

(2014) 10 AHC CK 0156
In the Allahabad High Court
Case No : Land Acquisition No. -4132 of 1983

A.C. Grice

APPELLANT

Vs

U.P. Avas Evam Vikas Parishad

RESPONDENT

Date of Decision : 15-10-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 35A
Constitution of India, 1950 — Article 13, 14, 15(1), 15(2), 16(1)
Land Acquisition Act, 1894 — Section 17(1), 7
Uttar Pradesh Avas Evam Vikas Parishad Adhiniyam, 1965 — Section 17, 17(3A), 18, 19, 28

Citation : (2014) 10 ADJ 159

Hon'ble Judges : Devi Prasad Singh, J;Arvind Kumar Tripathi (II), J

Bench : Division Bench

Advocate : P.N. Mathur, A.K. Jauhari, Akhilesh Kalra and Altaf Mansoor, Advocate for the Appellant; K.S. Pawar, Nakul Dubey, P.K. Rai and Sriram Sharma, Advocate for the Respondent

Judgement

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Devi Prasad Singh, J.—Being aggrieved with the acquisition of the land of a college namely La Martiniere College (for boys) the petitioners have preferred instant writ petition under Article 226 of the Constitution of India. Petitioner nos. 1 and 2 are the members of Board of Governance of La Martiniere College Lucknow. Petitioner no. 3 belongs to Anglo Indian Community and is an ex student of La Martiniere College, who became the member of Board of governance of the College as the representative of Indian Army. The land belonging to La Martiniere College was bequeathed by Major General Claude Martin who died in the year 1800. The will of Major General Claude Martin was under litigation in the then Supreme court at Fort William Calcutta (now High Court Calcutta). It is stated that the court (supra) laid down the scheme under which La Martiniere College (for boys) should be managed by its "Trust". The Board of Governance is the apex committee of the La Martiniere College which

supervise and manage the affairs of the "Trust". Chief Secretary of Uttar Pradesh and the Legal Remembrance of the State of Uttar Pradesh are two trustees nominated by Calcutta High Court.

2. Shri J.N. Mathur, learned Senior Counsel assisted by Shri Sanjeev Singh and others argued that the land and building of La Martiniere charities are used for the purpose of La Martiniere college since 1840 AD and for almost 143 years it has been managed as "minority institution". Students passed out from the institution had occupied high post in the country. Apart from imparting education up to Class XIIth, the college has a boarding house facility for about thousand students. The college has been involved in academic functions, parades, physical culture and training, sports and scouts activities, inter-house matches, acqaties, swimming, rowing etc. The playground of the college is also used for tennis, cricket etc. La Martiniere College falls within the "High security zone" being near to Chief Minister and Chief Justice residence and also is "Heritage zone".

3. It has been argued that La Martiniere is a minority institution belonging to Anglo Indian community hence protected by Article 30 of the Constitution of India. It is a minority institution not only on account of religion but also language i.e. English of the Christian community. Though while preferring the writ petition, the petitioner has claimed the right flowing from Constitution with regard to minority community but during the course of hearing learned Senior Counsel had not pressed the ground and assailed the notification for acquisition on other grounds.

4. A notice dated 22.1.1982 was issued under Section 28 of the UP Avas Vikas Parishad Adhiniyam 1965 (UP Act No. 1 of 1966)(in short hereinafter referred as Act). The notice reveals that UP Housing Development Board had drawn a plan as Martinpurwa Land Development and Housing Scheme, Lucknow and invited objection thereon. It is submitted that under Section 18 read with Section 19 of the Act different housing scheme may be launched by Housing Board but in the present case according to petitioner's counsel a vague proposal was launched without disclosing what type of housing accommodation shall be provided. It is also submitted that Housing Board has not formulated any scheme with due notification to public but notified a "site plan" of the area showing measurement and Khasra number with description in map (Annexure-2). After receipt of notice on behalf of petitioner objections were filed by their Advocate on 23.2.1982 (Annexure 3 and 4) but without giving any opportunity of hearing to the petitioner in response to notice the respondents Housing Board proceeded ahead with their scheme to acquire the playground and vacant area of the college. Feeling aggrieved with the action of the respondents the petitioner has approached this court under Article 226 of the Constitution of India for quashing of notification dated 22.1.1982 issued by the UP Awas and Vikas Parishad in pursuance to power conferred by Section 28 of the Act and also a notice dated 18.6.1986 (Annexure-1) issued by the Land Acquisition Officer as contained in Annexure-6 to the writ petition.

