
7.	*S.16 Possession upon award.*	*S.4(3) Possession forthwith*
8.	*Solatium (23) (2)*	*Nothing*
9.	*Payment 31*	*Nothing*
10.	*Public Purpose*	*Nothing*
11.	*S.9*	*No definition. The ostensible purpose based on willing/unwilling is wholly inconsistent with L.A. Act.*
12.	*Manner of taking possession*	*S.4(3)*
13.	*No return of land after possession 48*	*S.6 provides for return of land acquired under L.A. Act.*

14.	*S.24 – Secondly disinclination of the owner is wholly irrelevant*	*Disinclination is the very foundation*

He further submitted that since the impugned Act was not reserved for the assent of the President the question of receiving her assent could not arise and the Singur Act is directly declared by Article 254(1) to be void.

Admittedly the assent of President was not obtained.

Therefore, he submitted that the provisions of Section 3, Section 5(2), Section 4(3) and Section 6 of the impugned Act are void.

Mr. Pal lastly contended that the said Act is nothing but in violation of Article 14 of the Constitution and submitted that companies which have been allotted land for industrial purpose have been spared although they have not even utilized the land in any manner till date. Mr. Pal drew out attention to such companies and particulars which are stated in stay petition Page 22, Para 35, Volume I of the Paper Book. Mr. Pal submitted that the State chose not to file any affidavit in opposition in spite of this Hon'ble Division Bench gave them liberty to file affidavit nor did they make any oral submissions on this point.

Mr. Pal in support of his contention relied upon the decision of ***State of West Bengal Vs. Anwar Ali Sarkar*** reported in ***AIR 1952 SC 75*** and the decision of ***Ram Prasad Vs. State of Bihar*** reported in ***AIR 1953 SC 215***.

We have noticed that the Supreme Court in ***Anwar Ali Sarkar case (supra)*** where the Supreme Court held as follows :

> *"The question in each case would be : whether the characteristics of the class are such as to provide a rational justification for the differences introduced ? Judged by this test, the answer in the present case should be in the negative; for the difference in the treatment rets here solely on arbitrary selection by the State Government. It is true that the presumption should always be that the legislature understands and correctly grounds: Middleton Vs. Taxes Power & Light Co., (1919) 249 U.S. 152 but as was said by Brewer J. in Gulf Colorado etc. Company v. Ellis,*
> *"to carry the presumption to the extent of holding that there must be some undisclosed and unknown reason for subjecting certain individuals or corporations to hostile and discriminatory legislation is to make the protection clauses of the Fourteenth Amendment a mere rope of stand."* ***(Para 49)***

We have further noticed that in ***Ram Prasad case (supra***) the Supreme Court observed as follows :

> "*It is impossible to conceive of worse form of discrimination than the one which differentiates a particular individual from all his fellow subjects and visits him with a disability which is not imposed upon anybody else and against which even the right of complaint is taken away."*

He further submitted that where there are other Acts/provisions under which a property can be acquired and the same purpose is achieved, it would be

arbitrary and discriminatory to enact specific statue to deny the benefits available under such other statues. In support of his submission he relied upon the following decisions:-

1. ***AIR 1972 Cal 487 (Monoranjan Routh Vs. State of West Bengal) ;***
2. ***AIR 1975 Cal 325 (Ramendra Nath Vs. State of W.B.);***
3. ***2004 (1) SCC 467 (Para 16) (State of U.P. & Ors. Vs. Lalji Tandon (dead);***
4. ***AIR 1965 SC 1017 (P. Vajravelu Mudaliar & Anr. Vs. The Special Deputy Collector of Land Acquisition, West Madras & Anr.) (Para 19, 20);***
5. ***AIR 1968 SC 394 (Dy. Commr., Kamrup Vs. Durganath) (Paras 18, 20, 21).***

Mr. Pal further pointed out that here the land could have been acquired under L.A. Act. There was no urgency. It has been stated in the writ petition that assuming there was such urgency as alleged then Section 17 of L.A. Act could have been invoked. Lease could have been terminated under Transfer of Property Act and, thereafter, the W.B.P.P. Act, West Bengal Public Land (Eviction of unauthorized occupants) Act, 1962 could have been applied by the State. But no steps have been taken under such Acts. The learned Advocate General submitted that the proceedings under these Acts is time consuming.

Mr. Pal further pointed out that the fear of unrest and turmoil as alleged in the statement of objects and reasons for urgency has been belied because no such turmoil or breakdown of law and other has been reported or shown.

He further submitted that the Act violates Article 14 because it is founded and structured on an arbitrary basis viz. willing and unwilling in the context of L.A. Act. If this basis is accepted as valid classification then no land acquisition for any public purpose (industry or not). But a few unwilling (or even willing) owners or a political/third party without any lawful basis or right get hold of sufficient number of persons to sit on the land and stall the project or a scheme conceived in public interest. The State cannot reward such persons by enacting a law to return the validly acquired land (judicially declared or not) which would be a **dangerous precedent** and can strike at the root of any developmental work irrespective of the nature of the land. Such a classification would violate Art. 14 and Rule of Law which is a basic feature of the Constitution as held in ***Kesavananda Bharati Vs. State of Kerala*** reported in ***(1973) 4 SCC 225***. In substance, **no procedure** is provided under Section 5(2) of the Singur Act.

He submitted that all procedural Acts like Civil Procedure Code also basically provides for natural justice, yet Civil Procedure Code had to be enacted because how natural justice is to be fulfilled in civil litigation is the purpose of laying down the procedure. He also submitted that there is no straight jacket formula in natural justice principle. Hearing to be given or not is not a must for complying with natural justice. He further pointed out that post decisional hearing may amount to compliance with natural justice. Scope for oral evidence is undefined by the mere mention of natural justice. He also submitted that

manner & procedure of proof are not certain in 'natural justice'. He also submitted that there is no provision for execution of any purported order made by the District Judge nor will it be an award under the Arbitration and Conciliation Act, 1996. He further pointed out that the Hon'ble Single Judge found that the law is vague, ambiguous and therefore created law. This result of absence of substantive principles of law amounts to arbitrary conferment of power.

No provision of appeal has been provided in the Act in question. According to Mr. Pal the Articles 226 and 227 cannot be invoked because issues of facts will arise disputed questions of fact which are not to be decided under these two Articles.

He contended that Saving by 'High Authority' principle has no application in this case and submitted that the high authority principle is applicable where, prima facie, unguided discretion has been conferred, but the Court finds the guidance from the four corners of the statutes, which includes the fact that the donee of the power is a highly placed person. It is submitted that such principle can never be applied (i.e. High Authority) when an Adjudicating Authority is designated without any adjudicatory procedure before him and without any substantive law or principles before him.

Mr. Pal referred to the decision of ***Delhi Transport Corporation (supra)*** and submitted that it may also be characterized as excessive delegation of legislative function because what should be the amount and what principles to be applied are essential legislative functions which cannot be delegated and such excessive delegation is also a **facet of Article 14**.

Mr. Pal also relied upon a decision of **Delhi Laws Act case** reported in **AIR 51 SC 332 para 38**.

He submitted that Section 4(3) of the impugned Act confers arbitrary and drastic powers in favour of State officials to take possession of the land and to enter upon such land. The arbitrary conferment is demonstrated in this very case. The District Magistrate and other officers of the State have fulfilled the arbitrary provisions of Section 4(3) by acting arbitrarily as disclosed from their own records.

The learned Single Judge has held in TML's favour on this issue and drawn our attention to Paragraphs 8,9 and conclusion (d) at page 42 of the impugned judgment and he pointed out that no argument has been advanced on behalf of the State against this conclusion and finding.

Mr. Kapoor, learned Senior Counsel appearing on behalf of the vendor Tata Steel processing & Distribution Limited & Anr. submitted that the Division Bench

by its judgment uphold the process of acquisition initiated by the State and dismissed all the writ petitions. The said decision is of ***Joydeep Mukherjee's case (supra).***

Mr. Kapoor pointed out that in the said writ petitions several land owners who were unwilling challenged the acquisition proceedings. The Division Bench decided the question and upheld the acquisition. The said acquisition proceeding was also under the provisions of the Land Acquisition Act, 1894.

According to Mr. Kapoor the principles of res judicate became applicable in this case. After the said decision, no issue can survive about the willingness or unwillingness of the owners. The land stood vested free from encumbrances after the order was pronounced by the Court.

Mr. Kapoor pointed out that this is an Act of nine sections and a set of purported rules have been framed under the Act. The principal object of promulgation of the impugned Act is stated in the preamble in the following terms which reads as follows *:*

> *"....with a view to returning such portion of the land to the unwilling owners thereof, who have not accepted compensation.....".*

Mr. Kapoor submitted that this purported purpose is repeated in the Heading as well as in the Preamble and there is no ambiguity of any kind

whatsoever in this stated purpose. This is not only the principal object but in fact is the **sole object of the Act**.

He drew our attention to the statement of objects and reasons more particular in paragraphs 4 and 5 of the statement of objects and reasons which we have noted earlier. According to Mr. Kapoor the very purpose of the Act is to return the land to unwilling farmers/owners.

According to him, this reason is unknown to acquisition law, and a naked invasion of the judicial power of the Courts and therefore unconstitutional and void. It is the settled law that while interpreting the provisions of an Act, the statement of objects and reasons should be considered for harmonious construction and understanding of the different provisions of the enactment. The express purpose was, "to return the land to unwilling farmers." Such intention was reiterated and re-affirmed in section 6.

Mr. Kapoor pointed out that in Rule 2(3), an "unwilling owner" has been defined to mean owner of plot of land within the schedule to the Act whose land was sought to be acquired and who has not accepted compensation. According to him, this definition is itself bad. It, by itself, abrogates the decision of the Division Bench.

He further drew our attention to Rule 3 which reads as follows :

> ***"3. Transfer of land to unwilling owners –*** *The State Government shall by way of grant under the Governments Grant Act give equivalent quantum of land to unwilling owners who have not accepted the compensation out of the land mentioned in Schedule to the Act which need not be a specific plot of land of any unwilling owner or award compensation on the basis of decision taken by the High Power Committee."*

He further drew our attention to Rule 8 which reads as follows :

> *"the decision of the Committee with respect to grant of land and/or compensation to the unwilling owners shall be final."*

He further submitted that although the statute mandates that the land will be returned to unwilling farmers, discretion has been vested in the High Power Committee "not to return the land" but to grant compensation in lieu of the same.

Mr. Kapoor pointed out that the compensation of such so-called unwilling farmers award/compensation is already lying deposited with the authority for disbursement but they had admittedly refused to accept. Now the new rules say that the High Power Committee will give land or compensation. In that event, what happens to the working out of the acquisition already ordered by the Division Bench ?

He further submitted that the rules actually expose various inherent contradictions and reduce everything to absurdity. He further raised a question

how could those persons whose rights had already been adjudicated assume this legal character?

He further submitted that because the settled law is this: After the decision upholding the acquisition, -

"(a) The land vested in the State free from all encumbrances;

*(b) "Free from all encumbrances is wholly unqualified and would encompass the **extinguishing** of all rights, title and interests;*

(c) "Thus the State has absolute title/ownership over the land;

*(d) "Thereafter the claimants are not entitled to restoration of possession on the ground that **either the original purpose has ceased to be in operation** or the land could not be used;*

***(e) "The Original landowner becomes persona non grata.**[A person who has no legal rights.]*

(f) He has the right to get compensation only;

*(g) **"The person interested cannot claim restoration of the land on any ground whatsoever.***

In support of his submission he relied upon the decision of ***Sulochana Chandrakant Galande Vs. Pune Municipal Transport & Ors.*** reported in ***2010 (8) SCC 467***. We have noted in ***paragraph 17*** of the said decision which is reproduced hereunder :

"***17.*** *In Satendra Prasad Jain v. State of U.P., this Court held that once land was vests in the State free from all encumbrances, it cannot be divested. The same view has been reiterated in Awadh Bihari Yadav v. State of Bihar, U.P. Jal Nigam v. Kalra Properties (P) Ltd., Pratap, Chandragauda Ramgonda Patil v. State of Maharashtra, Allahabad Development Authority v. Nasiruzzaman, State of Kerala v. M. Bhaskaran Pillai, M. Ramalinga Thevar v. State of T.N., Printers (Mysore) Ltd. v. M.A. Rasheed, Bangalore Development Authority v. R. Hanumaiah and Govt. of A.P v. Syed Akbar."*

The Supreme Court further held in ***paragraph 19*** which is reproduced hereunder :

"**19.** *In a similar situation, in Gulam Mustafa v. State of Maharashtra, this Court held as under : (SCC p. 802, para 5)*

"5……once the original acquisition is valid and title has vested in the municipality, how it uses the excess land is no concern of the original owner and cannot be the basis for invalidating the acquisition. There is no principle of law by which a valid compulsory acquisition stands voided because long later the requiring authority diverts it to a public purpose other than the one stated in the ….declaration."

Hence, the Supreme Court held as follows :

"***22.*** *In view of the above, the law can be summarized that once the land is acquired, it vests in the State free from all encumbrances. It is not the concern of the landowner how his land is used and whether the land is being used for the purpose for which it was acquired or for any other purpose. He becomes persona non grate once the land vests in the State. He has a right to get compensation only for the same. The person interested cannot claim the right of restoration of land on any ground, whatsoever."*

He further submitted that in simple terms, the State could not identify or recognize “unwilling owners” in the teeth of the judgment. This classification itself was an illegitimate classification. And then to clothe them with rights and entitlements in flat contradiction and in the teeth of the judgment was an unconstitutional procedure adopted by the legislature wholly without authority of law.

He further submitted that ex facie, the entire exercise was undertaken to nullify the judgment of this Hon’ble Court which upheld the acquisition. Once the acquisition had been upheld, the rights of the original vendors or unwilling owners or unwilling farmers whether they had accepted compensation or not were merged and gone. Their causes of action were altogether extinguished by the decision. There is no question of those rights surviving. Their status was eroded by declared law.

Mr. Kapoor submitted that merely to reverse the judgment and having its effects which the State had sought, this is a colourable attempt to legislatively nullify and overrule the binding decision of the Hon’ble Court. This exercise is wholly impermissible constitutionally.

He relied upon the decision of the ***Municipal Corporation of the City of Ahmedabad & Anr.*** **Vs. The New Shrock SPG and WVG. Co. Ltd. & Ors.**,

where the Supreme Court rejected such an attempt as being, a direct inroad into the judicial powers of the State (pr.7) and as being **"Repugnant to the Constitution"** [pr. 8] [(1970) 2 SCC 280, prs. 5, 7 and 8]. He also relied upon the decision of ***Madan Mohan Pathak & Anr. Vs. Union of India & Ors.*** reported in ***(1978) 2 SCC 50*** and submitted that, Bhagwati, J., dealing with the LIC (Modification of Settlement) Act, 1976 said thus :

> *"The object of the Act was in effect to take away the force of the judgment by the Calcutta High Court recognizing the settlement in favour of the Class III and Class IV employees of the statute."*

He further relied upon the decision of ***G.C. Kanungo Vs. State of Orissa*** reported in ***(1995) 5 SCC 96*** where the Supreme Court held that when a statute appears to nullify the decision of a Court made in exercise of its judicial power then it encroaches upon the judicial power and has to be declared unconstitutional having regard to, the well settled and undisputed legal position that a legislature has no legislative power to render ineffective the earlier judicial decision by making a law which simply declares the earlier judicial decisions as invalid and not binding because the exercise of any such power in its power sense is not the exercise of legislative power but actually tantamounts to the exercise and encroachment upon the judicial power vested in the properly constituted authorities under the law.

He relied upon the decision of ***State of Tamil Nadu & Ors. Vs. K. Shyam Sundar & Ors.*** reported in ***(2011) 8 SSCC 737*** and submitted that the Supreme

Court struck down legislation by the State saying that, "a judicial pronouncement of a competent Court cannot be annulled by the legislation in exercise of its legislative powers **for any reason whatsoever."**

He further submitted that for these reasons it is respectfully submitted that the impugned Act is an illegal exercise of legislative power [or rather, based on the total lack of legislative power] and should be struck down on t his ground alone.

Mr. Kapoor further contended on the point of repugnancy and submitted that the Singur Act is bad because it is in direct conflict with the L.A. Act which already covers the whole field of acquisition.

It is submitted after analyzing the provisions of the Act it would be amply clear, categorical, explicit and unequivocal and from a conjoint reading of all relevant related statutory materials there is not even scope for argument that the purpose of the statue was to achieve acquisition and for the purpose of returning the land to unwilling owner. Therefore, the Singur Act is wholly repugnant to the provisions of the L.A. Act, 1894 and the State Legislature was not entitled to enact another statue as it purported to do by the Singur Act entirely for the purpose of acquisition of the lands at Singur.

He further submitted that applying any test of repugnancy [or any test of inconsistency] stated in different ways and in different words by the Supreme Court over and over again, it is submitted that the Singur statue cannot co-exist in the same field and being repugnant to the Central Act, it is void for transgression by virtue of Article 254 of the Constitution.

He relied upon the decision of **Ch. *Tika Ramji & Ors. ETC. Vs. State of Uttar Pradesh & Ors.*** reported in ***AIR 1956 SC 676 para 26 to 32*** a decision of Five Judges' Bench of the Supreme Court, the test for determining repugnancy was discussed in the following manner :

> *"If, however, a competent legislature expressly or explicitly evinces its intention to cover the whole field, that is a conclusive test of inconsistency where another Legislature assumes to enter to any extent upon the same field."*

He contended that the Supreme Court approved of the test proposed by Calcutta High Court in O.P. Stewart v. B.K. Roy Chaudhury the meaning of the repugnancy held as follows :

> *"29....It is sometimes said that two laws cannot be said to be properly repugnant unless there is a direct conflict between them, as when one says "do" and the other "don't", there is no true repugnancy, according to this view, if it is possible to obey both the laws. For reasons which we shall set forth presently, we think that this is too narrow a test: there may well be cases of repugnancy where both laws say "don't" but in different ways. For example, one law may say, "No person shall sell liquor by retail, that is, in quantities of less than five gallons at a time"*

and another law may say, "No person shall sell liquor by retail, that is, in quantities of less than ten gallons at a time". Here, it is obviously possible to obey both laws, by obeying the more stringent of the two, namely the second one; yet it is equally obvious that the two laws are repugnant, for to the extent to which a citizen is compelled to obey one of them, the other, though not actually disobeyed, is nullified".

The learned Judge then discussed the various authorities which laid down the test of repugnancy in Australia, Canada, and England and concluded at p. 634:

> *"The principle deducible from the English cases, as from the Canadian cases, seems therefore to be the same as that enunciated by Isaacs, J. in the Australian 44 hour case (37 C.L.R. 466) if the dominant law has expressly or impliedly evinced its intention to cover the whole field, then a subordinate law in the same field is repugnant and therefore inoperative. Whether and to what extent in a given case, the dominant law evinces such an intention must necessarily depend on the language of the particular law."*

Hence, he submitted that the present case both laws are undeniably about acquisition. The L.A. Act provides for acquisition in its own way. The Singur Act also purports to provide for acquisition but in a different way.

It is submitted that in the present case, the State Legislature without presidential assent, was not competent to enact its own acquisition law at all. It had no legislative competence whatsoever. To put it alternatively, it is respectfully submitted that the Singur Act ex facie purports to encroach upon a

field already covered by Parliamentary legislation namely LA Act, 1894 and therefore, was a stillborn statute and void ab initio. In support of his contention he further relied upon the decision of ***State of Orissa & Anr. Vs. M/s. M.A. Tulloch & Co.*** reported in ***AIR 1964 SC 1284***.

In the said decision the Court held as follows :

"*Repugnancy arises when two enactments both within the competence of the two Legislatures collide and when the Constitution expressly or by necessary implication provides that the enactment of one legislature has superiority over the other then to the extent of the repugnancy the one supersedes the other. But two enactments may be repugnant to each other even though obedience to each of them is possible without disobeying the other. The test of two legislations containing contradictory provisions is not, however, the only criterion of repugnancy, for if a competent legislature with a superior efficacy expressly or impliedly evinces by its legislation an intention to cover the whole field, the enacatments of the other legislature whether passed before or after would be overborne on the ground of repugnance. Where such is the position, the inconsistency is demonstrated not by a detained comparison of provisions of the two statutes but by the mere existence of the two pieces of legislation. In the present case, having regard to the terms of Section 18(1) it appears clear to us that the intention of Parliament was to cover the entire field and thus to leave no scope for the argument that until rules were framed, there was no inconsistency and no supersession, of the State Act.*"

He further relied upon the decision of **Cooper's case (Supra)** where it is said as follows :

*"Power to legislate for acquisition of property is exercisable **only** under Entry 42 of List III, **and not** as an incident of the power to legislate in respect of a specific head of legislation **in any of the three Lists."***

He relied upon the following decisions in support of his contention :

1. ***M. Karunanidhi Vs. Union of India & Anr.*** reported in ***(1979 3 SCC 431);***
2. ***Zavarbhai Amaidas*** reported in ***AIR 1954 SC 752;***

We have noticed in the decision of ***M. Karunanidhi (Supra)*** that the presumption is always in favour of the constitutionality of a statute and the onus lies on the person assailing the Act to prove that it is unconstitutional. Before any repugnancy can arise the conditions which must be satisfied are: (1) that there is a clear and direct inconsistency between the Central Act and the State Act; (2) that such inconsistency is absolutely irreconcilable and (3) that the inconsistency between the provisions of the two Acts is of such a nature as to bring the two Acts into direct collision with each other and a situation is reached where it is impossible to obey the one without disobeying the other. Where there is possibility of both the statutes operating in the same field without coming into collision with each other then there is no repugnancy arises. The most important tests to find out as to whether or not there is repugnancy is to ascertain the intention of the legislature.

He also relied upon the following decisions on the subject of repugnancy/Parliamentary Legislation covering the field.

1. ***Kesoram Industried (2004) 10 SCC 201;***
2. ***Offshore Holdings Pvt. Ltd. Vs. Bangalore Development Authority & Ors. reported in (2011) 3 SCC 139***
3. ***Trishala Jain (2011) 6 SCC 47;***
4. ***Kanthimathy Plantations (1989) 4 SCC 650***

He further relied upon the decision of ***Offshore Holdings (Supra),*** in particular paragraph 62 and 72 of the said decision and submitted that the acquisition and requisition of property as specified in Entry 42 of List II of Schedule VII which read with Article 246, is a stand-alone entry for acquisition of land. He further pointed out that in the said decision the Supreme Court held that in the event the field is covered by the Central Legislation, the State Legislature is not expected to enact a law contrary to or in conflict with the law framed by the Parliament on the same subject. In that event, it is likely to be hit by the Rule of repugnancy and it would be a stillborn or invalid law on that ground.

In this context he submitted that a separate statute for acquisition is constitutionally impermissible and a flagrant infraction of explicit constitutional limitations on the legislative competency of the State and therefore, void ab initio.

His second point with regard to Article 300A of the Constitution of India which deals with right to property and reads as follows :

> *"**300A. Persons not to be deprived of property save by authority of law.** – No person shall be deprived of his property save by authority of law."*

Mr. Kapoor submitted that the right to property is not a fundamental right yet it continues to be a right of citizens protected by the Constitution. The said Article rests on the doctrine of eminent domain. It guarantees constitutional protection against illegal deprivation of property by the State. It mandates that in order for any deprivation to be lawful and valid, the deprivation must be by authority of some law.

It is settled law that the word *"law"* in Article 300A *means "statute"*. The doctrine of eminent domain comprises of two parts (I) acquisition of property in public interest and (ii) payment of reasonable compensation therefor.

He further submitted that in other words, there must be a lawful public purpose justifying the acquisition of property and there must be payment of reasonable compensation for the acquisition. Unless these two constitutional preconditions are satisfied, there can be no deprivation of property. In support of his contention he relied upon the decision of ***Amarjit Singh & Ors. Vs. State of***

Punjab & Ors. reported in ***(2010) 10 SCC 43*** and ***State of Bihar Vs. Project Uchcha Vidya, Siksha Sangh & Ors***. reported in ***(2006) 2 SCC 545***.

We have noticed in the decision of ***Amarjit Singh (Supra)*** the Supreme Court held as follows:-

> *"Acquisition made for a public purpose and in accordance with the procedure established by law upon payment of compensation that is fair and reasonable cannot be assailed on the ground that any such acquisition violates the right to livelihood under Article 21 of those who may be dependent on the land being acquired. The LA Act provides for a reasonable compensation for the land acquired from the expropriated owners. Acquisition are made in exercise of power of eminent domain for public purpose, and that individual right of ownership over land must yield place to the larger public good. That acquisition in accordance with the procedure sanctioned by law is a valid exercise of power vested in the state."*

According to him, the statement of public purpose cannot be vague. It cannot be lacking in particulars. It cannot be evasive. The Courts are not expected to guess about the public purpose.

On the contrary, it is settled law that the public purpose must whether stated in a general way or even loosely, indicate on the face of this statute the public purpose for which the acquisition is sought to be undertaken.

In ***Amarjit's case (supra)*** it is held by the Supreme Court as follows:

"…Rehabilitation is not an essential requirement of law for any compulsory acquisition. Any law of acquisition cannot be said to violate the right to livelihood of the owners who may be dependent on the land being acquired from them."

The same proposition can also be found in the judgment of Sinha, J., in the ***Uchcha Vbidya case (Supra)*** and he submitted that the law is that vis-à-vis the land acquired, the position of the erstwhile owner is equivalent to that a persona-non-grate that is a person without any right.

We have noticed that in the case of ***State of Bihar and Ors. Vs. project Uchcha Vidya, Sikshak Sangh & Ors. (Supra)*** the Court held that the Article 300-A embodies the "doctrine of eminent domain" which comprises two parts, (i) acquisition of property in public interest; and (ii) payment of reasonable compensation thereof. The Supreme Court in the said decision also noted the decision in ***Jilubhai Nanbhani Khachar Case (Supra).*** The Supreme Court also pointed out that the word 'law' in the context of Article 300-A must mean an Act of Parliament or of a State Legislature, a rule, or a statutory order, having the force of law, that is positive or State-made law.

Therefore, the object of the impugned Act to return the land to the unwilling owners was ex facie illegal and a purported public purpose which ought not to be recognized or countenanced by the Courts being void ab initio.

He further stated that it is not enough to simple say in an expropriatory legislation that the property is being taken for a public purpose. The specific purpose has to be indicated.

He relied upon the decision of **Munshi Singh & Ors. Vs. Union of India** reported in **(1973) 2 SCC 334** and submitted that Singur Act does not provide any scheme for rehabilitation independently. There is no provision for rehabilitation and the use of the word in the title is itself colourable and illicit.

He further relied upon the decision of ***Babu Singh's case*** reported in ***(1981) 3 SCC 628*** and submitted that if there is no proper indication of a public purpose then the constitutional writ jurisdiction of our Courts is clearly attracted and as in the case of Babu Singh and Munshi Singh, the statute can be struck down on this ground alone.

His next point in dealing with regard to the compensation, he submitted that the Singur Act is bad and unconstitutional because it does not provide for just compensation. He submitted that the vendor/petitioner applied to the WBIDC for allotment of plot for a total area of 10 acres for setting up an ancillary manufacturing factory. The WBIDC accepted these applications and issued letters of allotment to the vendor/petitioner allotting the land in question for a period of 90 years on terms and conditions agreed and stated in the said letters.

The petitioner paid permits and the costs of registration. The petitioner paid lease rent annually as well as all municipal and Panchayet rates and taxes and other outgoings. The writ petitioner admittedly commenced the establishment of a factory and whilst this process was ongoing the unfortunate incidents took place which brought everything to a halt.

Mr. Kapoor further submitted that the WBIDC had issued possession certificates and promised to execute a lease, the draft of which was to be prepared by the WBIDC itself which it failed to finalize.