5. After notification dated 6.2.1982, (Annexure-28) notification dated 13.2.1983 was issued under Section 32 of the Act. The scheme under Section 31(2) of the Act was also sanctioned on 15.2.1982 under name and title of "Martinpurwa Grihsansthan Yojana" and published in the newspaper on 20.11.1982. Notice under Section 7 of the Land Acquisition Act was issued on 21.2.1983 and under Section 17(1) of the Land Acquisition Act on 22.2.1983 which has been stayed by this Court by an interim order, while entertaining the writ petition.

6. During the pendency of writ petition further development took place. The land in question as well as adjoining area has been declared as "green belt" in new master plan of Lucknow. The Awas Vikas Parishad had sent letter dated 14.2.2009 with a request to the government to de-notify the scheme since the Parishad is no more interested to continue with the housing scheme under the changed scenario where area in question has been declared as "green belt" in the master plan.

7. The submission of the learned counsel for the petitioner is that since Awas Vikas Parishad itself had wrote a letter being not interested to continue with the scheme, hence it is obligatory on the part of the government to cancel the scheme and release the petitioner's land in pursuance to power conferred by Section 33(c) of the Act.

It shall be appropriate that certain statutory provision of the Act be considered for the purpose of final adjudication of the present controversy.

8. Section 55 of the Act empowers the Board to acquire the land for the purpose of a housing scheme under the provision of Land Acquisition Act 1984 as amended for the purpose given in the schedule of the Act. Whenever scheme is framed the board should issue notice to affected party and also public notice in the newspaper. Section 32 of the Act further provides the period with regard to commencement of scheme. After commencement of scheme alteration may be done in pursuance to power conferred by Section 33 of the Act which shall be notified in the official gazette. For convenience Section 28, 32 and 33 of the Act as under:-

"28. Notice of housing and improvement scheme.-

(1) When any housing or improvement scheme has been framed, the Board shall prepare a notice to that effect specifying-

(a) the boundaries of the area comprised in the scheme;

(b) the dates, hours and place or places at which a map of the area, particulars of scheme, and details of the land proposed to be acquired and of the land in respect of which betterment fee is proposed to be levied may be seen; and

(c) the date by which objections to the scheme may be made.

(2) the Board shall--

(a) cause the said notice to be published weekly for three consecutive weeks in-
(i) the Gazette, and (ii) two daily newspapers having circulation in the area
comprised in the scheme at least one of which shall be Hindi newspaper; and

(b) send a copy of the notice to the local authority or authority within whose
jurisdiction the area comprised in the scheme lies.

(3) The Housing Commissioner shall cause copy of any document referred to in
clause (b) of sub-section (1) to be delivered to any applicant on payment of such
fee as may be provided by regulations.

32. Commencement of scheme-(1) Whenever the Board or the State
Government sanctions a housing or improvement scheme, it shall be notified in
the Gazette.

(2) The notification under sub-section (1) in respect of any scheme shall be
conclusive evidence that the scheme has been duly framed and sanctioned.

(3) Any person who, or a local authority which, had field objections under
Section 30, aggrieved by the decision of the Board sanctioning a housing or
improvement scheme may, within thirty days from the date of the notification
under sub-section (1), appeal to the State Government whose decisions thereon
shall be final.