Mr. Kapoor relied upon the decision of ***Anthony Vs. KC Ittop & Son*** reported in ***(2000) 6 SCC 394*** where the Supreme Court held as follows :

> *"When it is admitted by both sides that the appellant was inducted into the possession of the building by the owner thereof and that the appellant was paying monthly rent or had agreed to pay rent .....**The legal character of the appellant's possession has to be attributed to a jural relationship between the parties.** Such a jural relationship, on the fact-situation of this case, cannot be anything different from that of lessor and lessee ..... **There is no possibility for holding that the nature of possession .....is anything other than as a lessee."***

He further submitted that the State has pointed out that the vendor/petitioner in this case and the other similarly situated vendors had no

legal rights to protect. According to him, this contention is palpably wrong and absurd.

He contended that the position of the vendors including the petitioner is not different from that of Tata Motors Limited and what are plainly innuendoes and insinuations to the contrary in the Singur Act are meaningless, unintelligible, illegal and devoid of substance.

He further submitted that the law is that the person deprived must get "a just equivalent" of what is taken away from him. In other words, there cannot be an arbitrary value fixed.

He further submitted that the decision laid down in ***State of West Bengal Vs. Bela Banerjee*** reported in ***AIR 1954 SC 170*** so far as determination of compensation is concerned, is still good law. In that case, the Supreme Court said that what the State must ensure is to provide a just equivalent of what the owner has been deprived of and the Courts went on to say that, "within the limit of this basic requirement of full indemnification of the expropriated owners the Constitution allows free play to the legislative judgment as to what principle should guide the determination of the amount payable. Whether such principles taken into account of the **elements which make up the true value** of the property appropriated and excluded matters which are to be included is a justiciable issue to be adjudicated by the Courts.

It is submitted that in the instant case the compensation provided for taking away the land of the petitioner/vendor is hopelessly inadequate and amounts to no compensation at all. By Section 5(i), it is stated that for the taking of the land of the vendors and their right, title and interest in relation thereto only **"the amounts of premium paid"** shall be refunded. This compensation is no compensation at all. It is a case that it is even worse than the case of compensation awarded to TML by Section 5(2). **It is a case of no compensation.**

Therefore the Singur Act does not satisfy the tests of public purpose and the tests of reasonable compensation.

No notice is taken of the development of the factory land. No notice is taken of the investment made to improve the land. There is no provision for the appreciation in the value of the factory land due to the efforts of the petitioner. Section 5(1) ignores market value. It ignores net income value. It ignores replacement value. It is not predicated on any known or just principle of assessing the value of the vendors' lands. As submitted earlier, it is a case of no compensation at all.

He relied upon the decision of ***P. Vajravelu Mudaliar Vs. Special Deputy Collector for Land Acquistion, West Madras, and Anr.*** reported in **AIR 1965 SC 1017** and submitted that compensation offered must not be a pittance

against the real value. It cannot be assumed on frivolous basis. It cannot be illusory. It has to be real in the sense of being a just equivalent of what the owner has been deprived of.

He relied upon the decision of ***Mudalia's case (Supra)*** in ***Paragraphs 14 and 15*** and submitted that it is settled law that the compensation offered must not be a pittance against the real value. It cannot be assumed on frivolous basis. It cannot be illusory. It has to be real in the sense of being a just equivalent of what the owner has been deprived of. He submitted that in the present case by prescribing reimbursement only of premium at the date of allotment, the State has ensured that it is in fact giving nothing at all of any relevance or on any lawful basis or just re-compense to the vendors including petitioner for the property that is sought to be taken away from writ petitioner.

We have noticed that in the said decision the Court held that (i) the compensation shall be "a just equivalent" of what the owner has been deprived of; (ii) the principles which the legislature can prescribe are only principles for ascertaining a "just equivalent" of what the owner has been deprived of; and (iii) if the compensation fixed was not a "just equivalent" of what the owner has been deprived of or if the principles did not take into account all relevant elements or took into account irrelevant elements for arriving at the just equivalent, the question in regard thereto is a justiciable issue.

The Supreme Court further held as follows:-

> *"If the legislature, though ex facie purports to provide for compensation or indicates the principles for ascertaining the same, but in effect and substance takes away a property without paying compensation for it, it will be exercising power which it does not possess. If the legislature makes a law for acquiring a property by providing for an illusory compensation or by indicating the principles for ascertaining the compensation which do not relate to the property acquired or to the value of such property at or within a reasonable proximity of the date of acquisition or the principles are so designed and so arbitrary that they do not provide for compensation at all, one can easily hold that the legislature made the law in fraud of its power. Briefly stated the legal position is as follows: if the question pertains to the adequacy of compensation, it is not justiciable; if the compensation fixed or the principles evolved for fixing it disclose that the legislature made the law in fraud of powers in the sense we have explained, the question is within the jurisdiction of the Court."*

Mr. Kapoor, Senior Advocate relied upon the following decisions in support of his submission :

1. ***P. Vajravelu Mudaliar Vs. Special Deputy Collector for Land Acquistion, West Madras, and Anr.*** reported in **AIR 1965 SC 1017;**

2. ***K.T. Plantation (P) Vs. State of Karnataka reported in (2011) 9 SCC 1;***

3. ***Abdul Quddus reported in (1991) 6 SCC 589;***

4. ***Rajeev Sarin & Anr. Vs. State of Uttarakhand & Ors. reported in (2011) 8 SCC 708;***

5. ***State of Gujarat Vs. Shantilal Mangaldas & Ors. reported in (1969) 1 SCC 509.***

We have also considered the ***K.T. Plantation Case (Supra)*** where the Supreme Court held two conditions on the exercise of the power of eminent domain: the first requisite is public advantage and then compensation from the public funds be made, if possible, to the one who has lost his right. The Supreme Court in that decision also noticed that the question whether the "element of compensation" is necessarily involved in the idea of eminent domain arouses much controversy. According to one school of thought this question must be answered in the negative, but to another view, the claim for compensation is an inherent attribute of the concept of eminent domain. Then the Supreme Court in a series of decisions took the view in favour of doctrine of eminent domain. The Supreme Court in the said decision held as follows:-

> *"In Bela Banerjee Case, this Court held that ht legislature has the freedom to lay down principles which govern the determination of the amount to be given to the owners of the property appropriated, but the Court can always, while interpreting Article 31(1) and Article 31(2), examine whether the amount of compensation paid is just equivalent to what the owner had been deprived of."*

The Supreme Court further noted in the said decision that parliament thereafter brought in the Twenty-fifty Amendment Act, 1971 by which Article 31(2) was amended by which private property could be acquired on payment of an "amount" instead of "compensation". A new Article 31-C was also inserted. The Constitutionality of the said amendments was also the subject-matter in ***Kesavananda Bharati's case (Supra)*** where the Supreme Court held that a

constitutional amendment could not alter the basic structure of the Constitution. It further appears in the Forty-fourth Amendment, 1978 by which Article 300-A has been introduced. In the said decision the Supreme Court further held that the twin requirements of *"public purpose"* and *"compensation"* in case of deprivation of property are inherent and essential elements or ingredients, or *"inseparable concomitants"* of the power of eminent domain and, therefore, of List III Entry 42 of 7 Schedule would apply when the validity of a statute is in question. Hence, Supreme Court in the said ***K.T. Plantation Case (Supra)*** held as follows:-

> *"The principles of eminent domain, as such, are not seen incorporated in Article 300-A, as wee see, in Article 30(I-A), as well as in the second proviso to Article 31-A(1) though we can infer those principles in Article 300-A. The provision for payment of compensation has been specifically incorporated in Article 30(1-A) as well as in the second proviso to Article 31-A(1) for achieving specific objectives. The Constitution (Forty-fourth Amendment) Act, 1978 while omitting Article 31 brought in a substantive provision clause (1-A) to Article 30. Resultantly, though no individual or even educational institution belonging to majority community shall have any fundamental right to compensation in case of compulsory acquisition of his property by the State, an educational institution belonging to a minority community shall have such fundamental right to claim compensation in case the State enacts a law providing for compulsory acquisition of any property of an educational institution established and administered by a minority community. Further, the second proviso to Article 31-A(1) prohibits the legislature from making a law which does not contain a provision for payment of compensation at a rate not less than the market value which follows that*

a law which does not contain such provision shall be invalid and the acquisition proceedings would be rendered void."

We have also noticed the ***Rajeev Sarin's Case (Supra)*** where it has been specifically stated in ***Paragraph 21*** of the said decision that it is settled law that agrarian reforms fall within Schedule VII List II Entry 18 read with List III Entry 42 of the Constitution.

The Supreme Court in the said decision has also specifically held that the intention of the legislature to pay compensation is abundantly clear from the fact that section 19 itself prescribes that the compensation payable to a hissedar under Section 12 shall, in the case of private forest, be eight times the amount of average annual income from such forest and untimely held that the twin claimant of eminent domain has to satisfy and came to the conclusion in ***Paragraph 84*** of the said judgment which reads as follows:-

"We therefore find sufficient force in the argument of the counsel for the appellants that awarding no compensation attracts the vice of illegal deprivation of property even in the light of the provisions of the Act and is therefore amendable to writ jurisdiction."

His next point is that in any event the matter cannot come within the purview of Entry 18 of the List II of the VII Schedule. The question is whether the Singur Act can be enacted under the authority of Entry 18 of List II.

Mr. Kapoor submitted that the finding of the Hon'ble Single Judge on this aspect has held that the Singur Act had been promulgated for the purpose of

extinguishment/determination/ termination of the leasehold rights of Tata Motors Limited to the lands in question.

The Hon'ble Single Judge also noted the argument made before him in support of entry 18 of the list II but rejected that argument altogether and ultimately held that the Singur statute was referable to Entry 42 of List III and to no other field of legislation in any of the Lists.

Mr. Kapoor drew our attention to ***Offshore Holdings' Case (Supra)*** and submitted that once the doctrine of pith and substance is applied to the facts and circumstances of the instant case, it is more than clear that in substance, the said Act is comprehensively a statute on the subject of acquisition of certain lands and really a statute that can only fall under Entry 42 of List III. But the whole field of Entry 42 of List III has already been covered by the LA Act, 1894. Therefore, the said Act being in conflict with the Central Act was stillborn and ineffective. Thus, the provisions of the LA Act are entitled to primacy in all respects and the Singur law is stillborn and unconstitutional.

He relied upon the decision of ***K.T. Plantation case (supra)*** where the Supreme Court held as follows :

> *"The impugned Act, Acquisition Act primarily falls under List II Entry 18 since the dominant intention of the legislature was to protect an estate covered by the Karnataka Land Reforms Act, 1961 as part of agrarian reforms. (2011) 9 SCC 1 Paragraph 1 and 111"*

He also relied upon the decision of ***Rajeev Singh's case (supra)*** where the Supreme Court had occasion to consider the scope of Entry 18 of List II and it explained the scope in the following clear and emphatic terms:

> *"It is settled law that agrarian reforms fall within the Schedule 7 List II Entry 18."*

He further submitted that in the instant case it cannot be denied that Kuzalr Act, 1960 is a statutory enactment dealing with agrarian reforms. In other words Entry 18 of List II cannot be attracted in relation to any particular statute. Such a statute in pith and substance must be concerned with agrarian reforms. Agrarian means "relating to agriculture."

He further submitted that in the present case, the Singur Act had nothing to do with subject of agriculture or agricultural land or agricultural reforms or land reforms or anything of the kind. In fact, the land covered by the Singur Act is admittedly "factory land". The land was converted into factory land by the conscious and deliberate action of the State itself. Once such conversion had taken place, the State (whether under the same Government or any other Government) is estopped from contending that the land was or ought to be regarded as agricultural land. If the land was not agricultural land, then Entry 18 of List II can have no application whatsoever in pith and substance to the Singur Act.

He further submitted that Entry 18 List II and Entry 42 List III clearly operate in different fields and are in respect of distinctly independent subjects. Therefore, any argument to confuse the two fields covered by these two Entries ought to be resisted as being repugnant to the true and proper construction of these two separate entries.

According to Mr. Kapoor it is noteworthy that the requirement of public purpose and compensation are not legislative requirements to make laws under Entry 18 List II. These conditions or restrictions however are imported in the case of deprivation of property by Article 300A of the Constitution.

He further submitted that in other words, the Singur Act itself from its contents and its terms, when it purports to state the public purpose as well as the provisions for compensation, contains intrinsic evidence which inevitably establishes beyond controversy that the Singur Act is a law of acquisition promulgated by the State without having any power to do so and should be struck down on this ground alone.

He relied upon the decision of ***Glanrock Estate Pvt. Ltd Vs. State of Tamil Nadu*** reported in ***(2010) 10 SCC 96*** where the Supreme Court held on the subject matter concerned certain estates and lands which reads as follows :

> *"The 1969 Act is a piece of legislation for abolishing feudal tenure and is a measure of land reforms in pursuance of the directed principles of State policy. In pith and substance, the 1969 Act was in*

respect of "land" and "land tenure" under Entry 18 List II of the Constitution. Not only that it is settled law that the "State" has admittedly no legislative competence to enact a legislation in exercise of its powers of Schedule VII List II Entry 18 of the Constitution in relation to non agricultural land."

The Supreme Court held that such legislative jurisdiction exists only in terms of Schedule VII List II Entry 6 of the Constitution which was also placed before this Court in the case of ***Kerala Vs. PUCL*** reported in ***(2009) 8 SCC 46*** paragraphs 38, 131-133 and it is submitted that a plain comparison between Entry 18 of List II and Entry 42 of List III will show that acquisition of any kind cannot be brought within the scope of Entry 18 List II because if acquisition was to fall under Entry 18 then Entry 42 List III would be rendered superfluous. In support of his contention he also relied upon the decision of ***All Federation of Tax Practitioners Vs. UOI*** reported in ***(2007) 7 SCC 527***.

Mr. Kapoor relied upon the decision of ***Kameshwar Singh's case (Supra)*** where the Supreme Court held as follows :

"There is no doubt that land in Entry 18 in List II has been construed in a very wide way but if "land" or "land tenures" in that Entry is held to cover acquisition of land also, then Entry 36 of List II will have to be held as wholly redundant. So far as acquisition of land is concerned, a conclusion to be avoided. To give a meaning and content to each of the two legislative heads under Entry 18 and Entry 36 in List II the former should be read as a legislative category or head comprising land and land tenure and all matters connected therewith, other than

acquisition of land, which should be read as covered by Entry 36 in List II."

His further contention that Violation of the principles of natural justice/ violation of the equality clause guaranteed by Article 14 is nothing but discrimination.

Mr. Kapoor further relied upon the decision of ***Anwar Ali Sarkar's Case (Supra)*** and submitted that the West Bengal Special Courts Act, 1950 was struck down on the ground of violation of Article 14 of the Constitution because the Supreme Court held that the statute contained discriminatory procedure.

Mr. Kapoor contended that the Singur Act singles out for treatment the vendors, Tata Motors Limited by a prejudicial procedure which negates the general law of acquisition and it is done discriminatory, in its effect as well as in its operation and it exposes the vendors and Tata Motors Limited to the arbitrary and whimsical decisions of the State and therefore ought to be judged unconstitutional. He also relied upon the decision of ***Bidhan Nagar Salt Lake Welfare Association's Vs. Central Valuation Board*** reported in ***(2007) 6 SCC 668***.

In ***Bidhan Nagar Association's case (Supra), Sinha, J.*** put the principle in a very simple terms which reads as follows :

"When a statute does not provide for procedural fairness it may be ultra vires."

"When a substantive unreasonableness is to be found in a statute it may have to be declared unconstitutional."

"Moreover, if the requirement is not read into the provisions of an Act, it would be seriously open to challenge on the ground of violation of the provisions of Article 14 and on the ground of non compliance with the provisions of natural justice."

"The principle of natural justice cannot be dispensed with on mere ipse dixit."

"No statute which takes away somebody's right and/or imposed duties can be upheld wherefor for intent and purport there does not exist any provision for effective hearing."

Mr. Kapoor further submitted that in this background, the Supreme Court struck down the Act impugned in that case and declared the same to be unconstitutional being violative of Article 14 of the Constitution.

Mr. Kapoor relied upon the decision of ***Radhey Shyam Vs. State of U.P.*** reported in ***(2011) 5 SCC 553*** and submitted that illustrates the principle that the Government must provide appropriate material before Court evidencing the circumstances necessitating invocation of the urgency clause.

Mr. Kapoor further submitted that the Singur Act violates the fundamental rights guarantees under Articles 14, 19, 21 and 300A of the Constitution and is a whimsical and capricious and wholly arbitrary piece of legislation which ought to be struck down by this Court and it is prayed accordingly.

Mr. Bikash Ranjan Bhattacharjee, learned Senior Counsel appears in the matter in W.P. No. 10205 of 2011 (Biplab Das & Ors) submitted that the petitioners are erstwhile landowners of the land acquired by the State for the declared public purpose to set up an Automobile factory at Singur. There were two types of land i.e. 'sali' which was a single crop yield and the other was 'sona' a multi crop yield. 'Sona' land was costly for which a better compensation package than that of 'sali', was announced by the Government. A very handful of owners of 'sali' land did not accept the compensation and another group of landowners irrespective of quality of land could not accept the awarded compensation because of title dispute.

He further submitted that the erstwhile landowners after the acquisition and declaration of the award, the erstwhile landowners irrespective of acceptance and non-acceptance of compensation constituted one class. Unwillingness cannot be determined on the basis of non-receipt of compensation. According to Mr. Bhattacharya the impugned Singur Act was enacted to acquire the land from the Tata's for the public purpose of returning the land to the 'unwilling' erstwhile land owners.

He further submitted that quantum of land owned by the so-called 'unwilling' farmers having been known to the government that the total area of land would not be more than 20 acres could have been restored, if at all, following the condition of lease entered into with Tata.

He further submitted that the impugned purpose is arbitrary and violative of Article 14 of the Constitution of India. Reliance has been placed on the decisions of ***Ajoy Hassia Vs. Khalid Mujib*** reported in ***(1981) 1 SCC 722*** and ***State of Tamil Nadu Vs. K. Shyam Sundar & Ors.*** reported in ***(2011) SCC 737***.

He further submitted that the classification of willing and unwilling after the acquisition is not justified. He further submitted that under the L.A. Act once compensation is awarded non-acceptance of the same amounts to illegality. Citizens who had abided by the law could not be put into disadvantage in comparison with the persons who had defied the law. The Legislation in favour of the law violators would mean legislative protection to law breakers which would amount to negation of rule of law.

Mr. Bhattacharjee relied upon the decision of ***Nagpur Improvement Trust Vs. Vithal Rao*** reported in ***(1973) 1 SCC 500*** where the Supreme Court held as follows:-

> *"It is now well-settled that the State can make a reasonable classification for the purpose of legislation. It is equally well-settled that the classification in order to be reasonable must satisfy two tests (I) the classification must be founded on intelligible differentia and (ii) the differentia must have a rational relation with the object sought to be achieved by the legislation in question. IN this connection it must be borne in mind that the object itself should be lawful. The object itself cannot be discriminatory, for otherwise, for instance, if the object is to determine against one section of the minority the discrimination cannot be justified on the ground that there is a reasonable classification because it has rational relation to the object sought to be achieved."*

He further submitted that in the Singur Act the object of classification is unlawful and discriminatory. Accordingly, the same should be declared as ultravires to the Article 14 of the Constitution of India. The impugned classification for the purpose of restoration of land only to the so called unwilling farmers patently bad and discriminatory being violative of Article 14 of the Constitution of India. While the said impugned Act a class within the class has sought to be created.

He further submitted that if the impugned Act is allowed to be operative the wrongdoers will get a better price of this low yielding land taking advantage of the development of the land and its surroundings after the setting up of the factory shed by Tata.

He further submitted that for change of character of land the same would be sold in the open market and to get much higher price. Thus, by this purported legislation the law abiders will be placed into worse situation than law violators in the name of unwillingness.

Mr. Bhattacharya relied upon a decision of ***State of Orissa Vs. Chitra Sen Bhoi*** reported in ***(2009) 17 SCC 74*** where the Supreme Court on the issue of legislative discrimination held as follows :

> *"Legislature made a discriminatory policy between the poor and inarticulate as one class of person to whom the benefit of Section 28-A was to be extended and comparatively affluent who had taken advantage of the reference under Section 18 and the latter as a class to which the benefit of Section 28-A was not extended."*

He submitted that the Supreme upheld the legislation which was enacted for the benefit of the poor and inarticulate section as a part of social justice.

In the instant case there is no such distinction favourable factors are available in support of the impugned Singur Act.

He further submitted that the Supreme Court in ***Dev Sharan & Ors. Vs. State of U.P.*** reported in ***(2011) 4 SCC 769*** in ***paragraph 17*** held as follows :

> *"…in construing public purpose, a broad and overall view has to be taken and the focus must be on ensuring maximum benefit to the largest number of people. Any attempt by the State to acquire land by*

promoting a public purpose to benefit a particular group of people or to serve any particular interest at the cost of the interest of a large section of people, especially of the common people, defeats the very concept of public purpose."

It is submitted that in the instant case the impugned legislative intention is to serve the interest of handful of landowner and to defeat the larger public interest. Land in question ought to be returned to all the erstwhile owners without any discrimination. Petitioners cannot be deprived of their right to get back their land which was acquired for a purpose if the same is returned to so-called 'unwilling' land owners.

Mr. Bhattacharya adopt the submissions made by Mr. Pal, Learned Senior Advocate and Mr. S.K. Kapoor, Learned Senior Advocate and submitted that the "Singur Act" should be declared as bad and ultra vires.

The learned Counsel appearing on behalf of different writ petitioners (Vendors) adopted the submissions made on behalf of the TML by Mr. Samaraditya Pal, Senior Advocate, Mr. S.K. Kapoor, Senior Advocate, and Mr. Bikash Ranjan Bhattacharjee, Senior Advocate.

Mr. Anindya Kumar Mitra, learned Advocate General as well as Mr. Sakti Nath Mukherjee, learned Senior Advocate appearing on behalf State respondents submitted that the approach of the Court is to proceed with the presumption of

the Constitutionality of the statute and not to look into the statute with the intention of the findings defects.

According to him, in ***State of Bihar Vs. Bihar Distillery Ltd.*** reported in ***(1997) 2 SCC 453*** the Supreme Court held that the approach of the Court while examining the challenge to the Constitutionality of an enactment is to start with the presumption of Constitutionality.

He further contended that the Court should not approach the enactment with a view to pick holes or to search for defects of drafting. His further contention is that the intention of the legislature has to be gathered mainly from the statement of objects and reasons of the Act and its Preamble. He relied upon the decision of ***State of Karnataka Vs. Ranganatha Reddy*** reported in ***(1977) 4 SCC 471***. He further submitted that Court will take into consideration the surrounding circumstances under which the statute was enacted, the statement of objects and reasons, Preamble and the Title of the Act. According to him, the motive of the Legislature is beyond the pale of judicial review and he relied upon the decision of ***T. Venkata Reddy Vs. State of A.P.*** reported in ***(1985) 3 SCC 198 page 212***.

He further submitted that State has filed a cross-objection and contended that the said Act is not for acquisition of either leasehold right or allottes' right. Hence, no encroachment upon Entry 42 List III is involved. According to him, it

is a case of resumption of possession of leasehold land by the owner and in the process of extinction of the leasehold right and allottee's right encroachment upon Entry 42 List III incidentally took place. The Act is in the field of Entry 18 List II of 7th Schedule.

He further pointed out that Entry 18 is not confined to agricultural land and is of wide amplitude covering all right in or over land and also land tenures and also resumption of land tenure. In support of his submission he relied upon the decision of ***Megh Raj Vs. Allah Rakhia*** reported in ***AIR 1947 Privy Council 72***. The Privy Council held at ***paragraph 16*** as follows :

> *"The key to item 21 is to be found in the opening word, "Land." That word is sufficient in itself to include every form of land, whether agricultural or not. Land indeed is primarily a matter of provincial concern. The land in each province may have its special characteristics in view of which it is necessary to legislate, and there are local customs and traditions in regard to land-holding and particular problems of provincial or local concern which require provincial consideration. It would be strange if the land in a province were to be broken up into separate portions some within and some outside the legislative powers of the Province. Such a conflict of jurisdiction is not to be expected, item 21 is part of a Constitution and would on ordinary principles receive the widest construction, unless for some reason it is cut down either by the terms of item 21 itself or by other parts of the Constitution which has to be read as a whole. As to item 21, "Land", the governing word, is followed by the rest of the item, which goes on to say, "that is to say", These words introduce the most general concept – "right in or over land". "**Rights in land" must include general rights like full ownership or leasehold**

or all such rights. *"Rights over land" would include easements or other collateral rights, whatever form they might take. Then follow words which are not words of limitation but of explanation or illustration, giving instances which may furnish a clue for particular matters: thus there are the words "relation of landlord and tenant and collection of rents." These words are appropriate to lands which are not agricultural equally with agricultural lands. Rent is that which issues from the land. Then the next two sentences specifically refer to agricultural lands, and are to be read with items 7, 8 and 10 of List III. These deal with methods of transfer or alienation or devolution which may be subject to federal legislation but do not concern the land itself, a sphere in which the provincial and federal powers are concurrent, subject tot he express exception of the specific head of agricultural land which is expressly reserved to the provinces. The remainder of item 21 specifies important matters of special consequence in India relating to land. The particular and limited specification of agricultural land proves that "land" is not used in item 21 with restricted reference to agricultural land but relates to land in general."*

He also relied upon the case of ***Jilubhai Nanbhai Khachar (supra)***.

The reversionary interest always remained vested in the State. Upon extinction of the lease, leasehold right and allottees' right of possession revert to the landlords. According to him, this reversionary right has been confirmed under the Singur Act. Therefore, this is not a case of acquisition of any right. Leasehold interest gets extinguished. Therefore, according to him, Singur Act is not related to Entry 42 of List III, Schedule 7. Alternatively he submitted that

even if this Act in relation to Entry 18 of List II and Entry 42 of List III the Act will be valid as it would be incidental encroachment upon Entry No. 42. He further submitted that the State did not step into the shoes of the lessee or allottees under Singur Act.

He further submitted that TML's right and vendor's right both have been extinguished. The State cannot acquire the right already extinguished the right of the non-existence right or property cannot be acquired. If so the compensation is provided for either TML's right or allottees right under Article 300-A of the Constitution. Reliance has been placed in the case of ***Provident Investment Co. Vs. CIT*** reported in ***AIR 1954 Bombay 95 at paragraph 8*** and ***H.S. Ram Singh Vs. Bijoy Singh Surana*** reported in ***76 CWN 217 at paragraph 10***. He further tried to point out before this Court that on extinction of TML's leasehold resumption was acquired. To substantiate such submission he drew our attention to Section 100(5) of the Transfer of Property Act and referred to the decision of Tarkeshwar Sio Thakur Jiu Vs. Das Dass Dey & Co.reported in ***AIR 1979 SC 1669***.

He further submitted that when the purpose becomes impossible to achieve, the lease in view of its own terms ceases to be a lease and he relied upon the decisions of ***Rakhal Chandra Basak Vs. The Secretary for India in Council*** reported in ***33 CWN 669***; ***2003 (3) SCC 723*** (***M. Arul Jothi and Anr. Vs. Lajja Bal (Deceased) and Anr.); AIR 1962 SC 1305 (Amarsarjit Singh Vs. State of***

Punjab) ; ***AIR 1964 SC 685*** (***State of Orissa Vs. Ram Chandra***) and ***AIR 1999 SC 296 (Indu Kakkar Vs. Haryana State I.D.C. Ltd.)***.

We have noticed in ***Shri Shri Tarakeshwar Sio Thakur Jiu Vs. Dar Dass Dey and Co.*** reported in ***AIR 1979 SC 1669*** that the Court held that a right to carry on mining operations in land to extract a specified mineral and to remove and appropriate that mineral, is a 'right to enjoy immovable property' within the meaning of Section 105; more so, when it is coupled with a right to be in its exclusive khas possession for a specified period. The 'right to enjoy immovable property' spoken of in Section 105, means the right to enjoy the property in the manner in which that property can be enjoyed. Section 108 of the Transfer of Property Act regulates the rights and liabilities of lessors and lessees of immovable property.

We have also noticed the decision cited by Mr. Mukherjee in the case of ***M. Arul Jothi and Anr. Vs. Lajja Bal (Deceased) and Anr.*** reported in ***(2000) 3 SCC 723*** where the Supreme Court held that use of the words in the rent deed *"not to use it for any other purpose"*, have to be given effect to and hence Section 10(2)(ii)(b) has to be interpreted to mean that use of the building shall not be for a purpose other than that for which the shop was given.

We have further noticed the decision cited by Mr. Mukherjee in the case of ***Rakhal Chandra Basak (Supra)*** where the Court held that the lease of a plot of

land with a house thereon recited that the lessee required it for the purposes of a college and school and the terms were that the lessors would not be entitled to take hold of the property unless the lessee gave it up of his own accord, that the latter would be entitled to keep it as long as he liked and that he would not be entitled to give it up before he acquired a house of his own for the institution. After some time the lessee created a trust and conveyed the lease and certain other properties to trustees who acquired an adjoining plot of land and erected thereon a new building for the college, the subject-matter of the lease being converted to a residential establishment attached thereto. In that state of things, the legislature desiring to put the college on a more permanent basis passed an Act by which the property comprised in the lease was to vest in and to be held by the Governor in Council, but before the Act actually came into force, the Government determined to acquire the free-hold interest in the land and the question arose what compensation was to be paid to the lessors. The High Court held that the lease was terminable only at the option of the lessee and as by reason of the Act the lessors' chances of receiving back the property had been reduced to nil, they were only entitled to a sum arrived at by capitalizing the monthly rent. The Court held that the lease did not bear the construction that the lessee was entitled to be in possession only so long as he carried on a college on the property. It is further held that property leased being used for the purposes of the college other than actual teaching in a class room was not a cessation of the use of the land for the purposes of the college.

It is further submitted that in the present case an event happened and brought about the cessation of the lease when TML communicated its final decision and actually shifted to Gujarat and relocated their plant at Sanand. It is further submitted that in this case when the land is owned by the State with a lessee holding under a terminable lease and the occasion for termination or forfeiture arises then it will be resumption and not acquisition. Hence, it is submitted that Singur Act of 2011 is to be treated as an Act for resumption under Entry 18 of the List II and not as an Act for acquisition under Entry 42 of List III.

It is further pointed out that from the statement of objects and reasons it appears clearly that the State was acting upon the announcement of TML as their letter dated 28th September, 2010. Our attention was also drawn to a letter dated 22nd June, 2010 by which WBIDC enquired from the Managing Director of TML about the utilization of the land to them. It was pointed out in the said letter that the period of three years within which the leasehold land was required to be utilized for the small car project has already expired.

By a letter dated 28th September, 2010 TML with reference to the letter dated 22nd June, 2010 stated as follows :

> *"We have also had discussions with Hon'ble Industry Minister as well as with the Industry Secretary for finding various alternative uses for this plant. In this respect,* ***we would like to submit that we could also consider the option of moving out from the premises provided we***

and our vendors are compensated for the cost of the buildings, sheds on the premises and expenses incurred in developing the infrastructure which remain on the premises."

It is further submitted by Mr. Mukherjee that upon the extinction of the tenants or lessee's interest the possession of the property reverts to the landlord and not the tenancy right or the leasehold right. Our attention was also drawn to Mulla on the Transfer of Property Act 10th Edition. Reliance was placed in ***Kalty Das Ahiri Vs. Monmohim Dassee*** reported in ***AIR 1954 SC 298***.

It is further submitted by learned Advocate General that the decision of Hari Singh Gaur on Transfer of Property Act Volume 4, 8th Edition may be relied upon.

Learned Advocate General submitted that the ratio laid down in ***Collector of Bombay Vs. Nusserwanji Rattanji Mistri*** reported in ***AIR 1955 SC 298*** has no application in the facts and circumstances of this case. Since the Singur Act is not a Legislation for acquisition, the dominant purpose of the Singur Act is to utilize valuable track of lank for socio-economic development, employment generation and industrial development of the State. To give effect to such public purpose the State has exercised its right for reversion by way of Legislative Act. Resumption of the possession is incidental to the main purpose of putting the land to public use as specified in Section 6 of the Singur Act, 1962.

It is further submitted that the Singur Act empowers the State to resume possession of the land owned by the State. Leasehold is extinguished/abolished. Such taking of possession is made *"free of leasehold"* and allotments. The leasehold and allottee's right are abolished and compensation is provided. It is further submitted that assuming that Singur Act is relatable to both Entry 18 List II and Entry 42 of List III then also it is valid. It is a case of incidental encroachment on Entry 42 List III. According to him, it would be evident from the dominant purpose of Singur Act as mentioned in the statement of objects and reasons. The resumption of possession of land is incidental to achievement of the public purpose enumerated in the said Act.

In the further alternative, the answer is that on an item of entry in the concurrent list both Central Legislature and State Legislature can legislate. In case of State Legislation the restriction is that such legislation would not be repugnant to an existing Central Legislation. Only Central Legislation which is contended to be repugnant to Singur Act is L.A. Act, 1894. Learned Advocate General submitted that for deciding the question of repugnancy the following conditions are to be fulfilled :-

"*a. That there is a clear and direct inconsistency between the Central Act and the State Act;*

b. That such an inconsistency is absolutely irreconcilable;

c. That the inconsistency between the provisions of the two Acts is of such nature as to bring the two Acts in direct collision with each other and the situation is reached where it is impossible to obey the one without disobeying the other;

d. In other words the other two legislations must cover substantially the same subject."

In support of his contention he relied upon the decision of ***Rarjiv Sarin (Supra)***.

He further submitted that incidental encroachment into the field of acquisition of property under Entry 42 List III is permissible and he submitted that in ***Offshore Holding (supra)*** the Constitution Bench of Supreme Court had the occasion to consider the effect of the ratio laid down in ***Cooper's case (Supra)*** and ***Ishwari Khetan's case (supra)*** wherein it was held that the power to legislate for acquisition of property is an independent and separate power and exercisable only under Entry 42 of List III and not as incidental of the power to legislate in respect of a specific head of legislation. It was further held in the said decision that where acquisition is not the primary purpose of the legislation but incidental to the dominant object of the legislation, any incidental encroachment into the field of acquisition maybe ignored.

He further submitted that if Singur Act is held to be solely under Entry 42 List III, then still it is valid as it is not repugnant to Land Acquisition Act of

1894. According to him, L.A. Act is in the field of acquisition of land by and under executive order whereas Singur Act is for vesting of possession under the Legislative Act. In L.A. Act there is no provision for acquisition of land owned by the State. The Singur Act provides for payment of compensation directly to the lessee and to the allottees of land and not to the owner of the land.

He further submitted that under the Singur Act the rights of the TML have been extinguished whereas in L.A. Act the ownership of privately owned land has to be acquired. He pointed out that extinguishment of owner's rights is not the case of Singur Act since WBIDC is a wholly owned company by the State and keen on vesting of the land in State. He further pointed out that it is under Entry 18 of State List.

The next question which has been submitted by the learned Advocate General is that the ground taken on behalf of TML is that no principle for determination of compensation payable to TML is mentioned in the said Act. Therefore, this Act is ultra vires the Constitution.

According to him after the 44th Amendment of the Constitution principles for determination of compensation is not all required to be stated in the impugned statute itself. All that is required is that the statute shall not deny compensation and preserve the right to claim compensation. Therefore, this ground of challenge is untenable in the post 44th Amendment era. Now there is

no Article in the Constitution of India which requires that the principles for determination of compensation should be laid down in the Act itself. Article 300-A of the Constitution dose not ask for the same. So there is no violation of any Article of the Constitution and it is submitted that such proposition is submitted by the Constitution Bench Judgment in the case of ***K.T. Plantation (Supra)***.

Learned Advocate General drew our attention to Article 19(1)(f) and Article 31 as it was originally stood. He further submitted that after Constitution (4th Amendment) Act, 1955 the Amendment was extinction of Article 31. Therefore, after the 25th Amendment of the Constitution the later was further changed and right was given under the said Article to the citizen of India whose rights are being affected by any acquisition procedure. After the 44th Amendment Act, 1978 of the Constitution, the Article 300-A provides that no person shall be deprived of his property save by authority of law.

He further submitted that the judgment in ***State of Bihar Vs. Kameshwar Singh (supra)*** was cited by the appellants to substantiate their case that an Act of acquisition must provide for the principles for determination of compensation or fix the amount in the Act itself. In the said decision the Constitution Bench of the Supreme Court had the occasion to test the validity of three State Acts on the anvil of Article 31 (2) as it was originally stood. The Court could go into the question of adequacy of compensation given upon acquisition.

There was no constitutional bar or impediment upon the Court to adjudge the adequacy of compensation. Hence, Supreme Court struck down Section 14(6) and Section 23(f) of Bihar Land Reforms Act.

He further contended that in ***P. Vajravelu Mudliar's case (supra)*** the Supreme Court held that compensation offered must not be a pittance against the real value. It cannot be assumed on frivolous basis. It cannot be illusory. It has to be real in the sense of being a just equivalent of what the owner has been deprived of.

He further relied upon the decision of ***Union of India Vs. Metal Corporation of India*** reported in ***AIR 1967 SC 637*** where the Supreme Court held that the law to justify itself has to provide for payment of just equivalent to the land acquired or lay down the principles which will lead to that result. The principles laid down for fixation of compensation cannot be arbitrary. He submitted that both ***Vajravelu's case (Supra)*** and ***Metal Corporation's case (Supra)*** were disapproved and/or overruled by the Supreme Court in ***State of Gujarat Vs. Shantilal Mangaldas & Ors.*** reported in ***(1969) 1 SCC 509***. Thereafter 25th Constitution Amendment took place where the word *"compensation"* was replaced by the word *"amount"*.

The Constitution Bench of the Supreme Court in **State of Karnataka Vs. Ranganatha Reddy** reported in **(1977) 4 SCC 471** laid down the legislative

history of Article 31(2) and held that subsequent to 25th Amendment, Bank nationalization case does not hold the field. Justice Krishna Iyer in a separate but concurring judgment held that by subsequent to 25th Amendment, the word "compensation" was deleted and substituted by the neutral word "amount" and the Article was restricted to keep the principles of valuation beyond the pale of judicial review. Therefore, he submitted that subsequent to the 25th Constitution Amendment reference to Bank Nationalization case regarding the principles for determination of amount for acquisition of property is misplaced.

He further relied upon the decision of **K.T. Plantations (supra)** and submitted that after 44th Amendment an Act of acquisition should only ensure that there exists public purpose and the right to claim compensation is not denied. He further submitted that in K.T. Plantation the Constitution Bench had the occasion to consider nearly all the judgments including the case of ***Kameshwar Singh (Supra), P. Vajravelu Mudaliar (Supra), Cooper's (Supra)*** and ***Kesavananda (Supra).*** The Supreme Court further held that the right to claim compensation cannot be read into legislative Entry 42 List III of the Seventh Schedule.

He further submitted all that is now required is to provide for the right to claim compensation. He further submitted that Article 300A does not require the principles for determination of compensation or an amount for deprivation of property to be stated in the Act of Acquisition itself. According to him, Singur Act

does not deny compensation and on the contrary ensures payment of amount of compensation.

He further submitted that under the impugned Act, in respect of vendors the amount specified is @ Rs.15,00,000/- per acre under Section 5(1) TML would be compensated as expressly provided under Section 5(2). TML have not paid any premium/price for the lease. The vendors have paid the amount of premium calculated @ Rs.15 lacs per acres, but ultimately did not obtain the deed of lease.

He further submitted that the principles for computation of compensation are no longer required to be stated in the depriving statute after the 44th Amendment of the Constitution.

He relied upon the decision of **Rajiv Sarin's case (supra)** where it is observed that acquisition Act generally provides the criteria, but has not laid down that it is a must. According to him, the amount of compensation is to be adjudged by the highest judicial authority of the District. TML will get full opportunity of hearing for determination of amount of compensation as may be claimed by TML.

He further relied upon the decision of **Organo Chemical Industries Vs. Union of India** reported in **(1979) 4 SCC 573** where the Supreme Court considering the constitutional validity of Section 14B of the Employees Provident

Fund Act held that the power of the original provident fund commissioner to impose damages under Section 14B is a quasi judicial function. It must be exercised after notice to the defaulter and after giving him a reasonable opportunity of being heard .....an order under Section 14-B must be a "speaking order" containing the reasons in support of it.... The word "damages" in Section 14B lays down sufficient guidelines for him to levy damages. The power under the Section permits award of "damages" and that word has a wealth of implications sufficient to serve as guideline in fixing the impost.

We have noticed in ***Yadava Kuamr Vs. National Insurance Co. Ltd.*** reported in ***(2010) 10 SCC 341*** the Supreme Court held as follows ;

> *"....there is a distinction between compensation and damages. The expression compensation may include a claim for damages but compensation is more comprehensive. Normally damages are given for an injury which is suffered, whereas compensation stands on a slightly higher footing. It is given for the atonement of injury caused and the intention behind grant of compensation is to put back the injured party as far as possible in the same position, as if the injury has not taken place, by way of grant of pecuniary relief. Thus, in the mater of computation of compensation, the approach will be slightly more broad based than what is done in the matter of assessment of damages. At the same time it is true that there cannot be any rigid or mathematical precision in the matter of determination of compensation."*

The term "compensation" is not vague or uncertain which has been used in the impugned Act. It means just equivalent of the property deprived of;

indemnification to the owner of the right he lost. Guidelines for assessment are inbuilt in the word "compensation". So it was not necessary for the First Court to clarify by referring to Sections 23 and 24 of the L.A. Act.

He further submitted that however, the State have no objection to computation of compensation payable to TML according to Section 23 and 24 of the L.A. Act because State want to pay reasonable compensation.

He further submitted that meaning of "compensation" is recompense, just equivalent and he relied upon a decision reported in ***AIR 1923 Calcutta 507***.

He further relied upon a decision of **Rathi Menon Vs. Union of India** reported in **(2001) 3 SCC 714** where the Supreme Court relied on Black's Law Dictionary which expressed "compensation" as "equivalent" in money for a loss sustained; or giving back an equivalent in either money which is but the measure of value, or in actual value otherwise conferred; or recompense in value for some loss, injury or service especially when it is given by statute.

He also relied upon the decision of **Yadava Kumar Vs. Divisional Manager, National Insurance Company Limited** reported in ***(2010) 10 SCC 341*** which also expressed the meaning of compensation.

He further argued in respect of the compensation so to be granted to the vendors as stated in the Act. According to him, the principles for calculation for determination of the compensation is stated in the statute itself or the amount is to be fixed by the statute. According to him, the vendors who have been fully compensated for payment of their because of acquisition of their right in respect of the land and, therefore, the amount so mentioned in the Act in Section 5(1) cannot be said to be vague. Such compensation is not vague or illusory.

He further submitted that the Court has power to fix a reasonable time for completion for awarding the compensation by the District Judge from the date of the receipt of the claim so to be made or filed by the TML.

Learned Advocate General pointed out that the vendors' starting construction of building and structures are wholly disputed. It is submitted that the main manufacturing plant was abandoned by TML in 2008. No step was taken for setting up ancillary units by the vendors. He further drew our attention to ***Rajiv Sarin's case (Supra)*** in support of his contention.

Learned Advocate General further relied upon a decision of ***State of Tamil Nadu & Ors. Vs. L. Krishnan & Ors.*** reported in ***(1996) 1 SCC 250*** where the Supreme Court held that in case of acquisition of large area of land comprising several plots belonging to different persons, the specification of the purpose can only be with reference to the acquisition of the whole area. Unlike in the case of

an acquisition of a small area, it might be practically difficult to specify the particular public purpose for which each and every item of land comprised in the area is needed. According to him the Supreme Court distinguished the ratio laid down in the case of ***Munshi Singh (supra)*** by relying upon the judgments delivered by the Constitution Bench of the Supreme Court in the case of ***Aflatoon & Ors. Vs. Lt. Governor of Delhi & Ors.*** reported in ***(1975) 4 SCC 285*** **and Pt. Lila Ram Vs. The Union of India & Ors.** reported in ***(1975) 2 SCC 547***. The Supreme Court held at paragraph 39 that where large area is sought to be acquired for development or similar purposes, it would not be possible to specify how each parcel of land would be utilized and for what purpose. It is submitted that the decision of ***Munshi Singh (supra)*** should be read subject to the explanation and the holding in ***Aflatoon's case (supra)*** is a decision of a Constitution Bench.

It is further submitted that the public purpose of socio-economic development of the State has the seal of approval given by this Court in ***Jaydeep Mukherjee's case (supra)*** where the Court held that the socio-economic development and employment generation constitute sufficient public purpose. It is also held in the said decision that the State is the best Judge to decide what would be public purpose.

He further contended that safety and security is also a public purpose. It is ancillary to the public purpose of socio-economic development and he referred

to statement of objects and reasons of the said Act in particular in paragraph 4. It is contended that State is a primarily the best judge to decide what would be the public purpose. Such view has already been expressed in ***Daulat Singh Surana Vs. First Land Acquisition Collector*** reported in ***(2007) 1 SCC 641***.

It is further submitted that the principal purpose of socio-economic development of the State by utilization of Singur land would be possible, if the legislative Act takes care of the discontent of farmers/unwilling owners and would act as a catalyst for the purpose of socio-economic development and ensure safety and security of the area. It is further submitted that the restoration of land or payment of compensation in lieu of land is a measure of rehabilitation and is a public purpose.

It is further submitted that the public purpose is not static. It also changes with the passage of time, needs and requirements of the community. He further submitted that the owners who had accepted compensation cannot be treated at par unwilling owners who have not accepted compensation. Therefore, the classification made by the legislature is reasonable. He further submitted that rehabilitation is also a public purpose and reliance has been placed on the decision of ***State of Madhya Pradesh Vs. Narmada Bachao Andolan*** reported in ***(2011) 7 SCC 639***.

According to him the classification made between the farmers is also valid and does not offend Article 14 of the Constitution. Our attention has been drawn to the decision of ***State of Madhya Pradesh Vs. Narmada Bachao (Supra)*** where the Supreme Court held as follows:-

> *"A. It is desirable for the acquiring authority to ensure that as far as practicable persons who had been living and carrying on business or other activity on the land acquired, if they so desire, and are willing to purchase and comply with any requirement of the authority or the local body, be given a piece of land on the terms settled with due regard to the price at which the land has been acquired from them (pr. 26).*
>
> *B. The oustees are entitled to rehabilitation. Rehabilitation is meant only for those persons who have been rendered destitute because of a loss of residence or livelihood as a consequence of land acquisition. The authorities must explore the avenues of rehabilitation by way of employment, housing, investment opportunities, and identification of alternative lands (pr. 27).*
>
> *C. The oustees are entitled to resettlement and rehabilitation as per the policy framed for the oustees of the project concerned (pr. 31).*
>
> *D. Rehabilitation, is restoration of the status of something lost, displaced or even otherwise a grant to secure a dignified mode of life to a person who has nothing to sustain himself. This concept, as against compensation and property under Article 300-A, brings within its fold the presence of the elements of Article 21 of the Constitution of India. Those who have been rendered destitute, have to be assured a permanent source of basic livelihood to sustain themselves (pr. 94)."*

Learned Advocate General contended that the effect of Singur Act is not to nullify the judgment of the competent Court.

Learned Advocate General pointed out that an argument was made on behalf of the vendors that the Singur Act is in an attempt to overreach the judgment of the Hon'ble Division Bench of this Court in ***Joydeep Mukherjee's case (Supra)***. Our attention was drawn to Section 6 of the impugned Act for the purpose of advancing such argument on behalf of the vendors. According to him, Section 6 does not overreach the said decision. He submitted that the meaning of overreaching decision of the Court by a Statute is the enactment of a law by legislature which has the effect of nullifying a judgment of a Competent Court without removing the basis on which the judgment was delivered. The said proposition is well settled.

The learned Advocate General further relied upon the judgment cited by Mr. Kapoor in the case of ***State of Tamil Nadu & Ors. Vs. K. Shyam Sunder & Ors***. reported in ***(2011) 8 SCC 737*** and submitted that Singur Act does not seek to annul the judgment of the Division Bench in ***Joydeep Mukherjee's case (supra)***.

The Division Bench upheld the validity of acquisition of Singur land under the L.A. Act. The notice indicated the socio-economic development of the area, employment generation by setting up of Tata small car project at the site. The

Division Bench upheld the public purpose for acquisition under the LA Act. But in October, 2008 TML abandoned the project and, therefore, the socio-economic development and employment generation was no longer possible through TML or its recommended vendors.

It is contended that the impugned Act was enacted on 20th June, 2011 with the object of resumption of possession of the land for socio-economic development and rehabilitation. The acquisition proceedings have not been nullified by this Act. On the contrary the Singur Act has been legislated on the premise that the land acquisition proceedings are valid.

It is pointed out that public purpose on behalf of the acquisition under LA Act has subsequently been frustrated. In these circumstances, State Legislature enacted the Singur Act for resumption of possession of land for public purpose as mentioned therein.

Therefore, it cannot be stated that the judgment of the Division Bench has been nullified by the impugned legislation.

We have noticed the decision of ***State of Tamil Nadu and Ors. Vs. K. Shyam Sunder and Ors.*** reported in ***(2011) 8 SCC 737*** where the Supreme Court dealt with the question whether the legislature can overrule the judgment of the Court? In deciding such question the Supreme Court duly considered the

decisions of ***Shri Prithvi Cotton Mills Ltd. Vs. Broach Borough Municipality*** reported in ***(1969) 2 SCC 283; S.R. Bhagwat Vs. State of Mysore*** reported in ***(1995) 6 SCC 16; Cauvery Water Disputes Tribunal*** reported in ***AIR 1992 SC 522; G.C. Kanungo Vs. State of Orissa*** reported in ***(1995) 5 SCC 96; Madan Mohan Pathak Vs. Union of India*** reported in ***(1978) 2 SCC 50.*** After considering decisions the Supreme Court held as follows:-

> *"**Para 65.** In view of the above, the law on the issue can be summarized to the effect that a judicial pronouncement of a competent court cannot be annulled by the legislature in exercise of its legislative powers for any reason whatsoever. The legislature, in order to revalidate the law, can reframe the conditions existing prior to the judgment on the basis of which certain statutory provisions had been declared ultra vires and unconstitutional."*

Learned Advocate General relied upon the said decision and contended that there was a clear overruling of the orders of the High Court and the Supreme Court which has been specifically stated in paragraph 6 of the said judgment. The Supreme Court held that Amendment Act nullifies the effect of the High Court and the Supreme Court judgments. He further submitted that such conclusion is not possible in the instant case.

He further relied upon the decision of ***National Agricultural Cooperative Marketing Federation of India Ltd. & Anr. Vs. Union of India & Ors.*** reported in ***(2003) 5 SCC 23; Kerala State Coop. Marketing Federation Ltd. Vs. CIT*** reported in ***(1998) 5 SCC 48; Shri Prithvi Cotton Mills Ltd. Vs.***

Broach Borough Municipality reported in ***(1969) 2 SCC 283; Madan Mohan Pathak & Anr. Vs. Union of India & Ors.*** reported in ***(1978) 2 SCC 50;*** and submitted that the curative legislation does not in fact touch the validity of a judicial decision which may have attained finality albeit under the pre-amended law.

It is contended that the State Legislature exercised its right of reversion by a legislative act and there is no attempt to overrule the judgment of this Hon'ble Court. The decision of ***S.S. Bola Vs. B.D. Sardana*** reported in ***(2005) 7 SCC 58***4 cannot stand in the way.

It is further submitted that State has successfully defended the challenge to the acquisition proceedings before the Court. Subsequently, TML shifted the automobile factory to Gujarat and the State could not act as a mere fence sitter and allow the land to remain unutilized for years. The Singur Act is enacted to resume possession and to use the land for socio-economic development of the State and other public purposes.

According to Mr. Advocate General, the Hon'ble Single Judge held that the legislature used the expression "compensation" which means compensation based on principles mentioned in Sections 23 and 24 of the L.A. Act. The said portion of the judgment is under challenge in the cross-objection of the State. The Court further stated that the word "compensation" is vague and uncertain.

The said portion of the judgment is under challenge in the cross-objection filed by the State. But according to Advocate General, the word "compensation" is not vague or uncertain.

He further submitted that the District Judge upon hearing the parties would adopt such method of calculation as would be apposite and would be free to adopt the principles of Sections 23 and 24 of the L.A. Act as one of the methods for calculation of compensation and it was not required for the Hon'ble Single Judge to insert the said principle in the Act.

He further contended that it is not a case of legislation by the First Court. The Fist Court was pleased apply the principles of purposive interpretation to the provisions of the Act after quoting from the judgment of Supreme Court in the case of ***State of Bihar v. Bihar Distillery Ltd. & Ors*** reported in ***(1997) 2 S.C.C. 453*** which had reproduced some observations made by Lord Denning M.R. in ***Seaford Estates*** **(1949) 2 All ER 155.** The Hon'ble Single Judge concluded at page 39 that when an intention has been expressed by the legislation to pay compensation, it is permissible for the Court to make purposive interpretation. Therefore, it is clearly a case of purposive interpretation of the word "compensation" by the Hon'ble Single Judge.

It is further pointed out that Supreme Court also considered the observations of Lord Denning in Seaford Estates and in the case of ***Directorate of Enforcement Vs. Deepak Mahajan*** reported in ***(1994) 3 SCC 440.*** Learned Advocate General further stated that the observation of Lord Denning were disapproved in appeal by the House of Lords in ***Magor and St. Mellons Vs. Newport Corporation*** reported in ***(1951) 2 All ER 839.*** In the decision of ***Bangalore Water Supply and Sewerage Board Vs. Rajappa*** reported in ***1978 (2) SCC 213*** where the Supreme Court has approved the observations of Lord Denning. In the case of ***Bhanumati Vs. State of U.P.*** reported in ***(2010) 12 SCC 1*** where the Supreme Court applied the ratio laid down in Bihar Distiller and Seaford Estates to uphold the validity of the statutory provision. Therefore, it is submitted that intention of legislation should be first gathered from the title, pre-amble, statement of objection and the provisions of the statute and thereafter the Court is entitled to make purposive interpretation of the statute to carry out intention of the statute.

In support of his contention he further relied upon the decisions of ***State of Kerala v. Mathai Verghese & Ors.*** reported in ***(1986) 4 SCC 746; Padmasundara Raao Vs. State of T.N*** reported in ***AIR 2002 SC 1334; Union of India & Anr. V. Deoki Nandan Aggarwal*** reported in ***1992 Supp(1) SCC 323; Sathadevi Vs. Prasanna*** reported in ***AIR 2010 SC 2777*** and ***Delhi Transport Corporation Vs. DTC Mazdoor Congress & Ors.*** reported in ***(1991) Supp. (1) SCC 600*** and the Learned Advocate General submitted that principles

of reading down were not overlooked. The Court has invoked the principles of purposive interpretation is using the word "Compensation" to mean as payable under Section 23 and 24 of the L.A. Act as applicable.

In ***Rajiv Sarin's case (Supra)*** the Supreme Court directed following of the method of determination of compensation as given in KUZALR Act and from a different statute. The Supreme Court has not held anywhere that the method of compensation must be such as in the impugned statute itself. Mr. Advocate General pointed out that no such judgments has been sited for such proposition of law by the learned counsel appearing on behalf of the appellants and the vendors/writ petitioners.