(4) If the State Government cancels or alters the schemes as a result of an
appeal filed under sub-section (3), the cancellation or alteration shall be notified
in the Gazette.

(5) The scheme shall come into force--

(a) if sanctioned by the State Government, on the date of the notification under
sub-section (1);

(b) if sanctioned by the Board--

(i) where no appeal is preferred under subsection (3), on the expiry of thirty
days from the date of the notification under subsection (1); and

(ii) where an appeal is preferred and the scheme is on appeal maintained with or
without alteration, on the date of the decision of the appeal, and where more
appeals than one are preferred, on the date of the decision of the appeal last
decided.

33. Alteration of scheme after commencement----

(1) At any time after a housing or improvement scheme has come into force and
before it has been fully executed, the Board may for reasons to be recorded alter
or cancel it:

Provided that--

(a) if any alteration is likely to increase the estimated cost of executing a scheme

by more than ten per cent or if any altered scheme is estimated to cost more than twenty lakhs of rupees, the alteration shall not be made without the previous sanction of the State Government;

(b) before making any alteration which involves acquisition, otherwise than by agreement, of any land or building not proposed to be acquired in the original scheme, or owing to which any land not previously liable under the scheme to payment of betterment fee becomes liable to such payment, the Board shall serve a notice, in such form, on such persons or classes of persons and in such manner, as may be prescribed, of the proposed alteration and consider the objections, if any, received in pursuance of the notice within thirty days from the service of the notice or within such further time as the Board may, for sufficient cause, allow, and give an opportunity of being heard to the objectors.

(c) no scheme estimated to cost over twenty lakhs of rupees shall be altered or cancelled without the previous sanction of the State Government.

(2) Any alteration or cancellation of a scheme under sub-section (1) shall be notified in the Gazette and have effect from the date of such notification, so however, that any such modification shall be without prejudice to the validity of anything previously done under the original scheme."

9. The Housing Commissioner vide his letter dated 3.6.2011 informed the government showing its inability to continue with the scheme. Reason assigned therein is that it falls within the "green belt" and "high security" zone hence construction shall not be possible. While sending letter dated 3.6.2011 the Housing Commissioner had also informed that District Magistrate by his letter dated 3.11.1993 to stop the acquisition proceeding. The letter was sent by the Housing Commissioner at the stage when writ petition was dismissed for non-prosecution. The petition was later on restored. The copy of letter dated 3.6.2011 sent by Housing Commissioner in continuation of earlier letter dated 14.9.2009 filed as Annexure SCA-1 to the supplementary affidavit, for convenience letter dated 3.6.2011 is reproduced as under:-

10. There appears to be no room of doubt that minority institutions falling under Article 30 have been exempted from the government's regulatory power vide T.M.A. Pai Foundation and Others Vs. State of Karnataka and Others, and P.A. Inamdar and Others Vs. State of Maharashtra and Others, . The purpose is to permit the minority institutions to retain their own culture and traditions while educating the students of their own community. However, such rights is subject to constitutional limitation so that the protection granted under Article 30 is not being abused with mal administration.

11. The letter sent by Avas Vikas Parishad seems to has not been attended by the government in pursuance to power conferred by Section 33 of the Act. Obviously, it is for the government to consider the request of Avas Vikas Parishad that the land in dispute may not be used for housing purposes not only in view of change of "Lucknow Master Plan" declaring the area as green belt and high

security zone but also for the reason that Avas Vikas Parishad is no more interested to continue with the scheme.

12. Why the government has not taken a decision is not understandable more so when the land belongs to a prominent college of the city of Lucknow. From the factual matrix on record, it appears that there is no option with the government except to de-notify the land in question in pursuance to power conferred by Section 33 of the Act.

13. In case government would have been taken some decision keeping in view the factual matrix on record then it would not have been necessary for this Court to interfere with the matter on merit. The writ petition is pending in this Court since almost 30 years. It shows apathy on the part of government as well as Awas Vikas Parishad in keeping the matter pending and creating a situation for this Court to record a finding on merit.