It is further submitted that the contentions of writ petitioners are answered and are fully covered by principles laid down in ***Rajiv Sarin's case (supra)*** and ***K.T. Plantation's case (supra)***. It is further submitted that no valid ground for rebutting the presumption of constitutional validity of the Singur Act has been made out by the appellant and writ petitioners.

He further submitted that the TML and its vendors are not similarly situated because the vendor did not get the lease deed executed and registered whereas TML has already got the lease in their favour which is registered. Therefore, the decision reported in ***(2000) 6 SCC 394*** which has been cited has no application. The discrimination between TML and its vendors and the

decisions cited by the appellants and the applicants according to Mr. Advocate General has no application in the facts and circumstances of this case.

It is submitted that the decision cited on behalf of the appellant and the vendors on the question of violation of natural justice have no application in the facts and circumstances of this case. Learned Advocate General submitted that Singur Act provides for vesting by way of legislation whereas L.A. Act provides for acquisition through executive action. The present statute basically provides for resumption of possession. Therefore, there is no question of violation of natural justice. It is further submitted that Singur Act is neither unreasonable nor arbitrary and the decision of ***A.P. Dairy Development Corporation Vs. B. Narasimha Reddy*** reported in ***(2011) 9 SCC 286*** with regard to arbitrariness in State action has no application in the facts circumstances of this case.

Mr. Saktinath Mukherjee, learned Senior Advocate drew our attention to the petition and submitted that the appellant did not prayed for recovery of possession. He submitted that lease which was entered upon is nothing but a terminable lease and he drew our attention to the certain Clauses of the said lease and submitted that the lease has become infructuous due to the failure on the part of the appellant/writ petitioner to utilize the land leased out to them.

He further submitted that this is nothing but extinction of the lease. He also submitted that effect of the forfeiture of the lease would not attract the

Entry 42 in concurrent List III. He further relied upon the decision reported in ***AIR 1976 Calcutta Page 217 (Rathindra Nath Mitra Vs. Angurbala Mullick); Sailendra Nath Vs. Bijan Lal*** reported in ***AIR 1945 Calcutta 283*** on the question of extinction of lease.

He further submitted that the said decision so approved by the Supreme Court in ***AIR 1953 SC 514***. He contended that the action of the State Authorities are nothing but resumption and it is by way of a statute and thereby it should be treated as a legislative resumption. He relied upon the decisions of ***Aswini Kumar Ghose & Anr. Vs. Arabinda Bose & Anr.*** reported in ***AIR 1952 SC 369; Rakhal Chandra Basak Vs. The Secretary for India in Council*** reported in ***33 CWN 669; AIR 1998 SC 296; Amarsarjit Singh Vs. State of Punjab*** reported in ***AIR 1962 SC 1305.*** He further tried to distinguish ***Collector of Bombay Vs. Nusserwanji Rattanji Mistri & Ors.*** reported in ***AIR 1955 SC 298*** on the basis of his submission that it is nothing but legislative resumption.

He further relied upon in the decision of ***Shri Shri Tarakeshwar Sio Thakur Jiu Vs. Dar Dass Dey and Co.*** reported in ***AIR 1979 SC 1669*** reported in ***AIR 1979 SC 1669; Provident Investment Co. Ltd. Vs. Commissioner of Income Tax, Bombay City*** reported in ***AIR 1954 Bombay 95*** in support of his contention.

He further contended that the vendors rights were depended on the rights of the Tatas and he relied on the decision of ***Calcutta Credit Corporation Ltd. Vs. Happy Homes Ltd.*** reported in ***1968 SC 471*** on the question of resumption of grant he further submitted that ordinarily the said grant of property is in favour of Tatas. Therefore, the State has a right to resume the property. If it is a resumable grant then it can be resumed by the State and, therefore, the question of acquisition does not arise. He relied upon the decision of ***State of Orissa Vs. Ram Chandra*** reported in ***AIR 1964 SC 685.*** He further contended that the Act has been enacted with the authority under 18 of List II of 7 Schedule of the Constitution. If it is not resumable grant then it would come under acquisition to Entry 42 List III. He further relied upon the decision ***Jilubhai's case (Supra).*** According to him the extinction of right is nothing but resumption. Permanent lessee cannot be evicted except by a process of acquisition.

He further contended that there was a political problem which cannot be managed judicially. Therefore, Court would not pass any order and further, according to him, it is not justiciable and he relied on a decision of ***A.K. Kaul Vs. Union of Inda*** reported in ***AIR 1995 SC 1403; Sailendra Nath Vs. Bijan Lal*** reported in ***AIR 1945 Calcutta 283; Bengal Immunity Co. Vs. State of Bihar*** reported in ***AIR 1955 SC 661; Tata Power Company Ltd. Vs. Reliance Energy Ltd***. reported in ***(2009) 16 SCC 659***; ***Rameshwarlal Harlalka Vs. Union of India*** reported in ***AIR 1970 Calcutta 520; M/s***

Fatechand Himmatlal And Ors. Vs. State of Maharashtra reported in ***(1977) 2 SCC 670; Bengal Electric Lamp Works Ltd Vs. Sukdev Chandra Sinha*** reported in ***AIR 1983 Calcutta 389; Godfrey Phillips India Ltd. & Anr. Vs. State of U.P. & Ors.*** reported in ***(2005) 2 SCC 515*** and further relied on ***Rajib Sarin's case (Supra)*** in support of his contention.

He further contended that the Tatas abandoned the lease which would be evident from the letters addressed by the Tatas.

Mr. Mukherjee contended that by a letter dated 28th October, 2010 the company gave a notice and in fact surrendered the lease. Therefore, lease ends by surrender by the said letter. Mr. Mukherjee further submitted that Singur Act is an Act for resumption and not acquisition. Mr. Mukherjee pointed out that Tata Motors did not say that they are interested in compensation. Mr. Mukherjee's further point is that extinction is different from acquisition. When leasehold is extinguished, the leasehold does not return to the landlord.

Mr. Mukherjee further contended that the project of the Tata Motors at Singur was the project of the State as it would be evident from the letter issued by WBIDC dated 28th December, 2006 to Tata Motors and there was a Tripartite Memorandum of Understanding dated 9th March, 2007 which would show that the project of the said TML was an agency for achieving the public

purpose. According to Mr. Mukherjee, the lease shows that it was for manufacturing of car only. Therefore, purpose is fixed and no other purposes except manufacturing of car is possible. That is why the lease is not transferable.

He further pointed out that the election manifesto of Trinamul Party acquired land return to unwilling owners. The contention of Mr. Mukherjee is that the statement of objects and reasons of the Act has to be looked into for finding out the mischief which was to be remedied. According to Mr. Mukherjee State has no options. It had to act and, therefore, acted to takeover by legislation and accordingly acted. Mr. Mukherjee contended that the Preamble shows that the land lease taken but not the interest in land. Reference was also made to Mulla's Transfer of Property Act by Mr. Mukherjee to substantiate his argument on this question. He further contended that there is no prayer for recovery of possession because Tata Motors knows that its lease has been called back by the landlord i.e. State. Mr. Mukherjee further drew our attention to certain Sections of the Transfer of Property Act including Sections 105 and 111 for that purpose.

Mr. Mukherjee further submitted that in the case of ***Sailendra Nath Vs. Bijan Lal*** reported in ***AIR 1945 Calcutta 283*** when the lease is terminated sub-lease goes and when the lessee suffers a decree of ejectment, sub-lease is bound by such decree.

Mr. Mukherjee further submitted that in the case of ***A.K. Kaul Vs. Union of Inda*** reported in ***AIR 1995 SC 1403*** the subject matter of the judicial review application is such that the Court does not have adequate materials or tools to decide the issue. The manageable standards are certainly there when the constitutional validity of an act exists.

Mr. Mukherjee further submitted that in the case of ***Ram Chandra (Supra)*** the case involved a dispute regarding the right conferred by a grant (sanad) to resume the land. It is further submitted that the question of acquisition was involved in the said matter. Mr. Mukherjee submitted that in ***Tata Power Company Ltd. Vs. Reliance Energy Ltd.*** reported in (2009) 16 SCC 659 all the paragraphs 67, 79, 100, 101, 82 and 83 of the said decision related to well settled principles of interpretation of statutes.

He further submitted that in the Cooley of 1868 Edition there is no application because in spite of the Cooley the Constituent Assembly framed Article 31(2) and further pointed that Indian Constitution is not same as American Constitution.

We have noticed the decision cited by Mr. Mukherjee in the case of ***Aswini Kumar Ghose & Anr. Vs. Arabinda Bose & Anr.*** reported in ***AIR 1952 SC 369*** where the Court held that the title of a statue is an important part of the Act and

may be referred to for the purpose of ascertaining its general scope and of throwing light on its construction, although it cannot override the clear meaning of the enactment.

We have also noticed the decision cited by Mr. Mukherjee in the case of ***Rameshwarlal Harlalka Vs. Union of India*** reported in ***AIR 1970 Calcutta 520*** where the Court held that in determining where a statue should be condemned on the ground of vagueness it should be read as a whole and if upon such reading a reasonably certain meaning can be imputed to a provision, no complaint of vaguness can be imputed to the statute.

We have further noticed the decision cited by Mr. Mukherjee in the case of ***M/s Fatechand Himmatlal And Ors. Vs. State of Maharashtra*** reported in ***(1977) 2 SCC 670*** where the Court held as follows:-

> *"**Para 57.** Here we turn to Entry 24 of List II which runs – "Industries subject to the provisions of entries 7 and 52 of List I". This means that the State Legislature loses its power to make laws regarding 'gold industry' since Entry 24, List II is expressly subject to the provisions of Entry 52 of List I. This does not mean that other entries in the State List become impotent even regarding 'gold'. The State Legislature can make laws regarding money-lending even where gold is involved under Entry 30, List II, even as it can regulate 'gambling in gold' under Entry 334, impose sales tax on gold sales under Entry 54, regulate by municipal laws under Entry 5 and by trade restrictions under Entry 26, the type of buildings for gold shops and the kind of receipts for purchase or sale of precious metal. To multiply instances is easy, but the core of the matter is that where*

under its power Parliament has made a law which over-rides an entry in the State List, that area is abstracted from the State List. Nothing more."

The Court further held that there is no conflict between the Gold Control Act and the Debt Act. Secondly, the subjects of both the legislations can be traced to the Concurrent List and Article 254(2) validates within the State the operation of the Debt Act.

We have also noticed the decision cited by Mr. Mukherjee in the case of ***Provident Investment Co. Ltd. Vs. Commissioner of Income Tax, Bombay City*** reported in ***AIR 1954 Bombay 95 (Vol. 41, C.N. 23) (1)*** where the Court held as follows:-

*"**Para 8.** It is not necessary to point out the well settled difference between a transfer or a sale and a relinquishment. A sale or a transfer presupposes the existence of the property which is sold or transferred. It presupposes the transfer from one person to another of the right in properety. On the other hand, relinquishment means the extinction of a right or the destruction of a property, and if the property is destroyed or the right is extinguished, there is nothing left to transfer or to sell."*

We have also noticed the decision cited by Mr. Mukherjee in the case of ***Sailendra Nath Bhattacharjee Vs. Bijan Lal Chakravarty and Ors.*** reported in ***AIR (32) 1945 Calcutta 283*** where the Court held that when the period of a lease expires or the lease is determined by a proper notice to quit, the sub-lease,

if any, created by the lessee comes to an end. It is not necessary for the lessor to serve a notice to quit on the sub-lessee as well; the under-lease is determined by the notice to quit that is given to the lessee. The same consequences arise when a forfeiture is incurred by the tenant unless he has collusively or fraudulently brought it about; though the position is different in case of surrender as the leassee cannot derogate from his own grant and cannot surrender his interest to the prejudice of the under-lessee.

We have also noticed the decision cited by Mr. Mukherjee in the case of ***Calcutta Credit Corporation Ltd. Vs. Happy Homes Ltd.*** reported in ***AIR 1968 SC 471*** where the Court held that a notice which is defective may still determine the tenancy, if it is accepted by the landlord. A notice which complies with the requirements of Section 106 of the Transfer of Property Act operates to terminate the tenancy, whether or not the party served with the notice assents thereto. A notice which does not comply with the requirements of Section 106 of the Transfer of Property Act in that it does not expire with the end of the month of the tenancy. A tenancy is founded on contract, and it is always open to the parties thereto to agree that the tenancy shall be determined otherwise than by notice served in the manner provided by Section 106 of the Transfer of Property Act.

We have also noticed the decision cited by Mr. Mukherjee in the case of ***Jilubhai Nanbhani Khachar Vs. State of Gujarat*** reported in ***(1995) Supp. 1***

SCC 596 where the Supreme Court held that it is settled law of interpretation that entries in the Seventh Schedule are not powers but fields of legislation. The legislature derives its power from Article 246 and other related articles of the Constitution. The language of the respective entries should be given the widest scope of their meaning, fairly capable to meet the machinery of the Government settled by the Constitution. When the vires of an enactment is impugned, there is an initial presumption of its constitutionality and if there is any difficulty in ascertaining the limits of the legislative power, the difficulty must be resolved, as far as possible in favour of the legislature putting the most liberal construction upon the legislative entry so that it may have the widest amplitude.

We have also noticed the decision cited by Mr. Mukherjee in the case of ***Bengal Electric Lamp Works Ltd Vs. Sukdev Chandra Sinha*** reported in ***AIR 1983 Calcutta 389*** where the Court held that a notice to quit must be construed not with a desire to find fault in it which would render it defective, but it must be construed ut res magis valeat quam pereat. (That an act may avail, rather than perish.) Its validity ought not to turn on the splirtting of a straw nor should it be read in a hyper-critical manner nor its interpretation should be affected by pedagogic pendantism or overrefined subtlety. It must be construed in a common sense way.

Mr. Kalyan Kumar Bandyopadhyay, learned senior advocate appearing on behalf of the West Bengal Industrial Development Corporation, submitted that

the Court will first proceed with the presumption of constitutional validity of the statute. A State Act can be declared unconstitutional and/or ultra vires the Constitution in the following circumstances:

a) *When it is a piece of colourable legislation, that is to say, the State Legislature lacked competency to enact the legislation. In support of his contention, Mr. Bandyopadhyay relied upon a decision of* ***Dharam Dutt & Ors. Vs. Union of India & Ors.*** *reported in* ***(2004) 1 SCC 712*** *and specifically pointed out paragraph 16 of the said decision.*

He further stated that self-same view had also been expressed by the Supreme Court in the case of ***Ashok Kumar v. Union of India***, reported in ***(1991) 3 SCC 498***. In the said decision, the Supreme Court relied upon the ratio laid down in the case of ***K.C. Gajapati Narayan Deo v. State of Orissa*** reported in ***AIR 1953 SC 375***. He also stated that such Act can be declared as un-constitutional when it violates fundamental rights.

Mr. Bandyopadhyay submitted that the Court will find out whether the Act falls within the competence of State Legislature and whether the Act falls to any Entry in List II of the Seventh Schedule to the Constitution. He further submitted that the Court will not interpret the statute or construe the same in any narrow or pedantic sense and must adopt such construction which must be beneficial to the amplitude of legislative powers. In this context, he relied upon a decision of ***Jilubhai (supra)*** particularly in paragraph 7. He submitted that the Court must not seek an unnecessary confrontation with the legislature, particularly since the

legislature consists of representatives elected by the people. A Court can declare a statute to be unconstitutional when there can be no manner of doubt that it is flagrantly unconstitutional and there is no way out to avoid such decision. He relied upon a decision reported in ***(2008) 4 SCC 720 (Government of Andhra Pradesh v. P. Laxmi Devi)*** particularly in ***paragraphs 36-43*** and also paragraph 49 of the said decision and submitted that whenever a piece of legislation is said to be beyond the legislative competence of a State Legislature, it is to be found out that by applying the doctrine of pith and substance, the Court will express its opinion. It is not that Article 246(3) of the constitution is only for the purpose of invalidating the legislation on the ground of legislative incompetence of State Legislature. Reliance has also been placed in the Case of ***State of A.P. v. McDowell & Co*** reported in ***(1996) 3 SCC 709*** and ***Calcutta Gas v. State of West Bengal*** reported in ***AIR 1962 SC 1044***.

He further contended that in the case of ***Bhanumati v. State of Uttar Pradesh*** reported in ***(2010) 12 SCC 1***, particularly at paragraph 82 and 83 the Supreme Court followed the ratio laid down in ***State of Bihar v. Bihar Distillery Ltd. & Ors*** reported in ***(1997) 2 S.C.C. 453*** and submitted that the law as to presumption of constitutionality and purposive interpretation was summarized by the Court which is as follows:

(a) The court should try to sustain validity of the impugned law to the extent possible. It can strike down the enactment only when it is impossible to sustain it.

(b) The court should not approach the enactment with a view of pick holes or to search for defects of drafting or for the language employed;

(c) The court should consider that the Act made by the legislature represents the will of the people and that cannot be lightly interfered with;

(d) The court should strike down the Act only when the unconstitutionality is plainly and clearly established;

(e) The court must recognize the fundamental nature and importance of legislative process and accord due regard and deference to it.

He further tried to state before us that entire manufacturing facility had been shifted to Sanand in Gujarat and further relied upon the letter dated 28th September 2010 and submitted that in the said letter it was clearly indicated by the Tata Motors Ltd. that it could also consider the option of moving out from the premises provided TML and its vendors are compensated for the cost of the buildings, sheds in the premises and expenses incurred in developing the infrastructure which remain on the premises. In the Act itself the said letter has been specifically stated in the statement of objects and reasons. According to him, once legislation falls within any of the Entries in List II, no further enquiry is required to be made by the Court and in this context he relied upon a decision State of AP v. McDowell (supra) where Entries in the lists are to be given widest possible connotation. He further contended that entries in the Seventh Schedule are no powers but fields of legislation. In support of his contention, he relied upon a decision of Jilubhai (supra) and further relied upon a decision of ***Hoechst Pharmaceuticals Ltd. & Ors. Vs. State of Bihar & Ors.*** reported in ***(1983) 4 SCC 45***.

Mr. Bandyopadhyay further contended that Singur Act provides for resumption of possession of the land "free from lease" made under Entry 18 of List II and is not at all a case of acquisition of property under Entry 42 of List III. Entry 18 is not confined to agricultural land and is of wide amplitude covering all right in and over the land and also land tenures and also resumption of land tenure and in support of his contention, he relied upon a decision reported in ***AIR 1947 PC 72 (Megh Raj v Allah Rakhia)***. In the said case, the Privy Council held in unequivocal terms that land in Entry 21 would include leaseholds and it is not restricted to agricultural lands. He further pointed out that in ***Jilubhai (supra)*** the Supreme Court also specifically stated that land in Entry 18 is not restricted to agricultural land alone but includes non-agricultural land etc. According to him, the words "rights in" or "over land" made in Entry 18 is not restricted to agricultural land alone but includes non-agricultural land etc. and the said words confer very wide power between the landholders inter se or the landholder or the State or the landholder or the tenant. He further submitted that resumption includes all ancillary provisions, cancellation or extinguishment of any existing grant by the ex-rulers or lease by grant with retrospective effect. In view of the said decision, he submitted, there is no doubt that the Singur Act is relatable to Entry 18 of List II, therefore, question of repugnancy with the Central Act and Land Acquisition Act 1894 which is a legislation referable to Entry 42 of List III cannot arise at all. Mr. Banerjee further submitted that Singur Land is not privately owned by the TML. The lease granted on 15th March 2007 is

for specific purpose which is not transferable or disposable and it cannot be sublet. It cannot be also classified as "property" within protective umbrella of Article 300A of the Constitution.

He further contended that compensation has been specifically mentioned in the Act in question which is without any restriction as mentioned in Section 5(2) and such amount of compensation is to be adjudged by the District Judge, Hooghly, and an reasoned order should be passed by the said District Judge complying with natural justice

He relied upon in the case of ***Organo Chemical Industries & Anr. v. Union of India & Ors.*** reported in ***(1979) 4 SCC 573*** and also in the case of ***MSK Projects (I) (JV) Ltd. v. State of Rajasthan*** reported in ***(2011) 10 SCC 573*** and submitted that "compensation" means anything given to make the equivalent. He further submitted that after 44th amendment of the Constitution, the Constitution bench in the case of ***K.T. Plantations (supra)*** held that after 44th Amendment of the Constitution, an Act of acquisition should only ensure that there exists public purpose and the right to claim compensation is not denied. It is further stated that in the said decision it has been held that right to claim compensation cannot be read into legislative Entry 42 List III of the Seventh Schedule . According to him, after 44th Amendment, it is not necessary that in a legislation for acquisition need specify the principles for determination of compensation or alternatively fix the amount to be paid. All that is required

that the State should have the intention to pay compensation and the person deprived of his property must have the right to claim compensation. He further tried to impress upon us that Singur Act is nothing but an **Agrarian Reforms** and relied upon in the case of ***K.T. Plantation (supra)***.

He further submitted that since TML expressed its willingness to move out of the premises vide a letter dated 28th September 2010 and after lapse of three years, the State Legislature enacted Singur Act to resume possession of the land to carry out the public purpose of socio-economic development and generation of employment and industrial development of the State. The said public purpose has an approval of the Hon'ble Division Bench in ***Joydeep Mukherjee's case (supra)*** and in the circumstances, he submitted that the impugned Singur Act should be upheld by the Court and the Court should dismiss the appeal.

Regarding Presumption of Constitutionality Mr. Bandyopadhyay adopted the submission made by the learned Advocate General and Mr. Sakti Nath Mukherjee. We have noted the arguments on behalf of the State elaborately and since it would be mere repetition we refrain ourselves from further noting the same.

In reply to the submissions made on behalf of the State by the learned Advocate General, Mr. Sakti Nath Mukherji, Mr. Kalyan Bandyopadhyay and Mr. Ashok Banerji Government Pleader, Mr.Pal, learned Senior Advocate appearing

on behalf of the Tata Motors Ltd./ appellant contended before us that an attempt has been made to persuade this Court to hold that the presumption is virtually conclusive.

Mr. Pal submitted that in the context of acquisition of property this presumption has been reversed and when a challenge is thrown to the validity of a legislation acquiring property it is for "the State to justify" both what is the public purpose as well as whether the monetary amount has been given by the legislature, and whether it is illusory or not, as held in ***K.T. Plantation (supra)***. He further drew our attention to paragraph 221 (e) & (f) of the said decision, reads as follows:

> *"(e) Public purpose is a precondition for deprivation of a person from his property under Article 300A and the right to claim compensation is also inbuilt in that article and when a person is deprived of his property* ***the State has to justify both the grounds*** *which may depend on scheme of the statute, legislative policy, object and purpose of the legislature and other related factors"*
>
> *"(f) Statute, depriving a person of his property is, therefore, amenable to judicial review on grounds hereinbefore discussed"*

He further submitted that in the context of other legislative violations of the Constitution what the presumption implies is that courts will proceed with utmost circumspection and initially lean in favour of its validity. But this initial presumption is not conclusive. It is a rebuttable presumption. The presumption will stand rebutted or displaced and will not apply when

contravention is writ large on the face of the statute. In respect of his such contention, he placed a decision reported in ***AIR 1958 SC 538 (Re. Dalmia)*** in particular Clause (f) of paragraph 11 which reads as follows:

> *"that while good faith and knowledge of the existing conditions on the part of a Legislature are to be presumed, if there is nothing on the face of the law or the surrounding circumstances brought to the notice of the court on which the classification may reasonably be regarded as based, the presumption of constitutionality cannot be carried to the extent of always holding that there must be some undisclosed and unknown reasons for subjecting certain individuals or corporations to hostile or discriminating legislation"*

The same principle is also reiterated in the case ***of Depak Sibal (supra)*** reported in ***1989 (2) SCC 145*** in particular paragraph 15 of the said decision. He further pointed out that the same principle has also laid down and follow by the Calcutta High Court in a Division Bench reported ***in (1996) 2 CLJ 286 (Paschim Banga Bhumijibi) (Para 86).***

Mr. Pal pointed out that the learned Advocate General on presumption of Constitutionality cited a decision reported in **(1997) 2 SCC 453(State of Bihar and Ors. V. Bihar Distillery Ltd & Ors).** He pointed out in the said decision that the Bihar Excise (Amendment and Validating) Act, 1995 vested the power of price fixation to be done by the Commissioner of Central Excise vide letter dated 19th February 1990 and 20th February 1990 which were issued after negotiations with the distillers. The amending Act specifically

proved that the price so fixed by the State " shall be deemed to have been fixed under this Act". The Supreme Court said in paragraph 17 that if High Court looked at these letters the High Court would have realized that the Act was giving effect to the letters and putting its legislative imprimatur on them (Para 17). The Supreme Court said that the High Court should have noticed the preamble to find out the intention and deference to legislature and separation of powers. The ratio was laid down in paragraph 22 at page 468 of the said decision which reads as follows:

> *"Now coming to the validity of the Amending Act we are unable to see on what ground can its validity be impeached. All that it does is to provide statutory basis and legislative imprimatur tot he price fixation done by the Commissioner and its break-up. … The general averment of Mr. Y.V. Giri that the Act is arbitrary is too vague to merit any acceptance, apart from the fact that an Act of legislature cannot be struck down merely saying it is arbitrary- See this Court'' judgment in State of A.P. v. Mc. Dowell and Co. (SCC at pp. 737 to 739)- apart from the fact that the charge does not appear to be justified in the facts and circumstances of the case".*

Mr. Pal further pointed out that the learned Advocate General relied on heavily on certain observations made by Lord Denning in ***Seaford Court Estates Ltd. Vs. Asher*** reported in ***(1949) 2 All ER 155)*** (supra). According to Mr. Pal the observations made in the judgment are not binding and relied on a decision reported in ***(2009) 8 SCC 483*** where the Supreme Court held as follows:

"The courts should guard against the danger of mechanical application of an observation without ascertaining the context in which it was made. In CIT- v. Sun Engg. Works (P) Ltd. (1992) 4 SCC 363- vide para 39) this Court observed: (SCC pp. 385-86)

' It is neither desirable nor permissible to pick out a word or a sentence from the judgment of this Court, divorced from the context of the question under consideration and treat it to be the complete 'law' declared by this Court. The judgment must be read as a whole and the observations from the judgment have to be considered in the light of the questions which were before this Court. A decision of this Court takes its colour from the questions involved in the case in which it is rendered and while applying the decision to a later case, the courts must carefully try to ascertain the true principle laid down by the decision of this Court and not to pick out words or sentences from the judgment, divorced from the context of the questions under consideration by this Court, to support their reasonings'."

He further submitted that in the said decision it is also stated by the Court that each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect and it is necessary that one should avoid the temptation to decide cases by matching the colour of one case against the colour of another. He further drew our attention in a case of ***Jitendra Kumar Singh & Anr. Vs. State of Uttar Pradesh & Ors.*** reported in ***(2010) 3 SCC 119*** in particular paragraph 53 and 54 of the said decision where the Supreme Court held as follows:

"53. Even otherwise, merely quoting the isolated observations in a judgment cannot be treated as a precedent dehors the facts and circumstances in which the aforesaid observation was made"

Mr. Pal further submitted that the ratio to be deduced will appear from the decision in the case of ***Union of India v. Dhanwanti Devi*** reported in ***(1996) 6 SCC 44.*** In paragraph 9 of the said decision the Supreme Court stated follows:

'9....It is not everything said by a Judge while giving judgment that constitutes a precedent. The only thing in a Judge's decision binding a party is the principle upon which the case is decided and for this reason it is important to analyze a decision and isolate from it the ratio decidendi.... A decision is only an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically follows from the various observations made in the judgment. ... It would, therefore, be not profitable to extract a sentence here and there from the judgment and to build upon it because the essence of the decision is its ratio and not every observation found therein. ... It is only the principle laid down in the judgment that is binding law under Article 141 of the Constitution.'

He further stated that the two cases cited by the State and relied upon by the Hon'ble Single Judge in the case of ***Government of Andhra Pradesh & Ors. Vs. P. Laxmi Devi (Smt.)*** reported in ***(2008) 4 SCC 720*** relied on the following paragraphs in 40 and 41 at page 738 of the said decision which are quoted hereunder:

"40. The court must always remember that invalidating a statute is a grave step, and must therefore be taken in very rare and exceptional circumstances."

"41. We have observed above that while the court has power to declare a statute to be unconstitutional, it should exercise great judicial restraint in this connection …"

The Court concludes that Section 47A requiring pre-deposit was valid

Mr. Pal further pointed out that the learned Advocate General contended that the Singur Act is an Act for acquisition but it relates to Entry 18 List II. The learned Advocate General at the same time contends that Singur Act is not an Act for acquisition of land. Hence no amount is required to be paid under Section 5(2) of the impugned Act. According to him, the compensation is a giving by grace. Mr. Pal contended that it is not open to the State to submit that the Singur Act is not an Act for acquisition of land and the reasons are as follows:

" At the very close submissions I asked the learned Advocate General to take specific instruction, whether the State Government would prefer any appeal, if the Court interpreted the word "compensation" as embodying the principles enshrined in Sections 23 and 24 of the land Acquisition Act, 1894. He replied on the next date after taking instruction that the State had no objections if those principles for grant of compensation were deemed to have been embodied in the impugned Act and were to be considered and applied by the District Judge, subject to admissibility of any principle, while awarding compensation. I have taken that statement of the learned Advocate General to be the stand of the State."

The Hon'ble Single Judge has recorded the statement made by the learned Advocate General in answer to the query of the Court.

The learned Advocate General made a statement in reply to the query raised by the Hon'ble Single Judge and the statement has already been recorded by the Hon'ble Single Judge in its judgment itself.

Mr. Pal further pointed out that if it was not a case of acquisition then it is impossible to appreciate as to why the State did not object to those principles for grant of compensation under Sections 23 and 24 of the Land Acquisition Act, 1894 which sought to be inserted by the Hon'ble Single Judge in the judgment itself. Hence, he submitted that the reasons have already been stated that the Singur Act is an Act for acquisition. The Act contains to give compensation. The compensation is given when land is acquired by reason of the Constitution i.e., now by reason of Article 300A as interpreted by the Hon'ble Supreme Court in the cases **Jilubhai (supra)** ; **Rajiv Sarin (supra)** and ***K.T. Plantations (supra)*** (which also sources it to Rule of Law).

Compensation and/or amount is only paid where deprivation takes place by acquisition. Nowhere else from the judgment of the Hon'ble Single Judge it would appear that the Hon'ble Judge found that although there was

an intention to pay compensation but there is some vagueness and uncertainty which has been specifically recorded by His Lordship.

> *" But there is some vagueness and uncertainty with regard to compensation receivable which defect I propose to rectify by purposive interpretation of the provisions of the Act."*

Mr. Pal submitted that the learned judge did not exercise of "purposive interpretation of the provisions of the Act." The learned Judge does not identify which are "the provisions of the Act" or otherwise which the learned judge had in mind. It is clear that if the learned Judge was acting judicially and applying the principles of purposive interpretation, he should have stood on his own conviction independent of the views of the Government.

It is crystal clear that the learned Judge did not at all indulge in purposive interpretation. The learned Judge realized that since he was unable to find any principle of interpretation whether purposive or any other principle, learned Judge took the unprecedented approach of asking the learned Advocate General about incorporation of S.23 and S.24 of the L.A. act in open court and waited for the State's consent "on the next date".

Mr. Pal pointed out that the response was a qualified one. The learned Advocate General stated as recorded in the judgment:

> *"that the State had no objections if those principles of grant of compensation were deemed to have been embodied in the impugned*

Act and were to be considered and applied by the District Judge subject to admissibility of any principle, while awarding compensation."

After getting response from the learned Advocate General on the next date, the Court concluded by inserting the principles of awarding compensation enshrined in sections 23 and 24 of the Land Acquisition Act 1894. Accordingly, the State's view prevailed over any attempt to have recourse to the well settled and basic principles of rule of statutory interpretation i.e. that the interpretation exercised should be confined to four corners of the concerned statute. He further pointed out that no submissions is made by the Learned Advocate General or any other learned Senior Counsel appearing for the State to justify the Hon'ble Judge's deemed incorporation of S.23 and S. 24 in the Act in this appeal.

Mr. Pal further pointed out that the learned Advocate General further submitted that requirement for specifying the amount or the principle on which the amount is to be determined as contained in Article 31(2) cannot subsist after deletion of Article 31(1) and Article 31(2). According to the learned Advocate General the principles for determination are not required to be given. Mr. Pal submits that the said proposition is misconceived and misleading and he relied on paragraph 52 (Page 629), 56 (Page 632) and 58 (Page 631) in the case of ***Jilubhai Nanbhai Khachar (supra)*** which is quoted hereunder:

*"**Para 52 at pg.629***

The constitutional history of the interpretation of the power of Parliament to amend the Constitution under Article 368 from Kameshwar Singh to Kesavananda Bharati to give effect to the directive principles in Part IV vis-à-vis the right to property in Articles 19(1)(f) and 31 as well as the interpretation of 'compensation' from Bela Banerjee to Banks Nationalization case do establish that parliament has ultimately wrested the power to amend the Constitution, without violating its basic features or structure. Concomitantly legislature has power to acquire the property of private person exercising the power of eminent domain by a law for public purpose. The law may fix an amount or which may be determined in accordance with such principles as may be laid therein and given in such manner as may be specified in such law. However, such law shall not be questioned on the grounds that the amount so fixed or amount determined is not adequate. The amount fixed must not be illusory. The principles laid to determine the amount must be relevant to the determination of the amount. The doctrine of illusory amount or fixation of the principles to be arbitrary were evolved drawing support from the language originally couched in the unamended Entry 42 of List III which stood amended by the Constitution 7th Amendment Act with the words merely "Acquisition and Requisition of Property". Nevertheless even thereafter this Court reiterated the same principles. Therefore, the amendment to Entry 42 of List III has little bearing on the validity of those principles. We are conscious that Parliament omitted Article 31 (2) altogether. However when the State exercises its power of eminent domain and acquires the property of private person or deprives him of his property for public purpose, concomitantly fixation of the amount or its determination be must in accordance with such principles as laid therein and the amount given in such manner as may be specified in

such a law. However, judicial interpretation should not be a tool to reinduct the doctrine of compensation as concomitance to acquisition or deprivation of property under Article 300-A. This would be manifest from two related relevant provisions of the Constitution itself – Article 30(1-A) and second proviso to Article 31-A as exceptions to the other type of acquisition or deprivation of the property under Article 300-A.

"Para 56 at pg.631

It is, therefore, clear that the appellants are not entitled to compensation or just equivalent of property they are deprived of or indemnification of the property expropriated i.e. mines, whether worked or not, minerals whether discovered or not or quarries deprived by law made under Article 300A of the Constitution. The principles under section 69-A (4) of the Code are relevant. The resultant amount is not illusory. Thereby they are not void. We further hold that after the Constitution Forty-fourth Amendment Act has come into force, the right to property in Articles 19(1)(f) and 31 had its obliteration from Chapter III, Fundamental Rights. Its abridgement and curtailment does not retrieve its lost position, nor gets restituted with renewed vigour claiming compensation under the garb "deprivation of Property" in Article 300-A. The Amendment Act neither receives wrath of Article 13(2), nor does Section 69-A become ultra vires of Article 300-A"

"Para 58 at page 632

It is next contended that the Act and the related provisions provided different modes of compensation that the one provided in sub-section (4) of Section 69-A of the Code and that, therefore, it is discriminatory, violating Article 14 and unfair procedure offending Article 21. We find no substance in this contention. It is true that different Acts provide different principles to determine the amount payable to the deprived owner. The principle of average of three years net annual income received from production of the mines and minerals preceding the date of the vesting is

a relevant and germane principle to fix the amount payable to the owner. Comparative evaluation of different principles evolved by each statute may appear to be different and prima facie to be discriminatory from each other, but comparative analogy would not furnish satisfactory test to declare a national principle determined by the statute to be discriminatory. It is seen that the principle bears just relation to the object of determining the amount or compensation payable to the owner and the principle of average of three years net annual income is a reasonable classification having relation to the object of modification of the existing rights and extinguishment thereof. Section 69-A(4) of the Code is, therefore, valid. So it is unassailable under Article 14. The principle of unfairness of the procedure attracting Article 21 does not apply to the acquisition or deprivation of property under Article 300-A giving effect to the directive principles. We are not concerned in these appeals of the effect of mining and mineral lease or leases granted by the appellants to third parties, since that question was neither canvassed in the High Court, nor any factual foundation laid before us. We decline to go into that question. For well over twelve years the appellants worked the mines etc. by obtaining stay of operation of law and had appropriated the mines or minerals or quarries from the respective lands."

From the judgment it appears that this statement establishes beyond any doubt that even after the 44th Amendment the amount or the principles for determining the amount is a constitutional requirement under Article 300-A read with Entry 42 List III.

Mr. Pal submitted that after 44th Amendment law acquiring property has to lay down the amount or principles for determining the amount but not "compensation" or full indemnification as it was prior to the 25th Amendment but the amount specified must not be illusory and the determination principles must be relevant and appropriate to the nature of property acquired and their applications must not produce an illusory amount.

Mr. Pal stated that the proposition of the learned Advocate General has also hit by the judgment of the Division Bench of this High Court in the case of ***Paschimbanga Bhumijibi (supra)*** particular in paragraph 70 at page 308-309 where the Court observed which is as follows:

> *"The only question, therefore, is as to whether just compensation is required to be paid or not. The Supreme Court in Jilubhai (supra) upon reviewing its earlier decisions including the decisions cited by the learned Counsel for the parties held:*
> *'However, such law shall not be questioned on the grounds that the amounts so fixed or amount determined is not adequate. The amount fixed must not be illusory. The principles laid to determine the amount must be relevant to the determination of the amount We are conscious that parliament omitted Article 31(2) altogether. However, when the State exercises its power of Eminent Domain and acquires the property of private person or deprives him of his property for public purpose, concomitantly fixation of the amount or its determination must be in accordance with such principles as laid therein and the amount given in such manner as may be specified in such a law'.*

"Para 79 at page 311 of the said judgment

In Jilubhai's case (supra) the law has been declared in the following terms:-

(a) "Payment of just compensation or indemnification has been held by the Supreme Court in ***Bela Banerjee's case*** *reported in* ***AIR 1954 SC 170*** *is not required;*

(ii) Payment of market value in lieu of acquired property is not sine qua non for acquisition;

(iii) Acquisition and payment of amount are part of the scheme and they cannot be dissected;

(iv) However, fixation of the amount or specification of the principle and the manner in which the amount is to be determined must be relevant to the fixation of the amount;

(v) The amount determined cannot be illusory; and

(vi) The validity of irrelevant principles are amenable to judicial scrutiny."

"***Para 85 at page 312-313 of the said judgment***

Furthermore, no attempt has yet been made by the Parliament or any State Legislature to acquire any property without compensation. The Parliament and the Legislature must be held to be aware of the law laid down by the Supreme Court of India. As indicated hereinbefore, the Apex Court had all along maintained even after the Constitutional Amendment, that although adequacy of compensation cannot be justiciable, such amount cannot be illusory. The State may not be in a position to pay the full market value to the owner of the property sought to be acquired by reason of a legislation but it never denied the right to receive some amount for such acquisition. Jilubhai's case, in our opinion, should be understood from the aforementioned concept of payment of amount for acquisition or requisition of property of a

citizen. Even requisition of a movable or immovable property which caused temporary deprivation requires payment of compensation."

*"**Para 86 at page 313 of the said judgment***

Although there exists a presumption that an Act is constitutional and that legislature understands and appreciates needs of the people, but when the law is ex facie discriminatory or arbitrary or violative of any other provisions of the Constitution or a law laid down by the supreme Court, such presumption cannot stand and/or would be deemed to be rebutted, in which event the burden will shift to the State. But to me, it appears when the matter is thrashed out threadbare, the issue in most of the cases became academic as an unconstitutional statute cannot be held constitutional by taking recourse to the presumption. Only in a marginal case, the said presumption may be of some value; but the same may have a great role to play at the time of passing interim orders."

*"**Para 96 at page 315 of the said judgment***

No such principle has been laid down in the said Act. We are, therefore, of the view that no relevant principle for computation of compensation having been laid down, the said provision cannot but be held to be unconstitutional."

"Para 111 at page 319 of the said judgment

It is true that normally in exercise of its jurisdiction under Article 226 of the Constitution of India the Court may be circumspect in examining a policy decision but in view of Jilubhai's case (supra) that there cannot be any doubt whatsoever that a policy emanating from a legislation can be subjected to a judicial scrutiny and the same can

be tested in the light of the provision of the Constitution. We are, therefore, of the opinion that the amount payable for acquisition of surplus land as defined under Section 2(7) of the Act is without any just principles as also illusory."

He further pointed out that the constitution Bench in ***K.T. Plantation (supra)*** does not sound any dissenting note regarding the principles laid down and declared in ***Jilubhai (supra)***.

The question as to whether any principles is required to be laid down in a Statute for determining the amount payable for deprivation of property or taking possession after the insertion of Article 300A and deletion of Article 31(1) & (2) of the Constitution did not arise for the simple reason that the concerned statute, namely **'The Roerich and Devika Roerich Estate (Acquisition and Transfer) Act 1996** provided for the principles to be applied in determining the amount by Section 7 and Section 8 of the Act. He further drew our attention to paragraph 191 of the said decision which is as follows:

*"**191.** The legislation providing for deprivation of property under Article 300A must be "just, fair and reasonable" as understood in terms of Articles 14, 19(1)(g), 26(b), 301 etc. in each case, courts will have to examine the scheme of the impugned Act, its object, purpose as also the question whether payment of nil compensation or nominal compensation would make the impugned law unjust, unfair or unreasonable in terms of other provisions of the Constitutions as indicated above."*

> "***192.*** *At this stage, we may clarify that there is a difference between "no" compensation and "nil" compensation. A law seeking to acquire private property for public purpose cannot say that "no compensation shall be paid. However, there could be a law awarding "nil" compensation in cases where the State undertakes to discharge the liabilities charged on the property under acquisition and onus is on the Government to establish validity of such law. In the latter case, the Court in exercise of judicial review will test such a law keeping in mind the above parameters".*

Mr. Pal contended that after Amendment the amount or the principles for determination of the amount in 44th Amendment has been specified in all acquisition Acts enacted both by Parliament and State Legislatures. A compilation of number of such statutes have been submitted before this Court which we have already noted. He submitted it would be evident from the said statutes that even after the deletion of Article 31 and insertion of Article 300A by the 44th Amendment the legislatures have understood what Article 300A means. All these statutes have either provided for the amount or laid down the principles for determining the amount to be given to the expropriated owner. The said understanding provides the basis for invoking a rule of construction contained in the Latin maxim contemporanea exposition est optima et fortissimo in lege.

> *"A contemporaneous exposition (or construction) is regarded in law as the best and strongest (most prevailing)" (Trayer's Legal Maxims, Fourth Edn. 1993 page 103)*

G.P. Singh, in his 'Principles of Statutory Interpretation' (13th Edn. 212) says:

"Contemporary official statements throwing light on the construction of a statute and statutory instruments made under it have been used as contemporanea exposition to interpret not only ancient but even recent statutes both in England and India."

The State has also contended that the delegate *"i.e. the District Judge, Hooghly"* will decide later what will be the amount. Mr. Pal replied to such contention that the constitution requires/mandates that the legislature must specify the amount or the principles for determination of the amount ***(Jilubhai) (supra)*** and ***N. Kannadasan Vs. Ajoy Khose*** reported in ***(2009) 7 SCC 1, 32 Para 51***.

Therefore, he submits that the principles laid down in those decisions has to be followed. Non specification of the amount in an expropriatory Act which deprives a person of his property or interest in property would for all practical purposes be unconstitutional and violative of the Constitution and the Rule of law which has been held to be a part of the basic structure of the Constitution because it would mean that the expropriated owner cannot contend immediately after the acquiring legislation is published and before his possession is taken away that the amount given or the principles laid down would result in an illusory figure. In other words, access to the constitutional

remedy of judicial review under the Constitution would be rendered infructuous.

Specification will enable the person deprived to choose his course that is whether he will challenge the law to protect his possession and possession is 9/10th of ownership or accept the amount or the principles laid down in the Act and hand over possession to the State. The deferment and non-specification is deliberate and is a mirage. It has been done in a manner so that this Court is confused and misled into believing that the Act is constitutionally valid.

He further pointed out that the learned Advocate General submitted that the Constitution (25th Amendment) Act 1971 overruled ***R.C. Cooper's Case (supra)***. Mr. Pal contended that this is also totally misconceived. The said decision was cited on behalf of the Appellants to demonstrate that the field of acquisition was to be traced to Entry 42 List III. The Statement of objects and reasons of the 25th Amendment attempted to make adequacy of compensation non-justiciable. But in case of Keshavananda Bharati (13 Judges) it was held that even after 25th Amendment the Court can scrutinize whether the amount given in the statute is illusory or not. He further submitted that Cooper is relevant inasmuch as it said the 'appropriate method' of valuation has to be chosen having regard to the different nature and type of assets acquired. In ***Cooper's case*** it was clearly laid down that Entry 42 in List III is an independent and only entry in the 3 lists which

relates to acquisition and requisition of the property. The words “scrutinize”, “given”, “chosen” clearly shows that law must lay down and not a deferred or undisclosed principle to be evolved and applied by a delegated authority like the District Judge.

The State submitted that after the 44th Amendment, judgments prior to 44th Amendment with effect from 10th June 1979 have become irrelevant. Mr. Pal in his reply submitted that a consideration of legislative history throws light on the interpretation of the Constitution as it stands today. It is of significance that in the cases decided by the Supreme Court after the 44th Amendment and cited in these proceedings, the Court traced the history of Article 31 from the beginning till date as well as the decision of the Supreme Court starting from 1950 to 2011 and reliance has already been placed on ***Jilubhai (supra)***, ***Rajiv Sarin (Supra)*** and ***K.T. Plantation (supra)***.

Mr. Pal pointed out that the basic premise of the submission of the learned Advocate General is that the Singur Act discloses an intention to pay compensation as revealed by Section 5(2) of the Singur Act and that was enough and no further elucidation was necessary since meaning of the word ‘compensation’ was clear and well-known and understood and, therefore, it was not necessary to lay down any principles.

Mr. Pal also submitted that such submission is unacceptable for the following reasons:

(a) the submission is self defeating because it means that although there is an intention but no provision has been made in the Act.

(b) In this case the meaning of the word 'compensation' is to be considered in the constitutional context of right to property as it stands after the 44th Amendment. And this can be understood only by tracing its evolution in the Constitution.

(c) The so-called intention to compensate and actually providing for the same makes a world of difference i.e. the intention has never been translated into the fact of providing or giving compensation.

(d) The very submission that leasehold is a "dead asset" (Learned Advocate General) nor of "any value" clearly establishes that there was no such intention.

(e) Lease was of no value since it contained a non-transferable clause and other restrictions on user.

Mr. Pal pointed out that in any event this is totally wrong contention since the Lease deed expressly provides for transfer to subsidiaries and drew our attention to Clause 13 at page 364 of Part IV of the Paper Book. He further submitted that the subsidiaries and others on the Tata Group with high net worth and credibility and can be utilized by them unless the leasehold was transferred or assigned. Mr. Pal further pointed out that the

grounds taken in the cross-objection clearly and without any doubt shows that there was no intention to pay compensation. He further drew our attention to the ground taken in the cross-objection in particular Ground Nos. VI, VII, X and XIII and submitted these establish beyond any doubt that there was never any intention to pay compensation. He also pointed out that the very fact that the learned Advocate General took instructions from the State that the State would not appeal if section 23 and section 24 of Land Acquisition Act is incorporated which shows that the State admits that no provision for compensation was made nor was there any intention to pay compensation under section 5(2) or otherwise. He further pointed out that according to the State use of the word 'compensation' is enough i.e. it relates to the loss suffered by the person whose property is taken. Such contention is misconceived in the context of acquisition of an undertaking. Compensation will mean different values attributed to the different assets of the undertaking and in the instant case it could include, inter alia, loss of the unexpired term of the lease; the amount invested by way of capital expenditure; the loss of incentives; the loss of the indemnities recorded in the lease deed and a host of other attributes which the legislature must specify. Meaning of compensation has not been defined properly in any decision till date and that is the reason there are still a virtual debate between the legislature and the judiciary to find out what meaning is to be attributed to the meaning of the word 'compensation'. He pointed out in the case of ***Keshavananda Bharati (Supra)*** where the Supreme Court held that what is to be given is an amount

which is not illusory and the Court cannot decide whether it is illusory unless the amount or principles are specified. He further pointed out that the intention of the Legislature gives rise to the question of interpretation. The basic principles of interpretation are:

a) Intention of the legislature is to be gathered from the language used by the legislature i.e. from what is said by the legislature and not what it has not said;

b) Court cannot legislate;

c) Court cannot also incorporate provisions of one Act into another because this is exclusively in the domain of the legislature.

d) Expropriatory legislation is to be strictly construed;

e) The burden of proof regarding public purpose and compensation has been shifted to the State because of the law declared in K.T. Plantation (supra) which is as follows:

"(e) Pubic purpose is a precondition for deprivation of a person from his property under Article 300A and the right to claim compensation is also inbuilt in that article and when a person is deprived of his property the State has to justify both the grounds which may depend on scheme of the statute, legislative policy, object and purpose of the legislature and other related factors."

Mr. Pal pointed out the principles to be applied in this case in respect of interpretation of the statute in question. If language is plain then no question of interpretation arises; only when language of the enacted part of the statute is ambiguous/vague/uncertain then the Court will try to ascertain the

intention from external aids e.g. the Statement of Object and Reasons. He further pointed out that here the case is not of vagueness or uncertainty but incomplete legislation- a void has been left by the legislature in relation to an essential feature of Article 300A read with Entry 42 of List III and or Rue of law(as declared in K.T. Plantations). The word 'compensation' does not answer the question i.e. what is the amount or what are the principles which will fulfill the ingredients of compensation. By saying compensation means compensation in Section 5(2) begs the question. The said section is ex-facie unconstitutional and violates Article 300A read with Entry 42 List III and/or Rule of Law. Assuming it is vague and uncertain and interpretation is called for, the intention must be gathered from the language used as stated in ***Umed Vs. Raj Singh*** reported in ***(1975) 1 SCC 76***. He drew our attention to paragraph 38 of the said decision which reads as follows:

> *" The function of the court is to gather the intention of the Legislature from the words used by it and it would not be right for the court to attribute a intention to the Legislature, which though not justified by the language used by it, accords with what the court conceives to be reason and good sense and t hen bend the language of the enactment so as to carry out such presumed intention of the Legislature. For the court to do so would be to overstep its limits... "*

Such intention is totally belied by the State's emphatic stand that the Singur Act is not an Act for acquisition because compensation is payable only

when there is acquisition. Such intention is also belied by equally emphatic contention that the leasehold is a "**dead asset".**

Mr. Pal further pointed out that in any event the Court cannot supply words to fill up essential legislative function by enacting it itself through the process of lifting the same from another statute. He submitted that it is settled law that casus omissus (which means a case not provided for by a statute) cannot be supplied by judicial interpretation. Reliance has been placed in the case of ***M/s Rishabh Agro Industries Ltd. v. P.N.B. Capital Services Ltd.*** reported in ***AIR (2000) SC 1583*** and in particular he drew our attention to paragraph 6 at page 1587 of the said decision which is as follows:

> *"6. Learned Counsel appearing for the respondent has submitted that such an interpretation would defeat the ends of justice and make the petitions under the Companies Act, infrauctuous inasmuch as any unscrupulous litigant, after suffering an order of winding up, may approach the Board merely by filing a petition and consequently get the proceedings in the Company case stayed. Such a grievance may be justified and the submission having substance but in view of the language of Sections 15 and 16 of the Act particularly Explanation to Section 16 inserted by Act No.12 of 1994, this Court has no option but to adhere to its earlier decision taken in Real Value Appliances 1998 AIR SCW 1924: (AIR 1998 SC 2064) (supra). While interpreting, this Court only interprets the law and cannot legislate it. If a provision of law is misused and subjected to the abuse of process of law, it is for the Legislature to amend, modify or repeal it by having recourse to appropriate procedure, if deemed necessary."*

Mr. Pal further relied on a decision reported in ***AIR (2002) SC 1334 (Padmasundara Rao (Dead) & Ors. Vs. State of T.N. & Ors.*** in particular paragraph 13 at page 1340 of the said decision which is quoted hereunder:

> *"13. While interpreting a provision the Court only interprets the law and cannot legislate it. If a provision of law is misused and subjected to the abuse of process of law, it is for the legislature to amend, modify or repeal it, if deemed necessary (see Rishabh Agro Industries Ltd. v. P.N.B. Capital Services Ltd.- 2000(5) SCC 515). The legislative casus omissus cannot be supplied by judicial interpretative process…"*

Mr. Pal further submitted that Court cannot rewrite, recast or redesign and he relied on a decision reported in ***(1986) 4 SCC 746 (State of Kerala v. Mathai Verghese & Ors.)*** particular in paragraph 6 at page 749 of the said decision. In support of his contention, he further submitted that Court couldn't legislate which would be evident from the decision in the case of ***Union of India & Anr. V. Deoki Nandan Aggarwal*** reported in ***1992 Supp(1) SCC 323*** particular in paragraph 14 at page 332 of the said decision. He further submitted that the expression 'compensation' has a definite connotation and by itself provides a sufficient guideline. Mere use of word 'compensation' in Singur Act does not have definite connotation and it by itself does not provide sufficient guideline for determination of compensation. He further relied on a decision reported in ***Shantilal Mangaldas Case (Supra***)

which was subsequently approved in ***Rustom Cavasjee Cooper's case (supra)***.

He further submitted that the submission made in Section 5(2) of the Singur Act says that Tata Motors will get compensation as adjudged and determined by the District Judge, Hooghly. Section 5(2) confers upon the Tata Motors a right to claim compensation. In reply of the submission made by the learned Advocate General, Mr. Pal contended that mere right to receive compensation is of no use. The right must be followed by standards by which the compensation will be given i.e. what shape and size of the amount will be and what basis or procedure. Such a right is a mirage and there is no effective machinery as has been stated in the Act by which the adjudication takes place since there is no procedure laid down in the impugned Act for enforcing the rights. The District Judge will act as a delegate of the legislature and section 5(2) empowers him with the procedural standards and he has to act only under the power conferred by the statute to facilitate his determination and that is the reason in every statute there is section engrafted where an adjudicatory body is set up and that is why further provision has been given in section 131 of the Income Tax Act 1961.

Mr. Pal contended that the learned Advocate General has conceded that it is vague and uncertain but that will not make the Act void. He further contended that there is no provision for execution of the order which is to

be passed by the delegate since the provisions of the Civil Procedure Code or any other method of execution is not provided in the Act. Mere reference to natural justice is totally insufficient because the meaning and scope of 'principles of natural justice' are flexible. In this regard, Mr. Pal relied upon some decisions of ***Swadeshi Cotton Mills National Textile Corporation Vs. Union of India*** reported in ***(1981) 1 SCC 664; Keshav Mills Company Ltd. Vs. Union of India*** reported in ***(1973) 1 SCC 380; Maneka Gandhi Vs. Union of India*** reported in ***(1978) 1 SCC 248; H.L. Trehan Hindustan Petroleum Corporation Ltd. Vs. Union of India*** reported in ***(1989) 1 SCC 764*** and ***Shekhar Ghosh Vs. Union of India*** reported in ***(2007) 1 SCC 331***.