Public Interest and Education

14. Public interest involves different facet of life. There may not be any precise definition while evaluating public interest with regard to acquisition of land. The comparative assessment with regard to public interest should be done for the purpose of acquisition of the land involved therein and retained by a person or body/establishment. In the present case question cropped up whether acquisition of land for the construction of flats under the housing scheme shall serve the public purpose more than the educational purpose as well as extra curriculum activities enjoyed by the students who are undergoing studies in the College (La Martiniere boys). At the very outset while assailing public purpose it should be kept in mind that housing project for which land was supposed to acquire containing the small playground of the college in question may be shifted to some other place but the playground or the vacant land used for the welfare of students which include extra curriculum activities may not be shifted to any other place.

15. Accordingly, crucial question requires for consideration is that whether acquisition of land of a college which has spent centuries for human development is in public interest?

Whether the students may be deprived from their own playground and sports facilities which includes cricket, football, volleyball and alike games?

16. It has not been disputed by the learned Standing counsel that the land in question falls within the "heritage zone" and it has been declared as "green belt". Whether the construction of few buildings, flats will serve public interest more than the interest of generations to come to undergo with the studies and training along with sports facilities by students?

17. An old Sanskrit phrase says that "Education leads to liberation", that is liberation from ignorance which shrouds the mind; liberation from superstition which paralyses effort, liberation from prejudices which bring the Vision of the

Truth, liberation from immorality to morality and liberation from bodily pleasure to spiritual thoughts.

18. In a democratic form of government it is sustenance about the enlightenment of the populace is material. The education has become social and political necessity to educate the young generation and participate in national development. The theory of "vasudhaiva Kutumbakam" may be reality only in case peoples are educated in an institution by its teachers having commitment to social cause.

19. The education up to class XII is a desideratum for national development. India has been leader of world populace because of its "wisdom" and "knowledge". The great religions born in India because of its educational institutions having higher degree of highest pinnacle of wisdom and knowledge of commitment. A good education must be supplemented by good sports facilities for the outer and exposure of students to possess healthy mind with healthy body. Hon"ble Supreme Court once observed in a case reported in Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc. etc., , to quote:-

13. Victories are gained, peace is reserved, progress is achieved, civilization is build up and history is made not on the battle-fields where ghastly murders are committed in the name of patriotism, not in the Council Chambers where insipid speeches are spun out in the name of debate, not even in factories where are manufactured novel instruments to strangle life, but in educational institutions which are the seedbeds of culture, where children in whose hands quiver the destinies of the future, are trained From their ranks will come out when they grow up, statesmen and soldiers, patriots and philosophers, who will determine the progress of the land.

15. In Brown v. Board of Education of Topeka, U.S. Supreme Court Reports 98 Law. Ed. U.S. 347 at page 880 it was observed:

"Today, education is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment."

17. In this connection, the following passage from Additional District Magistrate, Jabalpur Vs. Shivakant Shukla, may be quoted:

"Part III of our Constitution confers fundamental rights in positive as well as in negative language. Article 15(1), 16(1), 922(2), 22(5), 25(1), 26, 29(1), 30 and 32(1) can be described to be Articles in positive language. Articles 14, 15(2), 16(2), 20, 21, 22(1), 22(4), 27, 28(1), 29(2), 31(1) and (2) are in negative

language. It is apparent that most categories of fundamental rights are in positive as well as in negative language. A fundamental right couched in negative language accentuates by reason thereof the importance of that right. The negative language is worded to emphasise the immunity from State action as a fundamental right. (See *The State of Bihar v. Maharajadhiraja Sir Kameshwar Singh of Darbhanga and Ors.*) These fundamental rights conferred by our Constitution have taken different forms.