The learned Advocate General cited a decision reported in ***AIR 1954 SC 170 (State of West Bengal v. Mrs. Bella Banerjee)*** and Mr. Pal pointed out that unlike the Singur Act, the West Bengal Land Development and Planning Act, 1948 was not enacted for returning the land to the so called unwilling erstwhile owners of the land whose land had already been acquired under Land Acquisition Act but the said West Bengal Land Development and Planning Act was primarily for the settlement of immigrants who had migrated into West Bengal due to communal disturbance in East Bengal and authorized a co-operative society to undertake a development scheme. According to him the said case has no relevance and when no meaningful or workable or specific provision is made in law regarding compensation/amount etc. then it

is an instance of fatal omission and will be a case of "no compensation" to use the terminology used by the Hon'ble Supreme Court in ***K.T. Plantation (supra)*** and ***Rajiv Sarin (supra)***. Such a situation is per se violative of Constitution as stated already.

The learned Advocate General further contented that :

(a) The procedure to be followed by the District Judge is:

(i) An application to be made by TML to the District Judge.

(ii) The District Judge will apply the principles of natural justice.

(iii) The District Judge will give a reasoned order.

(b) According to the learned Advocate General, Natural Justice is enough. Natural justice in Section 5(2) means that (i) TML has full right to claim; (ii) State has full right to defend.

The learned Advocate General further contended that as per section 5(2) the compensation will be determined later by the District Judge. Mr. Pal submitted that this is wholly unreasonable and arbitrary provision violating Article 226 i.e. it purports to disable the Hon'ble Court from scrutinizing the validity of the Act at threshold and what is the compensation payable or what are the principles for determining the same. Section 5(2) does not provide any time limit within which the determination will be made or the determined amount will be paid although District Magistrate dispossessed Tata Motors without notice

and with the help of police after news of Singur Act has come into force on 21st June 2011 and in effect the T.M. has to wait indefinitely for the purported determination of the amount. Taking possession of the property as it appears and the statute thereafter, asking the TML to chase litigation before the District Judge cannot be called for and it becomes a teasing illusion. He further pointed out that the purported determination will be final since it will essentially be a matter of fact and no appeal is provided from such determination. The contention of the State is that remedy under section 115 of the Code of Civil procedure will not apply and even if it does, a disputed question of fact will not be decided by a revisional Court. He further pointed out that the constitutional writ jurisdiction under Article 226 will not be available as the determination will almost entirely be a question of fact and disputed questions of fact are generally not entertained under Article 226 of the Constitution. The power of superintendence under Article 227 of the Constitution will also not be available for the same reason. Hence, he submitted that the compensation as stated in section 5(2) is nothing but has to be taken into illusion.

It is further submitted on behalf of the State that Singur Act is a special statute directly acquiring Singur land whereas Land Acquisition Act provides for executive acquisition. In reply to that Mr. Pal submitted both the Acts provide for acquisition of property. It is not strictly correct to say that vesting under the Singur Act is automatic and Land Acquisition Act for executive vesting. There is nothing as automatic vesting. Any acquisition whether directly under the Acts

like Singur Act, West Bengal Estates Act 1953, Land Reforms Act 1955 or the land Acquisition Act 1894 requires some executive action for acquisition and most importantly taking possession. He further submitted that it is a case of deprivation in Article 300A and includes taking away possession. He further submitted that taking away possession is indispensable part of vesting in both the Acts and the possession is 9/10th of ownership.

He further drew our attention to Section 4(2) of the impugned Act and submitted that the submission made on behalf of the State is only to create confusion and is attempted to mislead the Court that Singur land could not have been taken under the L.A. Act or by determination of the lease. The excuse of urgency as submitted by the learned Advocate General is also misleading since in cases of urgency, section 17 of the L.A. Act could be invoked. He further submitted that the question of special or general cannot arise in the present context because however special an acquiring Act might be whenever any Act acquires property, public purpose and compensation must be provided.

The learned Advocate General further submitted that executive action which is arbitrary can be struck down but legislature is free to legislate. In reply to that Mr. pal submitted that this is a totally misleading submission and such submission has been based on ***paragraph 207*** in ***K.T. Plantations Case (supra)***. In the case ***of K.T. Plantations***, the Supreme Court stated which is as follows:

*" **207.** Later, it is pertinent to note that a five-judge Bench of this Court in Ashoka Kumar Takur v. Union of India (2008)6 SCC 1, while examining the validity of the Central Educational Institutions (Reservation in Admission) Act 2006 held as follows:*

*'**219**. A legislation passed by parliament can be challenged only on constitutionally recognized grounds. Ordinarily, grounds of attack of a legislation is whether the legislature has legislative competence or whether the legislation is ultra vires the provisions of the Constitution. If any of the provisions of the legislation violates fundamental rights or any other provisions of the Constitution, it could certainly be a valid ground to set aside the legislation by invoking the power of judicial review. A legislation could also be challenged as unreasonable if it violates the principles of equality adumbrated in our Constitution or it unreasonably restricts the fundamental rights under Article 19 of the Constitution. A legislation cannot be challenged simply on the ground of unreasonableness because that by itself does not constitute a ground. The validity of a constitutional amendment and the validity of plenary legislation have to be decided purely as questions of constitutional law.'*

The expression equality adumbrated refers to Article 14 of the Constitution.

In the instant case it has been pleaded and argued that impugned singur Act and particularly sections 5(2), 4 and 6 are arbitrary provisions offending Article 14 of the Constitution.

The learned Advocate General further submits that according to 'conclusion (e)' in ***K.T. Plantations (supra)*** the compensation is secondary and therefore it cannot be argued to day that compensation must be laid down. To such argument, Mr. pal replied that this argument is not only erroneous but also misleading. There is no expression to the effect in conclusion (e) of ***K.T. Plantations (supra)*** that "compensation is secondary". K.T. Plantations does not pronounce nor does the Supreme Court declare that there is a hierarchy between public purpose and compensation. The exact phraseology in conclusion (e) has been specifically stated that public purpose is a precondition for deprivation of a person from his property under Article 300A and the right to claim compensation is also inbuilt in that article. Inbuilt means "existing as an original or essential part". Mr. Pal pointed out that in Concise Oxford Dictionary, 10th Edition at page 715. Public purpose and payment of amount which is not illusory are inseparable conditions of acquisition. Hence, Mr. pal contended that the Constitution cannot be interpreted to mean that public purpose is only to be specified and compensation will not be specified and the latter may be made known in the unknown future and the person may be dispossessed without any means to have a shelter which he could have had with the money.

It was further submitted on behalf of the State that ***K.T. Plantation (supra)*** **at para 175** says right to claim compensation is not in Entry 42 of List III but can be inferred from 300A. In reply to such submission that Mr. Pal submitted that the Supreme Court was dealing with the point as to whether right

to compensation after the 44th Amendment could be traced to Article 300A. The Supreme Court was also deciding on the scope and effect of Article 300A and held that right to compensation is inbuilt in Article 300A. Entry 42 List III was the only entry in the three lists of Schedule VII relating to *"acquisition and requisitioning"* and this has been stated in ***Cooper's case (supra); Iswari Khetan (Supra) and Jilubhai (supra)*** and he pointed out that ***in K.T. Plantation (Supra)*** the Supreme Court in ***Paragraph 158*** referred to ***Cooper's case (Supra)*** but did not overrule the proposition expressed by the Constitution Bench or State therein 44th Amendment. Mr. Pal further pointed out that even after in ***Rajiv Sarin's case (supra)*** the supreme court says that even a law for agrarian reform falls within "Entry 18 read with List III Entry 42" (para 21 at page 718). In ***K.T. Plantation (supra)*** Supreme Court observed which is as follows:

> *"188. We find no apparent conflict with the words used in List III Entry 42 so as to infer that the payment of compensation is inbuilt or inherent either in the words "acquisition and requisitioning" under List III Entry 42. Right to claim compensation therefore, cannot be read into the legislative List III Entry 42".*

This only means that the right to claim compensation cannot flow from Entry 42 List III. It does not say that the field of acquisition is not Entry 42 List III. It cannot be suggested that a judgment of 11 Judges Bench ***(Cooper***) and 5 Judges bench (Ishwari Khetan) was or could be overruled in K.T. Plantation as sought to be submitted by the State. Whether the Entry 42 List III was an entry

relating to acquisition was not even an issue in ***K.T.Plantation*** before the Supreme Court. The 44th amendment did not touch Entry 42 List III.

It is submitted by the learned Advocate General that the principle of purposive interpretation has to be applied. The KUZLAR Act did not use the expression 'possible income'. It only said 'income'. Mr. Pal in his reply contended that the phrase 'purposive interpretation' was not even used in Rajiv Sarin (supra) which was considering the provisions relating to payment of amount in the KUZLAR Act. The KUZLAR Act provided for the amount to be paid. The Supreme Court held that it would be unfair to say that persons who exploited the forest and derived income there from would get compensation and those who protected their forests and did not exploit them would not get compensation. In this context Supreme Court directed the State authorities to device a notional income from the former category and apply the statutory guidelines for assessing compensation to the latter category (i.e. those who protected their forests) on the same basis [See paragraph 18 of the ***Rajiv Sarin's Case (Supra)***]

It is further submitted on behalf of the State that the mindset of 1950s and 1960s required the Constitution to say that principles should be laid down. Mr. Pal submitted that such a proposition is not to be found in any precedent of Supreme Court or in any of the recognized text books on constitutional law of India. It would be absurd to suggest that the mindset of socialist and protectionist economic policies of 1950s and 1960s should hold good in the

liberalization and globalization stance from mid eighties through the nineties and in the 21st centuries. The mindset of 21st century is unequivocally declared by the Supreme Court in K.T. Plantation(supra) in announcing to the world by saying "let the message be loud and clear that the rule of law exists in the country" and property can only be taken for public purpose and compensation is inbuilt in Article 300A and that is evidence of the fact that a rule of law exists in the country. Rule of law has been held to be one of the foundational features of the basic structure of the Constitution.

It is submitted by the learned Advocate General that laying down principle curbs down the amount receivable and that is the reason the State did not lay down any principle so that Tatas get more. Mr. Pal in reply to such submission contended that this is a wholly unjustified and false assumption and has been made knowing to be so. This may be the perception of the State Government but not the perception of the Constitution. The constitution requirement is to pay an amount which is not illusory. It is absurd to suggest that the State wanted District Judge to give more to TML than what the Constitution required. In any event it would be wholly against public interest to even suggest that public funds could be utilized to pay more when the constitution if followed, would say pay less. The acceptance of such a proposition would expose the public funds to the risk of depletion and waste. If the State does so, then it will be not only be a highly arbitrary act, violating article 14, but a fraud committed on the people. Mr.

Pal pointed out that this is an argument in desperation and deserves outright rejection.

The learned Advocate General further submitted that the case of **P. Vajravelu Mudaliar (supra)** and ***Cooper's case (supra)*** have been overruled and ***Cooper*** is not good law regarding compensation any more. Mr. Pal replied that Entry 42 List III is an independent entry and there was no other entry in any of the 3 lists relating to acquisition or requisition of property. It is wrong to say that either Vajravelu or Cooper has been overruled by the relevant constitutional amendments including the 44th Amendment because both held that the amount given or the principles for determination cannot be illusory. In case of ***Jilubhai (Supra)*** the Court says that the amount cannot be illusory.

Further submission has been made by the learned Advocate General that there is no case decided by the Supreme Court after 44th Amendment which says that the amount or the principle must be laid down in the statute itself. Mr. Pal in reply stated that ***Jilubhai (supra)*** expressly says in paragraph 52. ***Rajiv Sarin's case (supra)*** recognizes also in paragraph 78 and the word 'generally' means always but not always when the State takes or deprives by police power. In any event it is not shown to justify why TM should be an exception to the general rule. The case of ***Paschimbanga Bhumijibi (supra)*** expressly say as has already been submitted on behalf of Tata.

The learned Advocate General further submitted that relying on ***Kameshwar (supra)*** it is contended that here TM is not yielding any income. Therefore, no compensation is to be paid.

Mr. Pal in his reply contended that this is a total misreading of the case of ***Kameshwar (Supra)***. One of the points taken by the owners was that for the non-income fetching properties no compensation was provided for. The Supreme Court rejected the argument on the ground that the Act had laid down the principle of payment of compensation on the basis of net income of the estate as a whole which included non-income fetching properties. It could not be said that the legislation is outside the ambit of Entry 42 of List III.

The cases cited by the learned Advocate General were also distinguished by Mr. Pal on the question of public purpose. The Advocate General cited ***State of Madhya Pradesh v. Narmada Bachao Andolan*** reported in ***(2011) 7 SCC 639***. Mr. pal submitted that this case has no relevance because there is no question of returning the land earmarked for the Omkareshwar Dam and there was no issue as to the judgment already delivered in ***Joydeep Mukherjee's case (supra)*** upholding the acquisition made under the Land Acquisition Act, 1894 and the effect thereof.

In ***Daulat Singh Surana's case (supra)*** Pal submitted that this judgment is clearly distinguishable because the specific purpose was clearly stated in the

notification under section 4 & 6 of the L.A. Act. In the instant case the purpose mentioned for acquisition of land was for socio-economic development, employment generation, industry and for other public purposes of the Act. In section 4 of the notification under the L.A. Act which indicated the user of the land in the following terms and this has been stated in the earlier notice which is as follows:

> *" whereas, it appears to be Governor that the land mentioned in Schedule below is likely to be needed to be taken by Government / Government undertaking/Development authorities at the public expenditure for a public purpose, viz. employment generation and socio-economic development of the area by setting up Tata Small Car Project in….."*

In this impugned Act there is no particularization, no scheme and in fact nothing has been taken in t he Singur Act as to for what specific purpose the land was to be used.

In the case of ***Aflatoon (supra)*** Mr. Pal submitted that the Supreme Court did not decide in this case on the merits whether the public purpose has been adequately specified.

Further case which has been cited by the learned Advocate General is reported in ***1975 (2) SCC (Lila Ram v. U.O.I.)*** . In reply to that decision, Mr. pal submitted that in this case section 4 of the notification was under challenge and

it was contended that Interim General Plan for the Greater Delhi was vague. After referring to ***Munshi Singh (supra)*** the Supreme Court distinguished ***Munshi Singh*** on the following basis in paragraph 4 at page 549 which is quoted hereinbelow:

> *"In the case of **Munshi Singh (supra)** the complaint of the appellant was that he was unable to object effectively under Section 5A of the Act to the proposed acquisition. The appellant in that case in that context referred to the fact that a scheme of planned development was not made available to him in spite of his application".*

The Supreme Court found that there was an Interim General Plan the provisions of which were to prevent haphazard and unplanned development of Delhi and thereby to ensure planned development of Delhi. The word "thereby" qualifies the expression Interim General Plan. According to Mr. Pal this case has no relevance in any manner.

In the case of ***State of West Bengal v. Bella Banerjee*** reported in ***AIR 1954 SC 170*** as has been cited by the learned Advocate General, Mr. Pal submitted that this case has no application in the facts and circumstances of the case.

In the case of ***State of Tamilnadu v. L. Krishnan*** reported in ***(1996) 1 SCC 250***, Mr. Pal pointed out that the ratio of the scheme is not relevant in the

Singur Case and the question of framing any initial or final scheme under a body like the Housing Board and the failure to object under section 5A of the L.A. Act did not and could not arise. In the circumstances, he submitted that this case has no application in the present facts and circumstances of the case.

In the case of ***Panipat Woollen & General Mills Co. Ltd. v. U.O.I.*** reported in ***(1986) 4 SCC 368***, it has been held that as the acquisition was made directly by legislative determination, the question of giving hearing before enactment does not arise and that question of inadequacy of compensation could not arise as the Act fell within the provision of Article 31(C) of the constitution before it was amended by the Constitution (42nd Amendment) Act, 1976. According to Mr. Pal this case has no application to the Singur Case.

Next case was cited by the learned Advocate General in ***T. Venkata Reddy v. State of Andhara Pradesh*** reported in ***(1985) 3 SCC 198*** and in the said decision it was held that if a statute is within the competence of the legislature the motive of the legislature in passing such statute is beyond the scrutiny of courts. According to Mr. Pal, this case has also no application to the Singur Case since the Singur Act was not just mainly because of some motive.

The next decision cited by the learned Advocate General is ***Md. Mozaharal Ahmad v. Md. Azimaddin*** reported in ***AIR 1923 CAL 507*** .the Court in the said decision pointed out that " the term compensation as used in Arts. 115 and 116

is thus, perhaps not sufficiently precise while the technical distinction between debt and damages may be too refined for the purpose." This case goes against the contention of the State that the meaning of compensation is clear and well understood.

In reply to submissions by Mr. Saktinath Mukherjee, learned Senior Advocate, Mr. Pal submitted that as per submission of Mr. Mukherjee, the lease on its own terms has been terminated; the lease has been frustrated and the lessee has admitted that lease has gone.

According to Mr. Pal, these submissions are deliberately misleading and have been made to create confusion in the mind of the court for the following reasons:

(a) the Singur Act is itself saying the leasehold of TML vests in the State.

(b) For termination of a lease under the Transfer of property Act, no compensation is paid. Section 5(2) says for vesting of leasehold TM will get compensation.

(c) In the letter dated 21st June 2011 written by District Magistrate, Hooghly, to MD of TM addressed to TM's Bombay office it is stated, *inter alia*, as follows:

" In terms of sub-section (1) and sub-section (2) of section 4 of the Singur land Rehabilitation and Development Act, 2011, the land stands vested to the State Government free from all encumbrances. In view of the provisions of sub-section (3) of section 4 of the singur Land Rehabilitation and

Development Act 2011, you are obliged to restore vacant possession of the land leased out to you by the West Bengal industrial Development Corporation Limited, forthwith in favour of the District Magistrate, Hooghly."

Admittedly, no notice of termination of the lease was given under section 111(h) of the Transfer of Property Act. There is no evidence nor any pleading of any of the grounds mentioned in section 111.

Mr. Pal further pointed out that the submissions made by Mr. Mukherjee regarding the letter dated 28th September 2010 is the notice given by TM and the lease ends by surrender. According to Mr. Pal, this is an absurd and misconceived submission because;

a) the letter did not deal with the question of the lease. It was not written in reply to the letter of WBDIC requesting TML to inform the Lessor as to what other use the land could be used by TML. The Lessor's said letter of 21st June 2010 proceeds on the basis that the lease exists.
b) The reply of TML clearly stated that it would consider setting up of any manufacturing activity if the law and order situation becomes congenial;
c) The State's stand that the leas was surrendered on the basis of TML's letter of 28th September is wholly perverse.

Mr. Pal drew our attention in section 111(e) which deals with express surrender in the following terms:

> *" By express surrender, that is to say, in case the lessee yields up his interest under the lease to the lessor, by mutual agreement between them".*

Implied surrender is a ground as per section 111(f) of the T.P. Act. In Mulla's "The Transfer of Property Act, 1882 (10th Edition) the concept of 'implied' is stated as follows:

> *" Implied surrender or surrender by operation of law occurs….*
> *(1) by the creation of a new relationship; or*
> *(2) by relinquishment of possession".*

According to Mr. Pal, none of these grounds exist in this case at all.

According to Mr. Mukherjee Singur Act is an Act for resumption and not acquisition. In reply to that Mr. Pal submitted that this is wholly misconceived. He further pointed out that Singur Act is an Act for acquisition. Therefore, there is no question of resumption as it is not even stated in the said Act.

It was pointed out by Mr. Mukherjee that TML has said that they were not interested in compensation and State has acted upon it. In reply to that Mr. Pal pointed out that in 2008 or in 2010 TML could not have asked for compensation

by reason of acquisition of its leasehold and other assets because TML could not imagine that its leasehold will be acquired by an Act of the State Legislature to be passed in 2011.

Mr. Mukherjee raised a question that would the State be justified in going for acquisition and pay TML. Mr. pal submitted that this is right. Therefore, the State is wasting public money by passing the acquisition Act, the Singur Act, inter alia, enacting

1. S.5(2) – purported compensation without any restriction as in L.A. Act (as submitted by the learned Advocate General);
2. Incurring huge administrative expenditure to implement the Act;
3. incurring substantial expenditure for contesting this litigation knowing fully well that there will be such contest.

Next submission made by Mr. Mukherjee is that there is no acquisition.

In reply to that Mr. Pal submitted that acquisition is unilateral coercive process of compulsory taking of any interest in land by the State. Acquisition is not based on any agreement or grant made and accepted by the grantee. A lease is based on agreement. It is a bilateral transaction. It is the transfer of an interest carved out by the landlord (owner) from his full title as owner to the lessee. The landlord's right to terminate the lease as per the termination

clause in the lease read with section 105 of the T.P. Act in law is known as the landlord's right of reversion i.e. after the lease is terminated the said carved out interest which the lessee was holding or enjoying reverts back to the landlord.

Mr. Mukherjee further submitted that extinguishment is different from acquisition. When leasehold is extinguished, leasehold does not return to the landlord.

In reply to that Mr. Pal pointed out extinguishment is derivative of the word extinguish. Extinguish means *"put and end to"* (Concise Oxford Dictionary-10th Edition). Here the relevant question to be considered is what is the mode that is adopted for extinguishment. A lease of the kind which TML held could be terminated by availing any of the grounds in section 111 of the Transfer of property Act, 1882. Each of these grounds relate to action taken by the parties to the lease. When the lease is terminated the lessee's interest comes to an end. The interest ceases to exist or becomes or stands extinguished. The cessation or extinguishment can be brought by the lessee also i.e. surrender. All these concepts pertain to *inter vivos* transfers based on mutual agreement between the lessor and the lessee and the acts and actions are taken or takes place within the four corners of the statute. There is no other method of termination other than in accordance with the terms of the lease read with Section 111 of the T.P. Act. They do not relate to a law

acquiring the leasehold interest by exercise of the sovereign power of the State. The instrument used is the statute i.e. the Singur Act and not the termination of the lease in accordance with the terms of the lease read with the T.P. Act. The lease is extinguished not in terms of the lease but by a force outside the lease, namely a statute for acquisition. There is no magic in the words 'extinction' or extinguish or extinguishment. The supreme Court has used the word extinguish in the context of L.A. Act in the case of ***Collector of Bombay (Supra)*** which reads as follows:

> *"It must accordingly be held that the effect of the land acquisition proceedings was only to extinguish the right of the occupants in the lands and to vest them absolutely in the Government...."*

Mr. Mukherjee further contended that the TML project at Singur was the project of the State as it appears from:

(i) letter of WBIDC dated 20th December 2006 to TML to conversion of land under section 4 (C) of Land Reforms Act;

(ii) Tripartite MOU dated 9th March 2007. project of the State and TML was the agency for achieving the public purpose.

Mr. Pal submitted that it is absurd even to suggest that it was a project of the State. In fact, it was TML's project and the land was acquired under the L.A. Act for generation of employment and for setting up industries. Conversion under

section 4(c) of the Land Reforms Act was required for the TML Project. In any event this submission has no relevance on the question of constitutional validity of the Singur Act.

Mr. Mukherjee further submitted that lease shows that it was for manufacturing car only. Therefore, purpose is fixed and no other purpose except manufacturing of car is possible under the lease. That is why it is not transferable.

In reply, Mr. Pal contended that the said submission is irrelevant and wrong.

The lease is in substance for a manufacturing activity which will generate employment. It is corroborated by WBIDC's letter dated 22nd June, 2010 (paper Book part IV page 1534). The letter dated 22nd June, 2010 where the specific query was made as follows :

> *"...we would like to know whether you plan to utilize the land leased to you in Singur for any other manufacturing activity."*

According to Mr. Pal the lease was transferable. The relevant clause (Part IV page 1364) which reads as follows :

"13. The Lessee shall not, during the term of this Lease Deed, sublease or transfer the said Demised land or any part thereof to any third party. However, the possession, use or enjoyment of any part of the said Demised Land by any Group company, associate company, subsidiary, joint venture, contractor for the purpose contained herein shall not be construed as a subletting for the above purpose, provided the Lessee shall continue to be responsible for the obligations and performance under this Lease Deed."

He further submitted that there are several companies in Tata group, its associates, subsidiaries, joint ventures and contractors, which are engaged in wide range of manufacturing activities. Therefore, the submission made by the State that it is not transferable cannot be acceptable.

Mr. Mukherjee further submitted that Election Manifesto of Trinamul Party was to acquire the land and return it to unwilling owners. Mr. Pal pointed out that this shows that the real purpose was to advance the interest of a political party and was not for a public purpose. The contents of an election manifesto by itself and without anything more cannot amount to public purpose even acquisition for a political party's followers and members would amount to public purpose and as such this proposition is of no relevance and is misconceived.

Mr. Mukherjee further submitted that the statement of objects and reasons can be looked into for finding out the mischief which was to be remedied. In reply, to of such submissions Mr. Pal contended that such submissions

substantially correct. But statement of objects and reasons of the Singur Act is based on falsity as already pointed in reply to submissions of Advocate General. According to Mr. Mukherjee, State has no option. It had to act and, therefore, acted to take over by legislation.

Mr. Pal submitted that this is a patently erroneous submission for the following reasons :

a. State could have terminated the lease and filed suit for ejectment.
b. State could have acquired the leasehold of TML with structures under L.A. Act 1894 for whatsoever public purpose. For the so called and false urgency, section 17 of L.A. Act could have been invoked. Consequently the leasehold of TML would vest in the State and the State could have used the land thereafter for whatsoever public purpose it thought fit.
c. State Could have invoked the West Bengal Public Land (Eviction of Unauthorized Occupants) Act 1962 or West Bengal Government Premised (Tenancy Regulation) Act, 1976.

He further submitted that the only reason for not resorting to the above Acts is that all of them require some notice to be served for a reasonable period and this would have frustrated the strategy of the State to somehow dispossess TML after sunset and in the dark without any notice to TML. This strategy was adopted to ensure that TML has no access to the High Court or to any other

Court to obtain a restraint order. He further submitted that even Section 4(3) of the Singur Act was not followed in the matter.

Mr. Mukherjee contended that the Preamble shows that land lease taken but not the interest in land. Mr. Pal submits that such submission is wholly misleading.

Mr. Mukherjee himself referred to Mulla's T.P. Act which shows that lease is transfer of interest in land and it is this interest of TML that the Singur Act purports to acquire. The only purpose of this submission is to create confusion that the State cannot acquire its own land. Further submission has been made by Mr. Mukherjee that when the impugned Singur Act comes TML's lease becomes dis-functional and extinguished.

Mr. Pal pointed out that this submission is a self defeating submission because it admits that alleged extinguishment is by reason of the Act. Every acquisition "Extinguishes" the interest of the land holder –be it a lessee's interest or whatever interest and vests in the acquire.

Mr. Mukherjee further submitted that there is no prayer for recovery of possession because TML knows that its lease has been called back by the landlord i.e. State. According to Mr. Pal the said submission is wrong and he drew our attention to prayers from (g) to (k) of writ petition (Part IV page 1269

and 1298 of the Paper Book) to show that prayers have been specifically made to get back the possession.

Mr. Pal further submitted with the decision cited by Mr. Mukherjee in ***M. Arul's case (supra)*** which has no manner of application in the facts and circumstances of the present case. In the said decision the question before the Supreme Court was whether in terms of the rent agreement the use of the shop for a different purpose other than the purpose for which it was let out would render the tenant liable for eviction and the Supreme Court upheld the decree of eviction for the change of user in breach of prohibition.

In the decision cited by Mr. Mukheree in the case of ***Indu Kakkar (Supra)*** where the Court held that if an allottee of land evacuates from the scene after inducting someone else into the plot without consent of the owner of the plot, it was not legally permissible for the inductee to compel the owner to recognizes him as the allottee and according to Mr. Pal this decision is wholly irrelevant in the facts and circumstances of this case.

According to Mr. Pal the decision of ***Tarkeshwar*** reported in ***1999 SC 1669*** is also not relevant in the facts and circumstances of this case since the question before the Supreme Court was whether the deed by which the tenant had right to extract sand was a lease or licence.