Some of these fundamental rights are said to have the texture of Basic Human Rights (See *A.K. Gopalan's case (supra)* at pp. 96-97, 248-293 and *Bank nationalization case (Supra)* at pp. 568-71, 576-78)."

20. Later on Hon^{ble} Supreme Court in *Islamic Academy of Education and Another Vs. State of Karnataka and Others*, , *T.M.A. Pai Foundation and Others Vs. State of Karnataka and Others*, and *P.A. Inamdar and Others Vs. State of Maharashtra and Others*, reiterated the importance of education for the coming generation. When La Martiniere college was established almost 200 years back the population of the country was few crores now we are more than 125 crores but even then La Martiniere College, boys and girls are capable to meet the requirement of time. The vision of the peoples who have retained sufficient area as vacant land fulfilling the requirement even after decades in spite of increase of population three or four times than what was existing those days is commendable. Whether keeping in view the growing population of the country the open land of the colleges may be acquired to deprive the students from the sports facilities which they are availing at the moment. What public interest will be served by accommodating 100 or 200 families after constructing some flats in the open land of the college?

21. Parliament by 86th amendment added Article 21(A), which makes education up to 14 years of age as fundamental right. Article 21A is reproduced as under:-

"21-A. Right to education-The State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine."

22. Keeping in view the fact that college is imparting education from nursery to intermediate, it is contributing the nation to educate the children with extra curriculum activities. Prima facie, it appears that it serve more public purpose than construction of few flats or houses which may be shifted to other place.

23. It was in *The State of Bihar Vs. Sir Kameshwar Singh*, their Lordship of Hon^{ble} Supreme Court attempted to decide the phrase "public interest". Hon^{ble} Supreme Court held that expression "public interest" is not capable of precise definition and has not a rigid meaning and is elastic and takes its colours from the statute in which it occurs. The concept vary with the time and state for society and its needs.

24. In *Rameshwar Prasad and Others Vs. State of Uttar Pradesh and Others*, ,

Hon"ble Supreme Court while defining public interest held that it takes within its fold several factors. No precise definition could be given.

25. In Meerut Development Authority Vs. Association of Management Studies and Another, , their Lordship of Hon"ble Supreme Court held that "public interest" if it is employed in a given statute is to be understood and interpreted in the light of the entire scheme, purpose and object of the enactment but in the absence of the same it cannot be pressed into service to confer any right upon a person who otherwise does not possess any such right in law.

26. Hon"ble Supreme court in a case reported in Dev Sharan and Others Vs. State of U.P. and Others, define the public purpose as under:-

"The concept of public purpose cannot remain static for all time to come. The concept, even though sought to be defined under Section 3(f) of the Act, is not capable of any precise definition. The said definition, having suffered several amendments, has assumed the character of an inclusive one. It must be accepted that 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. Even though the concept of public purpose was introduced by pre-Constitutional legislation, its application must be consistent with the constitutional ethos and especially the chapter under Fundamental Rights and also the Directive Principles.

In construing the concept of public purpose, the mandate of Article 13 of the Constitution that any pre-constitutional law cannot in any way take away or abridge rights conferred under Part-III must be kept in mind. By judicial interpretation the contents of these Part III rights are constantly expanded. The meaning of public purpose in acquisition of land must be judged on the touchstone of this expanded view of Part-III rights. The open-ended nature of our Constitution needs a harmonious reconciliation between various competing principles and the overhanging shadows of socio-economic reality in this country.

Therefore, the concept of public purpose on this broad horizon must also be read into the provisions of emergency power under Section 17 with the consequential dispensation of right of hearing under Section 5A of the said Act. The Courts must examine these questions very carefully when little Indians lose their small property in the name of mindless acquisition at the instance of the State. If public purpose can be satisfied by not rendering common man homeless and by exploring other avenues of acquisition, the Courts, before sanctioning an acquisition, must in exercise of its power of judicial review, focus its attention on the concept of social and economic justice."