According to Mr. Pal the decision of ***H.S. Ram (Supra)*** is also not applicable in the facts and circumstances of this case since it was a suit against tenant for eviction on ground (e) of Section 111 of T.P. Act, 1882 i.e. ground of "express surrender; that is to say the lessee yields up his interest under the lease to the lessor by mutual agreement between them. The Court further held that surrender results in extinction of the lessee's interest. The Court further held that reversion to which the lessor becomes entitled by surrender in respect of the under-lease upgraded to the direct lease under him, is not the reversion of the under-lease to which the lessee was entitled before surrender.

Mr. Pal submitted that the question of extinguishment is brought about by surrender by mutual agreement. The question of extinguishment by mutual agreement does not arise in the facts of this Singur case. Here extinguishment is by reason of exercise of sovereign power of the State through its legislative organ. No such pleading is forthcoming even in the statements of objects and reasons of the Act by the State.

According to Mr. Pal ***Calcutta Credit Corporation's case (Supra)*** cited on behalf of the State is wholly irrelevant in the facts and circumstances of this case, since it is related to notice of determination of a lease under Section 111(h) of T.P. Act given by the lessee to the lessor after expiration of the lease intimating to the landlord the lessee's intention to vacate the premises on 31st August, 1953

where the landlord's appeal was allowed by the Court after holding notice was not capable of being withdrawn.

In ***Amarsarjit Singh's case (Supra)*** the question was "whether certain jagirs in the State of Punjab known as 'Cis Sutlej' jagirs were liable to be resumed under the provisions of the Punjab Resumption of Jagirs Act, 1957. The validity of this Act was challenged on, inter alia, the ground that the State legislature was not competent to enact the Act. The Supreme Court framed the issue as to whether there was any requisition by Section 2(1)(a) of the Act, any assignment of revenue of these jagirs and whether such assignment was by the State Government.

The Supreme Court holds that the status of the jagairs were subject of the State and *"the jagirs"* which were subject matter of these proceedings fall within Section 2(1)(a) of the Act. Therefore, no question of acquisition of any interest in any land by the State or compensation arose.

Mr. Pal pointed out that in the decision of ***Thakur Amar Singh Vs. State of Rajasthan*** reported in ***AIR 1955 SC 504*** the difference between resumption of grant and acquisition is brought out in paragraph 27 as follows ;

> *"27.But the resumption for which the Act provides is something different from the resumption which is authorized by Article 7(3). It was a resumption not in accordance with the terms of the grant or the law*

applicable to jagirs but contrary to it, or in the words of Section 21"notwithstanding anything contained in any existing jagir law applicable thereto". It was a resumption made not in enforcement of the rights which the rulers had as grantors but in exercise of the sovereign rights of eminent domain possessed by the State. The taking of properties is under the circumstances, in substance, acquisition notwithstanding that it is labeled as resumption."

Mr. Pal submitted that the decision of ***Collector of Bombay (Supra)*** wholly supports the case of TML. He submitted that the point for decision was the liability of certain lands in the city of Bombay and the same was liable to be assessed to land revenue under the Bombay City Land Revenue Act, 1876.

The lands were originally known as Foras lands and the rights of the occupants were settled by Bombay Act of 1851 called the Foras Act. Between 1864 to 1867, the lands were acquired under L.A. Act of 1857 for the purpose of Railway. Since the lands were no longer required for the purpose of railway, the Government sold them to the writ petitioner. The petitioner conveyed the lands to trust and the respondent and others were the trustees under the said trust. The Collector issued notices to the respondent proposing to assess them to land revenue.

The trustees contended that the right of the collector to assess the lands to land revenue under Section 8 of the Bombay Act of 1876 was there but subject to the limitation of the right of the Government to assess the land. The Supreme

Court had to consider whether the respondent trustees were right in contending the limitation of the right of Government to assess land revenue. The Supreme Court scrutinized the said 'Foras' Act in detail and allowed the appeal of the Collector after holding that by virtue of the reservation in Section 2 of the 'Foras' Act the Government had the right to handover the assessment then payable and therefore, there was a limitation on its right to enhance. But the effect of the acquisition under the L.A. Act of 1857 was to extinguish the right of the trustee respondents limiting the Government's right/power to assess the enhanced land revenue.

Mr. Pal contended that Mr. Mukherjee cited the decisions of ***Provident Investment Co. Vs. I.T. Commr. of Income Tax, Bombay*** reported in ***AIR 1954 Bombay 95; Aswini Kumar Ghose & Anr. Vs. Arabinda Bose & Anr.*** reported in ***AIR 1952 SC 369; Bahadur Vs. Motichanda*** reported in ***AIR 1925 All 580; Godfrey Phillips India Ltd. & Anr. Vs. State of U.P. & Ors.*** reported in ***(2005) 2 SCC 515*** and those have no manner of application in the present case.

Mr. Pal pointed out in ***Bengal Immunity Co. Vs. State of Bihar*** reported in ***AIR 1955 SC 661*** the Supreme Court interpreted and explained the mischief rule in paragraph 22. In ***Bengal Electric Lamp's case (Supra)*** a tenant governed by WBPT Act 1956 wrote a letter to the landlord and Court held that the letter was a valid notice to quit given by the tenant and resulted in

termination of the tenancy. Both the said decisions are irrelevant in the facts and circumstances of this case. No letter was written by TML.

Mr. Pal pointed out that the decision in ***Megh Raj & Anr. Vs. Allah Rakhia & Ors.*** reported in ***AIR 1947 PC 72*** is not related to any acquisition of property. The Privy Council held that although mortgage was not expressly mentioned in item No. 21 of the Provincial list (corresponding to Entry 18 of List II) it should be implied because it could not be accepted that so important a subject as mortgage was left out of the Constitution. The object of the impugned Act of Punjab was the relief of mortgagors by giving them restitution of the mortgaged premises on condition more favourable than those under the mortgage deed and it was a statutory redemption.

In ***Jilubhai case (Supra)*** Supreme Court hold that even after the 44th Amendment, the law must specify the amount to be given or the principle and Mr. Pal referred to paragraph 52 of the said judgment. The Bombay Land Revenue Code is related to Entry 18 and 25 of List II read with Entry 42 of List III which has been specifically stated in the said decision in paragraph 13 and 20.

It is submitted in ***Dharam Dutt (Supra)*** where the court held that if legislature is competent then motives are not relevant. In the context of an Act for acquiring land the onus is on the State to justify that the acquisition is for public

purpose and the amount of compensation given is not illusory as held in ***K.T. Plantaion (Supra)***.

It is pointed out by Mr. Pal in ***MSK Projects (Supra)*** the tenders were invited for construction of Bharatpur Bypass. At pre-bid conference for compensation principle was worked out on the basis of investment made to the tune of Rs.13.25 crores. Dispute arose regarding State for not issuing a notification preventing vehicles from using the congested main road and thereby reducing the toll. The Court held that the contractor (MSK) cannot have the fixed amount as he had not insisted on the same. The said decision is wholly irrelevant in the facts and circumstances of this case.

In ***Organs Chemicals (Supra)*** cited by Mr. Bandopadhyay has no relevance in the facts and circumstances of this case.

Mr. Pal contended that ***Sulochana's case (Supra)*** fully support the case of the Tata Motors. It is held that the acquisition proceedings cannot be withdrawn/abandoned once possession has been taken (paragraphs 12, 17 and 20).

In ***Leelawanti & Ors. Vs. State of Haryana & Ors.*** reported in ***(2012) 1 SCC 66*** where it reiterates the land of which possession has been taken cannot

be returned following inter alia in ***Syed Akbar's case (supra)*** reported in ***(2005) 1 SCC 558***. In the said decision the Supreme Court held as follows :

> "***para 18***. *If para 493 is read in a manner suggested by the learned counsel for the appellants then in all the case the acquired land will have to be returned to the owners.....Such interpretation would also be contrary to the language of Section 16 of the Act.....".*

The decision in ***Netai Bag & Ors. Vs. State of W.B. & Ors.*** reported in ***(2000) 8 SCC*** support the TML and vendor's case and held that once land is acquired the ex-owner cannot question how the Government deals with the land or ask for return of the land. The grant of lease regarding surplus land by the executive was not arbitrary.

In ***Laxmi Devi's case (Supra)*** the validity of Section 47A of Indian Stamp Act 1899 was under challenge as it required a pre-deposit of 50% of the deficit duty assessed by the Registering Officer for referring the matter to the Collector.

Mr. Pal contended that in the context of a challenge to deprivation of the property, the law has been clearly stated in ***K.T.Plantation (Supra)*** that the State has to justify both the amount given and the public purpose.

Mr. Pal submitted that ***K.K. Baskaran Vs. State Represented by its Secretary, Tamil Nadu & Ors.*** reported in ***(2011) 3 SCC 793*** has no relevance in the facts and circumstances of this case. ***Bhanumati & Ors. Vs.***

State of Uttar Pradesh reported in ***(2010) 12 SCC 1*** is wholly irrelevant in the facts and circumstances of this case. Mr. Pal further submitted that in fact this judgment read with ***K.T. Plantation (supra)*** is wholly in favour of TML because the expression Rule of law is not to be found in the Constitution but it has been held to be a feature of the basic structure of the Constitution and the silence of fixation of amount or principles for determination in the Article 300A or Entry 42 of List III is no reason for denying their absence in our Constitution. ***McDowell's case (Supra)*** is wholly irrelevant in the facts and circumstance of this case.

In the case of ***Hoechst Pharmaceuticals Ltd. & Ors. Vs. State of Bihar & Ors.*** reported in ***(1983) 4 SCC 45*** Court held that for judging the validity of Section 5(3) of the Bihar Finance Act, 1981 (which levied a surcharge to be paid by a dealer) the Court has to determine whether in pith and substance the law is relatable to Entry 54 List II (Tax on sale or purchase of goods) and not Entry 33 of List III (Trade and commerce in, and production and distribution of products etc.) under which Essential Commodities Act 1955 was enacted and as such the question of repugnancy between Section 5(3) of the Bihar Finance Act, 1981 and paragraph 21 of the Drugs (Price Control) Order made under the Essential Commodities Act did not arise.

Mr. Pal pointed out that in ***K.T. Plantation (supra)*** relied upon by the State the Supreme Court in paragraph 91 Court notes the argument of the petitioners that the Act was not for agrarian reforms and hence not protected by

Article 31-A of the Constitution. In paragraph 97 of the said decision the Court noted another argument of the petitioners that concept of eminent domain and stated it is to be read into Article 300A. In paragraph 107 of the decision the Court noted when plea of repugnancy is to be urged and in paragraph 108 it reiterates the principles of absolute conflict, direct conflict etc. and in paragraph 109 the Court stated that what is to be examined when repugnancy is alleged is that whether the two legislations cover or relate to the same subject matter and for this purpose the dominant intention of two legislations are to be seen. Are they different or are similar?

Mr. Pal further pointed out that applying the tests laid down in these decisions, in the instant case, the dominant, rather the only intention of the L.A. Act and the Singur Act is the same i.e. to acquire land. Therefore, on the same field, Mr. Pal further pointed out, L.A. Act is acquisition for public purpose as Singur Act State also claims acquisition for public purpose though in fact it does not disclose any public purpose. The conflict between L.A. Act and Singur Act is writ large and irreconcilable as tabulated in the submissions made on behalf of Tata Motors.

Mr. Pal submitted that the decision cited by Mr. Ashok Banerjee, learned Government Pleader reported in ***AIR 1964 SC 689*** has already been dealt by him since this decision has been cited by Mr. Mukherjee. The other decisions cited by

him ***(2006) 4 CHN, (2007) 3 SCC 607 and (1977) 4 SCC 145*** have no relevance in the facts and circumstances of this case.

Accordingly, Mr. Pal submitted that the Singur Act is a law relating to acquisition relatable to Entry 42, List III of Seventh Schedule only. There is no valid provision for payment for acquisition made in the Act. The public purpose which has been stated and the compensation which has been sought to be paid is absolutely vague and it also violates Article 254 of the Constitution and Presidential assent has not been obtained in the matter. The discrimination is clearly made in the Act itself by making a difference between the willing and unwilling owners in case of the acquisition. By such action a settled position will be unsettled. Hence, he submitted that this Act offends the principles and the basic structure of the Constitution and should be declared as *ultra vires*.

We have heard the learned Counsel for the parties at length. We have also given liberty to the parties to file their notes of argument. We have considered all the decisions cited on behalf of the parties before us and after analyzing the submissions made on behalf of the parties it appears to us that the first question arose before us that whether the Singur Land Rehabilitation & Development Act, 2011 is an Act for acquisition and made under Entry 42 of List III of the 7th Schedule or the State has enacted the said law under Entry 18 of List II of the 7th Schedule.

For the purpose of coming to such conclusion it is necessary for us to find out the intention of the legislatures which has been reflected in the said Act of 2011. We have already stated the said Act and the part of the rules in the preceding paragraphs.

It appears from the Preamble of the said Act that the said Act has been enacted to provide for taking over the land covered by the lease granted to Tata Motors Ltd. on the ground of non-commissioning and abandoning small car project and ancillary factories with a view to return such portion of the land to the unwilling owners **who have not accepted compensation** and the further motive as reflected in the said Act is to utilize the balance portion of the land in public interest and for the benefit of the State. Therefore, we find from the said Preamble that the Act has two compartments, one is to return the land to the *"unwilling owners"* and the other is to utilize the same in public interest.

We have noted that the said Act has nine sections and came into force after the date of the notification in the official gazette on 20th June, 2011 after having obtained the assent of the Governor.

The text of the Act give the definition in Section 2 and purposefully Section 3 is the vesting Section and section 4(1) of the Act includes "assets, rights leaseholds including properties movable and immovable standing on the land".

It further appears that under the said Section 4(3) of the Act TML has to forthwith restore vacant possession of the land in favour of the District Magistrate, Hooghly and further authority has been given to the District Magistrate and or its representatives to take steps and use force as may be necessary to take possession of the land. Section 5 deals with the compensation to be paid to the vendors as well as to the Tata Motors. So far the vendors are in question, an amount has been specified in Section 5(1) of the said Act treating to be the compensation for taking over the land in fact with the interest thereon from the vendors. So far the Tatas are concerned, it appears that the amount of compensation would be adjudged and to be determined by the District Judge, Hooghly after filing of an application by the Tatas. It further appears that such adjudication is to be made following the principle of natural justice. We have also noticed that in Section 6 of the said Act it has been specifically stated that equivalent quantum of the land should be returned to the unwilling owners who have not accepted compensation and further the description of the land has been given in Part I and Part II of the Schedule of the said Act and balance shall be utilized for socio-economic development, employment generation, industry and for other public purpose of the State.

The justification has also been given in the statement of objects and reasons for promulgamating the said Act and we find that it has been stated in paragraph 2 of the said statement of objects and reasons that after granting of

lease to the TML four years had passed but no small car project industry has been commissioned for regular production of small car.

It has been stated that *"which has in fact been abandoned by the TML as announced by the TML and reiterated in their letters including the letter dated 28th September, 2010 ....."*. It has further been stated that the ancillary industries to whom the letters of allotment had been issued for the purpose of setting up of the industry did not set up the industry. The object has also totally failed. It is further stated that no employment generation and socio-economic development has taken place and people in and around the area have not been benefited in any manner.

It further appears from the said statement of objects and reasons that several owners of the land/farmers have protested against acquisition and have not accepted any compensation and on having realized that there is no scope of any generation of employment have been clamouring for return of their land. It is further stated that the said unwilling farmers were staging agitation endangering safety and security of the area.

In these circumstances, it is further stated in the statement of objects and reasons, in view of the total frustration of the object and purpose of allotment/lease of land and for ameliorating ascending public dissatisfaction and agitation and to take steps urgently for return of the land to the unwilling owners

of the land who have not accepted any compensation and to utilize remaining portion of the land in public interest for benefit and socio-economic development of the State of West Bengal, the State Government in public interest considers it necessary to take back the ownership of those plots of land and takeover possession thereof.

In exercise of the power conferred by Rule 9 of the said Rules under the Act, a High Power Committee has been constituted under the rules to allot and distribute the land to the unwilling owners whose land was acquired by way of acquisition process in the year 2006. There is no dispute that the possession has already been taken in the matter.

Therefore, after analyzing the said Act and the statement of objects and reasons it is stated that the object and purpose of allotment/lease of land and for ameliorating the public dissatisfaction, steps have been taken urgently to return the land to the unwilling owners who have not accepted compensation.

Therefore, the primary and dominant intention of the Act is nothing but to return the land to the unwilling owners. It further appears from the said reasons that on the basis of the understanding of the State that the TML has already abandoned the said land, steps were taken to acquire the land in question. So far the question of abandonment is concerned an affidavit has been filed before us and admittedly it appears from the said affidavit that TML has already paid

the lease rent to the State and the State has duly issued receipts therefor and such payments were made till 2012.

We have also noticed that there is an intention to pay compensation. We have also noticed that under the provisions of the impugned Act even the leasehold interest has been acquired. We have also noticed that under Article 246(2) of the Constitution concurrent power is conferred upon both the Union and State Legislature to legislate with respect to the subject included in List III. Hence, if both the Parliament and State Legislature make laws relating to some concurrent subject a question of conflict may arise between the two enactments.

We have further noted that the various entries in the three lists are not *"powers of legislation"* but *"fields of legislation"*. Article 246 is only demarcating such fields. The power to make a law authorizing "deprivation of property" is conferred by Article 300-A. It cannot be contended that because there is no entry in the lists relating to 'deprivation of property' as such, it is not within the competence of the legislatures of this country to enact such a law.

In our opinion a law can be made under Entry I of List I, Entry I of List II or List III. The entries of the lists are mere legislative heads. The language of these entries should be given the widest scope of their meaning. A reference to a wrong entry in the statement of objects and reasons of a Bill would not preclude the Court from upholding the validity of the law if it is found to relate to a subject on

which it is competent to legislate under another entry which is within its jurisdiction. Where the vires of an enactment is challenged the Court should always be in favour of presumption of the constitutionality. We have noticed that it is the duty of the Court to declare a statute valid and at that point of time the Court should put the most liberal construction to the relating legislative entry so that it may have the widest amplitude. In doing so, the Court must look at the substance of the legislation. The question that also arises that whether the meaning of "Property" includes any proprietory interest, including a temporary or precarious interest, such as that of a mortgagee or lessee.

"Property" includes not only real and personal property but also incorporeal rights such as patents, copyrights, leases, chooses in action and every other thing or exchangeable value which a person may have. In other words, the meaning of "Property" would connotes everything that has an exchangeable value. Therefore, it appears to us that 'deprivation of property' as mentioned in Article 300-A of the Constitution includes leasehold. The reason is leasehold is nothing but property.

We have considered the decision of ***Cooper (Supra)*** where the Supreme Court held that the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1969 relates to Entry 45 List I and Entry 42 of List III. Similarly, in ***Rajiv Sarin's case (Supra)*** the Supreme Court held that Kumaun and Uttarakhand Zamindari Abolition and Land Reforms Act 1960

(KUZALR Act) relates to Entry 18 List II read with Entry 42 List III. In the case of ***Jilubhai (Supra)*** the Supreme Court also held that the Bombay Land Revenue Code and Land Tenure Abolition Laws (Gujarat Amendment) Act 8 of 1982 fell within Entries 18 and 23 of List II read with Entry 42 of List III.

In Entry 18 of List II the rights have been given to the State Legislature widely to cover land reform and alteration of land tenures, but not "acquisition of land" which is included in Entry 42 of List III [See ***Kameshwar Singh's case (Supra)*** or transfer of property other than agricultural land which is included in Entry 6 List III. Admittedly, it is permissible for expansion of the rights of tenants or the lands available for cultivation by tenants under this entry by limiting the extent of lands in the possession of land owners or to do away with intermediaries or to provide for the cancellation of lease made not in the normal course of management but in anticipation of legislation for the abolition of intermediaries [*See* ***Raghubir Singh Vs. State of Ajmer*** reported in ***AIR 1959 475***], transfer to tenant in possession by way of compulsory purchase of all lands not required by the land holder for their personal cultivation, distribution of the ownership and control of agricultural lands as passed to subserve common good. Prevention of encroachment of public lands and removal of such encroachments or unauthorized occupation of vacant land.

We have also considered the decision of ***Jilubhai Case (Supra)*** where in ***paragraph 10*** the Supreme Court held as follows:-

> *"**10.** Land in Entry 18 is not restricted to agricultural land alone but includes non-agricultural land etc. The words "rights in" or "over land" confer very wide power which are not limited by rights between the landholders inter se or the landholder or the State or the landholder or the tenant. It is seen that restriction or extinction of existing interest in the land includes provision for abolition and extinghishment of the rights in or over the land. Resumption of the estate is one of the objectives of the Government and the Act seeks to serve that object. Resumption includes all ancillary provisions, cancellation or extinguishment of any existing grant by the ex-Rulers or lease by grant with retrospective effect as was upheld in Thakur Raghubir Singh v. State of Ajmer (now Rajasthan)".*

We have also noticed that land may include any estate or interest in lands. Land in its widest signification would therefore include not only the surface of the ground, cultivable, uncultivable or waste lands but also everything on or under it. In ***Jagannath Baksh Singh Vs. State of U.P.*** reported in ***AIR 1962 SC 1563*** the Supreme Court held that the word 'land' is wide enough to include all lands whether agricultural or non-agricultural land.

We have also noticed that the power of the State Legislature to legislate in respect of the landlord and tenant of buildings is to be found in Entries 6, 7 and 13 of List III and not in Entry 18 of List II because the expression 'land tenures' in Entry 18 of List II would not cover tenancy of buildings or of house accommodation.

We have also seen that lease of non-agricultural property and all matters relating thereto are dealt with by Entries 6 and 7 of List III.

We have considered each and every word of Entry 18 and read the Act in question and in further considered the submissions made on behalf of the State where the learned Advocate General, Mr. Saktinath Mukherjee, Mr. Kalyan Bandyopadhyay, Mr. Ashok Kumar Banerjee, submitted that it is a case of resumption of possession of lease-hold land by the owner in the process extinction of the lease-hold right and allottee's right incidentally takes place. Further it is submitted that the Act is in the field of Entry 18 List II.

Reliance has been placed on ***Megh Raj Vs. Allah Rakhia*** reported in ***AIR 1947 Privy Council 72*** where we have noted that "Rights in land" must include general rights like full ownership or leasehold or all such rights. This observation was made by the Privy Council in the context of using the words "right in or over land". Relying upon the said judgement State forcefully argued that Singur Act, not being an Act for acquisition of property is not related to Entry 42 of List III. Alternatively, submissions have also been made that even if this Act is relatable to Entry 18 of List II and Entry 42 of List III, the Act will be valid as it would be incidental encroachment upon Entry 42. It is further submitted that the Singur Act 2011 is an Act for resumption of land under Entry 18 of the List II and not as an Act for acquisition under Entry 42 of List III. Reliance was also placed on the facts that the TML pointed out in their letter dated 28th September, 2010 that

they are ready to move out from the premises provided that they are compensated for the cost of buildings, sheds on the premises and expenses incurred in developing the infrastructure which remain on the premises. The learned Advocate General and the learned Senior Advocates for the State relying upon the said letter submitted that the decision of ***Collector of Bombay Vs. Nusserwanji Rattanji Mistri & Ors.*** reported in ***AIR 1955 SC 298*** is not applicable in the facts and circumstances of this case since according to them Singur Act is not a legislation for acquisition. The dominant purpose of the Singur Act is to utilize valuable track of land for socio-economic development, employment generation and industrial development of the State. To give effect to such public purpose the State has exercised its right of reversion by way of legislative Act. But it appears to us that after considering the Act itself and after analyzing all Sections of the said Act we find that the dominant purpose of the Singur Act is to return the land to the unwilling owners and/or farmers of the said land. Thereafter, balance land should be utilized for socio-economic development, employment generation and industrial development of the State.

The law made by the legislature of a State in context to Clause (1) and (2) of Article 254 refer to Post-Constitutional laws made by a State Legislature, and, accordingly, neither Clause has any application to Pre-Constitutional provincial laws. It also to be noted that the words 'provincial law' used in Section 107(1) of the Government of India Act, 1935, meant a law made by a Provincial Legislature enacted after 1st April, 1937. Article 254(2) applies only to an Act 'made by a

State Legislature' and does not contemplate notifications under State laws being validated by President's assent.

Therefore, in our opinion, Pre-Constitution Provincial law has no application to decide a question of the law made by the Legislature of a State. Therefore, ***Megh Raj Vs. Allah Rakhia*** reported in ***AIR 1947 Privy Council 72*** cannot have any application after the Post-Constitution period.

We have also noticed that acquisition of property would always come under Entry 42 of List III. There is no hesitation for us to hold that the Entry 18 is wide enough to cover to land reform and alteration of land tenures and also for agrarian reforms but not 'acquisition of land which is included in Entry 42 List III'. [See ***Kameshwar Singh's case (Supra), Rustom Cooper's case (Supra), Ishwari Khetan's case (Supra), K.T. Plantation (Supra)].***

In ***B.N. Elias Vs. The Secretary of State for India in Council*** reported in ***32 CWN 860*** the Court observed that lessee is certainly the owner of the lease-hold interest in the property. In Section 23 of the Land Acquisition Act, the expressions "owner" and "person interested" are used for the purpose of determining the compensations payable to different persons and if the lessee suffers loss then that should be taken into consideration in determining the market-value of the land and compensation awarded with reference to it.

In ***Inder Parshad Vs. Union of India and Ors.*** reported in ***(1994) 5 SCC 239*** the Supreme Court held that being an owner the Government is not entitled to acquire its own interest in the land or land alone for public purpose. But where it leases its land in terms of the covenants it cannot unilaterally determine the lease and take back possession and if the land is required for a public purpose it has to exercise the power of eminent domain by invoking the provisions under the Land Acquisition Act for getting such land. Therefore, it appears to us that the Government is required to exercise the power of eminent domain by invoking the provisions under the Land Acquisition Act for getting such land.

We have also considered the decision of ***Union of India Vs. A. Ajit Singh*** reported in ***(1997) 6 SCC 50*** where the Supreme Court held as follows:-

> *"The respondent was granted a lease of the government land for 30 years with a right to further renewal up to a maximum period of 99 years. Since the land was required for acquisition notice was issued terminating the tenancy of the respondent. The respondent filed an appeal before the Additional District Judge who held that the lease still subsisted. The appellant initiated proceedings under the L.A. Act. The question before the Supreme Court was as to what proportion the landlord and the tenant were entitled to the compensation."*

The Supreme Court held as follows:-

> *"The appellant initiated the acquisition under the Land Acquisition Act, though the covenant in the lease deed provided the right to*

dispossession and for taking possession for public purpose. In view of the fact that the order became final and the possession was not taken, pursuant to the termination of the tenancy, and since the acquisition was initiated under the L.A. Act, the respondent is entitled to the payment of the compensation. The right of tenancy is a right under which a tenant is entitled to enjoy the possessory title and enjoyment of the leased land subject to covenants relating to ejection after due determination of tenancy."

In ***State of U.P. and Ors. Vs. Lalji Tandon*** reported in ***(2004) 1 SCC*** the Supreme Court held as follows:-

"The other two pleas raised on behalf of the appellant State merit a short and summary burial. The appellant's plea that the land having been acquired there could be no renewal of lease has been termed by the High Court as "ridiculous" and we find no reason to take a different view. Suffice it to refer to a recent decision of this Court in Sharda Devi v. State of Bihar wherein it has been held that the Land Acquisition Act, 1894 cannot be invoked by the Government to acquire its own property. It would be an absurdity to comprehend the provisions of the Land Acquisition Act being applicable to such land wherein the ownership or the entirety of rights already vests in the State. The notification and declaration under Section 4 and 6 of the Land Acquisition Act for acquisition of the land i.e. the site below the bungalow are meaningless. It would have been different if the State would have proposed the acquisition of leasehold rights and/or the superstructure standing thereon, as the case may be. But that has not been done. The renewal of lease cannot be denied in the grab of so-called acquisition notification and declaration which have to be just ignored."