27. The acquisition of land unmindful to fundamental right and public purpose that too with regard to education is the instance of non application of mind.

Hon"ble Supreme Court in a case reported in Raghbir Singh Sehrawat Vs. State of Haryana and Others, had rightly observed that wisdom appear to have become irrelevant for the State apparatus while acquiring the land under Land Acquisition Act and other law time being in force. Para 4 of the judgment of Shri Raghbir Singh Sehrawat (supra) is reproduced as under:-

"Unfortunately, these words of wisdom appear to have become irrelevant for the State apparatus which has used the Land Acquisition Act, 1894 (for short, "the Act") in last two decades for massive acquisition of the agricultural land in different parts of the country, which has not only adversely impacted the farmers, but also generated huge litigation adjudication consumes substantial time of the Courts. These appeals filed against orders dated 17.5.2010 and 19.11.2010 of the Division Bench of the Punjab and Haryana High Court is one of many such cases which the landowners are compelled to file with the hope that by Court's intervention they will be able to save their land."

28. In Bharat Sewak Samaj Vs. LT. Governor and Others, , Hon"ble Supreme Court while relying upon earlier judgments referred the cases reported in Dev Sharan and Others Vs. State of U.P. and Others, and Sri Radhy Shyam (Dead) through L.Rs. and Others Vs. State of U.P. and Others, culled down certain principles determinative to assess public purpose. Their Lordship reiterated that acquisition must be consistent with the constitutional ethos specially fundamental right and directive principle of State policy.

29. In case, public purpose is assessed keeping in view the aforesaid broader principle of law there appears to be no doubt that depriving the petitioner of its land, which is being used with regard to extra curriculum activities of the college, it seems to be fraught with grave consequences and adversely impinging upon constitutional protection envisaged under Article 21A and directive principle of state policy whereby right to quality of life, right to dignity of life held to fundamental in nature. Deprivation of the College from the play ground and the open space meant for extra curriculum activities or functions etc seems to be against constitutional ethos and directive principles of state policy hence, not sustainable.

30. Article 39(f) of the Constitution of India provides that children should be given opportunity and facilities to develop in healthy manner. Article 41 of the Constitution of India further commands that State shall strive to secure the right to work, to education. Article 46 of the Constitution of India further provides that education and economic interest of SC, ST and other weaker section should be promoted. Article 49 makes it obligatory for the State to protect every monument or place or object of artistic or historic interest. For convenience Article 39(f), Article 41, Article 46 and Article 49 are reproduced as under:-

39(f) that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.]

41. Right to work, to education and to public assistance in certain cases.-The State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want.

46. Promotion of educational and economic interests of Scheduled Castes, Scheduled Tribes and other weaker sections.-

The State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation.

49. Protection of monuments and places and objects of national importance.-

It shall be the obligation of the State to protect every monument or place or object of artistic or historic interest, _44[declared by or under law made by Parliament] to be of national importance, from spoliation, disfigurement, destruction, removal, disposal or export, as the case may be.

31. Apart from directive principles (supra) Article 51A provides that it shall be duty of every citizen to value and preserve the rich heritage of composite culture to develop the scientific temper, humanism and spirit of enquiry and to strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement. It further provides that parent or guardian shall provide opportunity for education to their children.

32. In view of above, acquisition of land in dispute is not only in contravention of directive principle of State policy but also contrary to the fundamental duties assigned by Article 51A of the Constitution.

33. It shall not be incorrect to say that any housing project that too for small area in view of present dispute may be shifted to other place but the play ground and open spaces serving since centuries the college and its students cannot be shifted to other place. Accordingly, on comparative assessment we found that public purpose will serve more to keep the land in dispute with the college for the use of students and colleges in different ways than to acquire it for construction of houses under scheme or alike purpose.

34. The step taken by the Housing Board to acquire the land in question seems to be an instance of "careless mind" and failure in assessing the comparative requirement of the society with regard to education vis a vis houses where later can be shifted to other places but former can not be.

POSSESSION

35. In case the land of the "seat of learning" is taken away by cruel hand of mighty government then where the efflux of population which the India is facing

will go to educate their children. The young mind not only requires class room but open space to practice different extra curriculum activities to make them healthy. Horse riding, cricket, volley ball and so many activities which is being carried out in open space of the college since centuries shall result with adverse consequences in due course of time.

36. Even if some portion of the land is excess than the present requirement, in due course of time it shall become "short of requirement" to accommodate the coming generation. A child is educated and moulded to become a "good citizen" by practising different form of activities, not only by class room reading.

37. Admittedly, possession of land has not been taken over by the housing board or the state. Merely by issuing notice does not mean that respondents have taken possession of land. In spite of the fact that once writ petition was dismissed in default for few years, the land in dispute could have been taken over by the Housing Board as well as State in accordance to rules, neither the Housing Board nor the State taken over the possession of land. In Shri Raghbir Singh Sehrawat's case (supra) question with regard to taking possession of acquired land has been dealt with as under:-

"In Banda Development Authority, Banda Vs. Moti Lal Agarwal and Others, , the Court referred to the judgments in Balwant Narayan Bhagde v. M.D. Bhagwat (supra), Balmokand Khatri Educational and Industrial Trust, Amritsar Vs. State of Punjab and others, , P.K. Kalburqi v. State of Karnataka (2005) 12 SCC 489, NTPC Ltd. v. Mahesh Dutta (supra), Sita Ram Bhandar Society, New Delhi Vs. Lt. Governor, Govt. of N.C.T. Delhi and Others, and culled out the following propositions:

"(i) No hard-and-fast rule can be laid down as to what act would constitute taking of possession of the acquired land.

(ii) If the acquired land is vacant, the act of the State authority concerned to go to the spot and prepare a panchnama will ordinarily be treated as sufficient to constitute taking of possession.

(iii) If crop is standing on the acquired land or building/structure exists, mere going on the spot by the authority concerned will, by itself, be not sufficient for taking possession. Ordinarily, in such cases, the authority concerned will have to give notice to the occupier of the building/structure or the person who has cultivated the land and take possession in the presence of independent witnesses and get their signatures on the panchnama. Of course, refusal of the owner of the land or building/structure may not lead to an inference that the possession of the acquired land has not been taken.

(iv) If the acquisition is of a large tract of land, it may not be possible for the acquiring/designated authority to take physical possession of each and every parcel of the land and it will be sufficient that symbolic possession is taken by preparing appropriate document in the presence of independent witnesses and

getting their signatures on such document.

(v) If beneficiary of the acquisition is an agency/instrumentality of the State and 80% of the total compensation is deposited in terms of Section 17(3-A) and substantial portion of the acquired land has been utilised in furtherance of the particular public purpose, then the court may reasonably presume that possession of the acquired land has been taken."

38. Accordingly, since possession of land has not been taken and housing board itself had shown its inclination to release the land being no construction could have been raised on account of heritage zone, green belt etc. the State should have released the land in pursuance to power conferred by Section 33 of the Act.

GREEN BELT

39. Admittedly, under Lucknow Master Plan the area in question has been declared as green belt. Under the Master plan of city a green belt is left over not only for environmental protection but to provide fresh air and ecological balance to the citizenry. By carving out green belt of the vicinity in question which includes land in dispute under the master plan, housing board or State Government have loses their right to acquire the land for the purpose of housing project. Schedule III of Environmental Protection Rule 1986 makes imperative for the government or its authority to maintain the green belt for the purpose of environmental protection. Hon"ble Supreme Court in a case reported in City and Industrial Development Corporation of Maharashtra and Another Vs. Ekta Mahila Mandal and Another, had set aside the regularisation of encroachment done over green belt.