We have also considered the decision of ***Mihir Ray Vs. The Second Land Acquisition Collector & Ors.*** reported in ***1999 (1) CHN 689*** where the Court held that a tenant can maintain a writ application under Article 226 of the Constitution in which he can very well challenge the acquisition proceeding, as, in our view, he must be held to be a "person interested" within the meaning of section 3(b) of the Act read with section 5A of the Act.

We have noticed the decision of ***Rajiv Sarin (Supra)*** where the Supreme Court held that "*it is settled law that agrarian reforms fall within Schedule VII List II Entry 18 read with List III Entry 42 of the Constitution*". In the said decision the Supreme Court also noted that the Constitution Bench decision of the Court in ***Ranjit Singh Vs. State of Punjab*** reported in ***AIR 1965 SC 632*** where the Supreme Court held as follows:-

> *"**13.** … The scheme of rural development today envisages not only equitable distribution of land so that there is no undue imbalance in society resulting in a landless class on the one hand and a concentration of land in the hands of a few, on the other, but envisages also the raising of economic standards and bettering rural health and social conditions. Provisions for the assignment of lands of Village Panchayat for the use of the general community, or for hospitals, schools, manure pits, tanning grounds, etc. enure for the benefit of rural population and must be considered to be an essential part of the redistribution of holdings and open lands to which no objection is apparently taken. If agrarian reforms are to succeed, mere distribution of land to the landless is not enough.*

There must be a proper planning of rural economy and conditions and a body like the Village Panchayat is best designed to promote rural welfare than individual owners of small portions of lands."

The Supreme Court also in the case of ***Rajiv Sarin (Supra)*** held as follows:-

*"**34.** It is by now a well-established rule of interpretation that the entries in the lists being fields of legislation must receive liberal construction inspired by a broad and generous spirit and not a narrow or pedantic approach. This Court in Navinchandra Mafatlal v. CIT and State of Maharashtra v. Bharat Shanti Lal Shah held that each general word should extend to all ancillary and subsidiary matters which can fairly and reasonably be comprehended within it. In those decisions it was also reiterated that there shall always be a presumption of constitutionality in favour of a statute and while construing such statute every legally permissible effort should be made to keep the statute within the competence of the State Legislature."*

The Supreme Court in ***Paragraph 39*** of the said judgement also held as follows:-

*"**39.** This Court in Glanrock Estate (P) Ltd. v. State of T.N. observed in para 445 of the judgment as follows: (SCC p. 113)*

> *"45. .... we are of the view that the requirement of public purpose and compensation are not legislative requirements of the competence of legislature to make laws under Entry 18, List II or Entry 42, List III, but are conditions or restrictions under Article*

31(2) of the Constitution as the said article stood in 1969. …Lastly, in pith and substance, we are of the view that the Janmam Act (24 of 1969) was in respect of 'land' and 'land tenure' under Entry 18, List II of the Constitution."

Relying on those decisions the Supreme Court in ***Collector of Bombay (supra),*** we have noticed, has consistently opined that when there is acquisition there is exercise of power under Entry 42 of List III and this power cannot be an incident of any other power [See *Rustom Cavesjee Cooper's case (supra)* and *Ishwari Khetan Sugar Mills's case (supra)].*

We have also agreed and expressed the same view and hold that when there is acquisition the field of legislation must have been exercised under Entry 42 of List III of the Constitution and not otherwise. Now the question arises at this stage to find out that when the vires of an enactment is challenged and there is difficulty in ascertaining the limits of the power of the legislatures the difficulty must be resolved so far as possible in favour of the legislative body, putting the most liberal construction upon the relevant legislative entry so that it may have the widest amplitude and looking at the substance of the legislation. It is duty of the Court to read the entries in the different lists without giving a narrow meaning to any of them. There can be no reason in such a case of giving a broader interpretation to one power than to the other. The Court will rely upon the doctrine of *'pith and substance'* and Court has to ascertain the true character of the legislation.

We have further noticed on such examination that the legislation is in substance one on a matter of acquisition then it must be held to be valid in its entirety, even though it might incidentally trench on matters which are beyond its competence. In a situation of overlapping, the rule of 'pith and substance' has to be applied to determine to which entry does a given piece of legislation relate. Thereafter, any incidental trenching on the field reserved to the other legislature is of no consequence.

In order to examine the true character by the enactment, following such doctrine we have already examined the objects, scope and effect of the provisions. The name given by the legislature to the impugned enactment cannot be a conclusive on the question of its own competence to make it. It is the *'pith and substance'* of the legislation which decides the matter and it has to be determined with reference to the provisions of the statute itself.

According to Mr. Pal, learned Senior Advocate, no question of *'pith and substance'* arises in this case as Entry 18 of List II has no manner of application, although State contends that the subject matter of Singur Act exclusively and wholly relates to Entry 18 of List II. Our attention was drawn to the decisions which we have noticed and already stated earlier and wherefrom Mr. Pal contended that it is not necessary even to rely upon the doctrine of *'pith and substance'* to come to the conclusion in the matter.

Mr. Kapoor, learned Senior Advocate pointed out that the provisions of the Act is clear, categorical, explicit and unequivocal relating to all relevant statutory materials. The Act is nothing but an Act for acquiring the interest of the vendors.

We have noticed that in ***Collector of Bombay Vs. Nusserwanji Rattanji Mistri & Ors.*** reported in ***AIR 1955 SC 298*** the Court held that taking of properties in substance is nothing but acquisition even when it is leveled as resumption ***[***see : ***AIR 1955 SC 504 (Thakur Amar Singh Vs. State of Rajasthan)]***.

We have further noticed in ***Collector of Bombay (Supra)*** the reasoning of the Supreme Court which is set out hereunder :

> *"(12). We are unable to accept this contention. When the Government acquires lands under the provisions of the Land Acquisition Act, it must be for a public purpose, and with a view to put them to that purpose, the Government acquires the sum total of all private interests subsisting in them. If the Government has itself an interest in the land, it has only to acquire the other interests outstanding therein, so that it might be in a position to pass it on absolutely for public user."*

We have further noticed in ***Government of Bombay Vs. Esufall Salebhai*** reported in ***34 Bom 618 at p. 636*** where the Court held as follows :

"With this observations, we are in entire agreement. When Government possesses an interest in land which is the subject of acquisition under the Act, that interest is itself outside such acquisition, because there can be no question of Government acquiring what is its own."

After analyzing the arguments and decisions cited on behalf of the State and the parties we come to the conclusion and hold that both the Acts i.e. L.A. Act and present Singur Act come within the same field i.e. within the Entry 42 of List III.

Applying the tests laid down by the Court the question is now whether the law enacted by the State Government i.e. Singur Land Rehabilitation & Development Act, 2011 and the Land Acquisition Act, 1894 can go together and whether the impugned Act is repugnant to Land Acquisition Act, 1894.

We have noticed in the case of ***Rajiv Sarin (Supra)*** the Supreme Court held as follows:-

*"**33.** It is trite law that the plea of repugnancy would be attracted only if both the legislations fall under the Concurrent List of the Seventh Schedule to the Constitution. Under Article 254 of the Constitution, a State law passed in respect of a subject-matter comprised in List III i.e. the Concurrent List of the Seventh Schedule to the Constitution would be invalid if its provisions are repugnant to a law passed on the same subject by Parliament and that too only in a situation if both the laws i.e. one made by the State Legislature and another made by Parliament*

cannot exist together. In other words, the question of repugnancy under Article 254 of the Constitution arises when the provisions of both laws are completely inconsistent with each other or when the provisions of both laws are absolutely irreconcilable with each other and it is impossible without disturbing the other provision, or conflicting interpretations resulted into, when both the statutes covering the same field are applied to a given set of facts. That is to say, in simple words, repugnancy between the two statutes would arise if there is a direct conflict between the two provisions and the law made by Parliament and the law made by the State Legislature occupies the same filed. Hence, whenever the issue of repugnancy between the law passed by Parliament and of State Legislature are raised, it becomes quite necessary to examine as to whether the two legislations cover or relate to the same subject-matter or different."

In the said decision the Supreme Court while dealing with the question of repugnancy held as follows:-

"46. *Repugnancy in the context of Article 254 of the Constitution is understood as requiring the fulfilment of a "triple test" reiterated by the Constitutional Bench in M. Karunanidhi v. Union of India [(1979) 3 SCC 431], which reads as follows:*

> *"24. It is well settled that the presumption is always in favour of the constitutionality of a statute and the onus lies on the person assailing the Act to prove that it is unconstitutional. Prima facie, there does not appear to us to be any inconsistency between the State Act and the Central Acts. Before any repugnancy can arise, the following conditions must be satisfied:*

1. That there is a clear and direct inconsistency between the Central Act and the State Act.

2. That such an inconsistency is absolutely irreconcilable.

*3. That the inconsistency between the provisions of the two Acts is of such a nature as to bring the two Acts into direct collision with each other and a situation is reached where it is impossible to obey the one without disobeying the other."***"**

The Supreme Court in the said decision further held as follows:-

"…if both the legislations are relatable to List III of the Seventh Schedule to the Constitution, the test for repugnancy is whether the two legislations "exercise their power over the same subject-matter…" and secondly, whether the law of Parliament was intended "to be exhaustive to cover the entire field".

Supreme Court in the said decision after applying all the test held as follows:-

"in a nutshell, whether on account of the exhaustive code doctrine or whether on account of irreconcilable conflict concept, the real test is that would there be a room or possibility for both the Acts to apply. Repugnancy would follow only if there is no such room or possibility."

We have also noticed that in the case of ***Leelawanti's case (supra)*** it reiterates that land of which possession has been taken cannot be returned.

We have further noticed that in ***McDowell & Co. (supra)*** the Court came to the conclusion that Andhra Prohibition Act is wholly within Entries 8 and Entry 6 of List II. Therefore, State has competence to enact this Act.

After considering all these cases, it appears to us that the intention of the legislature in Singur Act is nothing but to acquire the property that is leasehold interest. In this case TML is having the leasehold interest and the vendors were enjoying possessory right in the land. It is the intention which can be culled out from the impugned Act. We have also considered the case of ***Offshore Holdings (supra)*** since we have found that in the said B.D.A Act the issue was whether by reason of the incorporation of the L.A. Act, Section 11A of the L.A. Act could apply to land acquired to the B.D.A Development Schemes and since it appears to us that the B.D.A. Act and L.A. Act were incorporated and such provisions of L.A. became part and parcel of the B.D.A. Act only to reconcile between two Acts and keep to parity and, therefore, L.A. Act became the part and parcel of the B.D.A Act and as such the question of repugnancy as envisaged in Article 254 could not arise in the said matter.

We have also considered Article 254 of the Constitution and under Article 254(1) it has been specifically stated that law made by the legislature of the State shall to the extent of the repugnancy, be void.

We have further noticed in ***Government of Bombay Vs. Esufall Salebhai reported in 34 Bombay 618 at page 636*** that the Government by the Singur Act intended to acquire the outstanding interests.

It is further contended on behalf of the appellant and vendors that the Singur Act is wholly repugnant to the provisions of L.A. Act of 1894. We have also noted the judgment relied upon by him and according to him the important thing to consider with reference to repugnancy is whether the legislation is in respect of the same matter. It is pointed out by both of them that no assent was taken from the President as it requires to have under Article 254.

Learned Advocate General contended that where acquisition was not the primary purpose of the legislation but incidental to the dominant object of the legislation, any incidental encroachment in the field of acquisition may be ignored. *(See* ***Offshore Holdings)***. Learned Advocate General further contended that even if the Singur Act is held to be solely under Entry 42 List III still it is a valid and it is not repugnant to L.A. Act.

We have also noticed that Court always lean towards the constitutionality of a statute upon the premise that a legislature appreciates and understands the needs of the people, that it knows what is good or bad for them, that the laws it enacts are directed to problems which are made manifest by experience, that the elected representatives in a legislature enact laws which they consider to be reasonable for the purposes for which these laws are enacted and that a

legislature would not deliberately flout a constitutional safeguard or right. (***See Ram Krishna Dalmia Vs. S.R. Tendolkar*** reported in ***AIR 1958 SC 538***). The legislature composed of the elected representatives of the people is supposed to know and be aware of the needs of the people and what is good or band for them and that a Court cannot sit in judgment over the wisdom of the Legislature. (See ***State of Andhra Pradesh Vs. McDowell & Co.*** reported in ***AIR 1996 SC 1628, 1641***). Therefore, usually, the presumption is in favour of the constitutionality of the statute, and the onus to prove that it is unconstitutional lies upon the person who challenges it.

We have further noticed that in the instant case the assent of the President was not taken. According to learned Advocate General, L.A. Act is in the field of acquisition of land by and under executive order. The Singur Act is for vesting of possession under the Legislative Act. According to him in L.A. Act there is no provision for acquisition of land owned by the State. The Singur Act provides for payment of compensation directly to the lessee and to the allottees of the land and not to the owner of the land.

He drew our attention to a comparative chart and provisions of the L.A. Act and the Singur Act to show that the Singur Act is within the legislative competence of the State Legislature which is set our hereunder :

Land Acquisition Act	**Singur Act**

a. State cannot acquire its own property.	a. Act providing for resumption of possession by the Government of land of the State free of leasehold
b. Act for acquisition of ownership of privately owned land and not State land.	b. Only extinghishes the leasehold right and the allotment of the vendors. Extinguishment of owner's right is not the case in the Singur Act. WBIDC (wholly owned by the State – paragraph 4 of writ petition) keen on vesting of the land in State
c. There is no direct vesting of any land in either the Central Government Executive action through Land Acquisition Collector is necessary to acquire ownership of the land.	c. Provides for direct vesting freed from leasehold without requiring any executive action.
d. The Act is under Entry 42 of concurrent List and deals with acquisition of land owned by private bodies.	d. It is under Entry 18 of State List. No question of repugnancy. Basically concerned with landlord-tenant/lessor-lessee relationship (land tenure).

Mr. Advocate General relying upon ***Rajiv Sarin's case (supra)*** and ***K.T. Plantation's case (supra)*** submitted that on the same principles it should be held that there is no repugnancy of the Singur Act and L.A. Act.

We have also considered the submissions made on behalf of the appellant where Mr. Pal contended that the Singur Act is a law wholly relating to the acquisition of property even following the doctrine of *'pith and substance'* test. The Singur Act is an Act for acquisition. He drew our attention to the Sections of the impugned Act and submitted that returning of land and conferring title can not be permitted.

In the instant case, the land including the leasehold of TML has been acquired for returning the land and conferring title on the persons from whom it had been acquired. Such action on the part of the State confirms repugnancy between the two Acts, i.e. Singur Act and L.A. Act. He relied on the comparative table which we have already stated in the preceding paragraphs.

We have noticed in ***K.T. Plantation case (Supra)*** the acquisition Act which was passed subsequently got the assent of the President and thereafter was brought into force. It was pointed out that before the Supreme Court that the management and protection of land used for linaloe cultivation and the preservation of artifacts, paintings, etc. are not part of agrarian reforms. The concept of agrarian reforms is a dynamic one and in various decisions the Supreme Court examined its meaning. It was submitted before the Court that the procedure and principle for the acquisition of land as well as determination of compensation, etc. under both the acts are contrary to each other and hence, the impugned Act can be saved only if the Presidential assent is obtained under Article 254(2) of the Constitution. The learned counsel submitted that the Acquisition Act is in pith and substance a law on acquisition and the Presidential assent under Article 254(2) was warranted to save the legislation.

We have also noticed that the Supreme Court observed that Act was enacted in public interest to secure its proper management and to preserve the valuable tree growth, paintings, art objects, carvings and for the establishment of an art gallery-cum-museum. The learned counsel submitted that general scheme

of the Acquisition Act is for the preservation of linaloe cultivation and other tree growth hence constitutes a measure of agrarian reforms and in any view the Act does not violate Article 14 or 19 of the Constitution of India.

We have noticed in ***K.T. Plantation case (Supra)*** where the Supreme Court held as follows:-

> "***Para 108***. *The question of repugnancy under Article 254 of the Constitution arises when the provisions of both laws are fully inconsistent or are absolutely irreconcilable and it is impossible without disturbing the other, or conflicting results are produced, when both the statutes covering the same field are applied to a given set of facts. Repugnancy between the two statutes would arise if there is a direct conflict between the two provisions and the law made by Parliament and the law made by the State Legislature occupy the same field. Reference may be made to the decisions of this Court in Deep Chand v. State of U.P., Prem Nath Kaul v. State of J&K, Ukha Kolhe v. State of Maharashtra, bar Council of U.P. v. State of U.P., T. Barai v. Henry Ah Hoe, Hoechst Pharmaceuticals Ltd. v. State of Bihar, Lingappa Pochanna Appelwar v. State of Maharashtra and Vijay Kumar Sharma v. State of Karnataka."*

We have also noticed in the said decision when the repugnancy between the Central and State legislations is pleaded it is necessary to examine whether the two legislations cover or relate to the same subject-matter. The test for determining the same is to find out the dominant intention of the two legislations and if the dominant intention of the two legislations is different and they cover

different subject-matter then merely because the two legislations refer to some allied or cognate subjects, they do not cover the same filed.

We have also noticed in ***K.T. Plantation case (Supra)*** where the Supreme Court observed as follows:-

> "***Para 112.*** *…. the Land Acquisition Act, 1894 is an Act which fell exclusively under list III entry 42 and enacted for the purpose of acquisition of land needed for public purposes for companies and for determining the amount of compensation to be made on account of such acquisition, which is substantially and materially different from the impugned Act whose dominant purpose is to preserve and protect "estate" governed by Article 31-A(1)(a) read with Article 31-A(2)(a)(iii) of the Constitution."*

In the said decision the Supreme Court held that the Act which was enacted in public interest to preserve and protect the land used for the linaloe cultivation and construct as part of agrarian reforms which is its dominant purpose. Whereas we find from the impugned Singur Act itself that the dominant purpose of the Singur Act is to return the land to the unwilling owners and thereafter to use the land for the public interest. Therefore, the Singur Act cannot come within the purview of Entry 18 List II.

We have further noticed that the validity of the acquisition Act on the touchstone of Article 300-A of the Constitution and examine whether the concept of eminent domain to read into Article 300-A and in the statute enacted to

deprive a person of his property. The law is settled on such question and the framework of the statute should satisfy the twin principles i.e., public purpose and adequate compensation. The doctrine of eminent domain would show that a person must be deemed to be deprived of his property if he was "subsequently dispossessed" or his right to use and enjoy the property was "seriously impaired" by the impugned law. Then certainly the eminent domain will be applicable.

We have also noticed in ***K.T. Plantation case (Supra)*** where the Supreme Court observed as follows:-

> "***Para 172.*** *.... the law taking private property for public purpose without compensation would fall outside List III Entry 42 and cannot be supported by another entry in List III."*

Therefore, in the instant case, that test also applicable and on such test it would appear that the distinction is payment of compensation. Accordingly it would attract Entry 42 of List III.

In the said decision the Supreme Court observed as follows:-

> "***Para 179.*** *.... But the question is whether the principles of eminent domain are completely obliterated when a person is deprived of his property by authority of law under Article 300-A of the Constitution"*

The Supreme Court further held that public purpose is a condition precedent for invoking Article 300-A. In the said decision the Supreme Court further observed as follows:-

> "***Para 185.*** *....But, we fail to see why we trace the meaning of a constitutional provision when the only safe and correct way of construing the statute is to apply the plain meaning of the words. List III Entry 42 has used the words "acquisition" and "requisitioning", but Article 300-A has used the expression "deprivation", though the word "deprived" or "deprivation" takes in its fold "acquisition" and "requisitioning", the initial presumption is in favour of the literal meaning since Parliament is taken to mean as it says."*

We have also noticed in ***K.T. Plantation case (Supra)*** where the Supreme Court held as follows:-

> "***Para 189.*** *Requirement of public purpose, for deprivation of a person of his property under Article 300-A, is a precondition, but no compensation or nil compensation or its illusiveness has to be justified by the State on judicially justiciable standards. .... In other words, the right to claim compensation or the obligation to pay, though not expressly included in Article 300-A, it can be inferred in that article and it is for the State to justify its stand on justifiable grounds which may depend upon the legislative policy, object and purpose of the statute and host of other factors."*

We have also noticed in ***K.T. Plantation case (Supra)*** the Supreme Court observed as follows:-

> "***Para 211.*** *The rule of law as a concept finds no place in our Constitution, but has been characterized as a basic feature of our Constitution which cannot be abrogated or destroyed even by Parliament and if fact binds Parliament. In Kesavananda Bharati case, this Court enunciated the rule of law as one of the most important aspects of the doctrine of basic structure. The rule of law affirms Parliament's supremacy while at the same time denying it sovereignty over the Constitution."*

In the said decision we have noticed that the acquisition Act which was upheld by the Supreme Court obtained the assent of the President and the Court held that hence immune from challenge under Article 14 or 19 of the Constitution.

It appears to us that applying all these tests we have come to the conclusion that Singur Act speaks about acquisition. We have also compared the Act with that of the Land Acquisition Act and it appears to us that the Act has failed to come over the test laid down by the Supreme Court in several decisions. It appears to us that there is clear and direct inconsistency between the Land Acquisition Act and the Singur Land Rehabilitation and Development Act, 2011, and, in our considered opinion, such inconsistency is absolutely irreconcilable.

It further appears to us that the inconsistency is such between the provisions of the two Acts that it would be direct collision with each other and it is impossible to obey the one without disobeying the other. We further noted that in the instant case the acquisition is not for agrarian reforms, but if it was so

then we could have saved the Act after bringing it under the agrarian reforms under Entry 18 of List II. Therefore, it appears to us that this Act fulfills the triple test laid down by the Constitution Bench in ***M. Karunanidhi (Supra)*** thereby it has to be declared as void under Article 254(1) of the Constitution.

It appears to us that in the instant case since there is an existing law made by the Parliament on a matter in the concurrent list and if there is repugnancy exist between a State law and the existing law the law made by the Parliament will prevail and the State law to that extent of such repugnancy shall be void. [(see Article 254(1)]. We have also considered that if the law is made by the Legislature and the Legislature has reserved for the assent of the President and the assent has been given by the President to such law then the such law should prevail in the said State.

Returning land and conferring title is absolutely direct confrontation with the Act prevailing in the said field i.e. L.A. Act, 1894. We have specifically considered the provisions of Sections 3, 4(3), 5 and 6 of the Singur Act and it appears to us that the said provisions of the Act is totally repugnant to the Act of 1894.

Before we part, the other point which has been urged before us is that in the Act there is no valid provision for payment for acquisition and for public purpose and further the violation of Article 14. Since we hold that impugned Act

is void under Article 254 of the Constitution, we feel it that it is not necessary for us to elaborate on those points.

We have noticed that the Hon'ble Single Judge although recognized the defect in Singur Act and opined as "vagueness and uncertainty with regard to the compensation receivable" but it appears to us that His Lordship tried to interpret the law by inserting Section 23 and 24 of the Land Acquisition Act and doing so His Lordship wanted to remove the vagueness and uncertainty from the Act. It appears to us that the Court cannot legislate and the decisions cited on such question which we have considered and we find that the latest decision of the Supreme Court ***Sathadevi's case (Supra)*** where the Supreme Court has specifically observed that the Court cannot re-write, recast, reframe legislation. The rules of interpretation do not permit the rewriting or recasting or resigning of a statute. Therefore, we hold that Court has no power to do so. Therefore, we accept His Lordship's opinion to the extent that the impugned Act suffers from vagueness and uncertainty with regard to the question of payment of compensation to the TML. So far Section 5(1) of the said Act it appears that compensation to the vendors as stated in Section 5(1) is only refund of the amount so paid by them. Therefore, such amount is nothing but has to be stated to be as 'no compensation' as held by the Supreme Court in ***Rajiv Sarin's case (supra)*** and for such reason should be struck down.

It appears to us that when the matter is thrashed out threadbare, the issue in most of the cases became academic as an unconstitutional statute cannot be

held constitutional by taking recourse to the presumption. The other aspect of the matter which has also been stated before us that the Singur Act is nothing but an Act only to by-pass the judgment delivered by the Division Bench of this High Court in ***Joydeep Mukherjee's case (Supra)***. We have considered ***Madan Mohan Pathak's case (Supra), G.C. Kanungo's case (Supra), S.R. Bhagwat's case (Supra), K. Shyam Sundar's case (Supra)*** and we find that the legislatures can not take recourse to bypass a decision of a competent Court. The judgment delivered by the Division Bench in ***Joydeep Mukherjee's case (Supra)*** settled the process of acquisition. Thereafter the land vested in the State free from all encumbrances. Lands were transferred to WBIDC. Thereafter WBIDC became the absolute owner of the property in question. Then user of the land was changed and the original landowner became persona non grata. So their only right was to get compensation and nothing else. The persons who were the owners of the land cannot claim restoration of their title in the land on any ground. We have noted the decision of ***Sulochona (Supra)***, therefore, the right of the unwilling farmers are not surviving at all. So on such question also the impugned Singur Act cannot be upheld.

So far the question of public purpose we do not think it is necessary for us to elaborate on this question any further. But before we part we must hold that return of land to the unwilling owners are not permissible after the acquisition process is completed and, therefore, cannot satisfy the term public purpose.

Therefore, the reasons given by us and in view of the above discussions we hold that :

(a) The Singur Act is a law relating to acquisition and further it appears to us that without having assent from the President of India the Singur Act is hit by Article 254(1) of the Constitution of India.

(b) The provisions of Sections 3, 4(3), 5 and 6 of the impugned Act are direct in conflict with that of the L.A. Act and thereby repugnant to the said Act.

(c) In view of the above discussion, the above Act is wholly in exercise of the power by the State under Entry 42 List III of the Seventh Schedule to the Constitution of India. Hence, there was acquisition of land leased out to the Tatas and possessory right of the vendors. We further come to the conclusion that the Act cannot be treated as for public purpose when the intention is to return the land to the unwilling land owners/farmers.

(d) Since we have expressed our opinion that the Court has no jurisdiction to insert, in the guise of interpretation of statute, or rewrite/recast/reframe the same as held by the Supreme Court, we hold that Hon'ble Singe Judge after holding that the intention of the legislature to pay compensation is vague and uncertain, has no power to insert or recast or rewrite the statute by inserting Sections 23 and 24 of the Land Acquisition Act, 1894. Therefore, the said part of the order is not sustainable in the eye of law and is set aside.

In these circumstances, we have to hold that the Singur Land Rehabilitation & Development Act, 2011 is held to be unconstitutional and void since it is without having assent from the President of India.

We have also noticed that Section 5(1) only speaks about the refund of the money which was paid by the vendors and such refund tantamounts to no compensation as awarded to the vendors/writ petitioners and, accordingly, that also is not sustainable in the eye of law. Since 'no compensation' is nothing but in the nature of illusory and should be struck down.

For the reasons stated hereinabove, the judgment and/or order so passed by the Hon'ble Single Judge is set aside. The appeal is allowed. The cross-objection filed by the State is also dismissed and the Act is declared as void.

The writ petitions filed by the vendors are also disposed of.

Photostat certified copy of this judgment, if applied for, be supplied to the parties.

(PINAKI CHANDRA GHOSE, J.)

I agree.

(DR. MRINAL KANTI CHAUDHURI)

LATER

We are of the opinion that the aggrieved parties must get a chance to test this judgment and/or order in appeal. Therefore, for the ends of justice we stay this judgment and/or order for two months from date. We further direct the State should not part with the possession of the land during this stay.

(PINAKI CHANDRA GHOSE, J.)

I agree.

(DR. MRINAL KANTI CHAUDHURI)