40. In view of above, the changed scenario under the Lucknow Master Plan area in question which includes the land in dispute have been declared as green belt, no housing project may be launched under the teeth of Lucknow Master Plan 2021.

Heritage Zone

41. It has not been disputed that the land in dispute and the surrounding area falls within the heritage zone. The building of La Martiniere college itself is more than 150 years old. Accordingly, Housing Board has rightly wrote a letter to the government that in lieu of Lucknow Master Plan and the area has been declared as heritage zone as well as green belt, it shall not be lawful to construct houses or flats under the project.

42. Once an area is declared as heritage zone and there are old buildings or monuments covered by Ancient Monuments and Archaeological Sites and Remains Act, 1958 and Rules framed thereunder read with Ancient Monuments and Archaeological Sites and Remains (Framing of Heritage Bye-laws and other Functions of the Competent Authority) Rules, 2011 (in short hereinafter referred as 2011 Rules), it shall not be lawful for respondents to continue with the proposed acquisition to continue with housing project.

43. 2011 Rules(supra) provides detailed procedure with regard to construction in the heritage zone and without prior permission no construction may be raised. The terms and conditions given in the 2011 Rules and the Act (supra) broadly does not seems to make out a case to carry on with the construction by the respondents in pursuance to impugned notices.

44. The writ petition has been pending in this Court since almost three decades and the material on record shows delaying tactics on the part of government as well as the Board. Their action does not seems to justify more so when decision is to be taken with regard to use of land of an educational institution. It makes out a case to award exemplary cost.

45. The Legislatures to their wisdom have amended the Code of Civil Procedure inserting Section 35A whereby it provides for compensatory cost by the courts.

46. Hon"ble Supreme Court in the case of Salem Advocate Bar Association, Tamil Nadu Vs. Union of India (UOI), , has held as under:-

"so far as awarding of costs at the time of judgment is concerned, awarding of costs must be treated generally as mandatory inasmuch as the liberal attitude of the Courts in directing the parties to bear their own costs had led the parties to file a number of frivolous cases in the Courts or to raise frivolous and unnecessary issues. Costs should invariably follow the event. Costs must be appropriately apportioned. Special reasons must be assigned if costs are not being awarded. Costs should be assessed according to the rule in force."

47. The aforesaid view has also been adopted by Hon"ble Supreme Court in a judgment rendered in the case of A. Shanmugam Vs. Ariya Kshatriya Rajakula Vamsathu Madalaya Nandhavana Paripalanai Sangam Represented by Its President etc., .

48. In South Eastern Coalfields Ltd. (supra), Hon"ble Supreme Court while dealing with the question held as under:-

"28....Litigation may turn into a fruitful industry. Though litigation is not gambling yet there is an element of chance in every litigation. Unscrupulous litigants may feel encouraged to approach the courts, persuading the court to pass interlocutory orders favourable to them by making out a prima facie case when the issues are yet to be heard and determined on merits and if the concept of restitution is excluded from application to interim orders, then the litigant would stand to gain by swallowing the benefits yielding out of the interim order even though the battle has been lost at the end. This cannot be countenanced. We are, therefore, of the opinion that the successful party finally held entitled to a relief assessable in terms of money at the end of the litigation, is entitled to be compensated by award of interest at a suitable reasonable rate for the period for which the interim order of the court withholding the release of money had remained in operation."

49. Hon"ble Supreme Court in the case of Amarjeet Singh and Others Vs. Devi

Ratan and Others, held as under:-

"17. No litigant can derive any benefit from mere pendency of case in a court of law, as the interim order always merges in the final order to be passed in the case and if the writ petition is ultimately dismissed, the interim order stands nullified automatically. A party cannot be allowed to take any benefit of its own wrongs by getting an interim order and thereafter blame the court. The fact that the writ is found, ultimately, devoid of any merit, shows that a frivolous writ petition had been filed. The maxim *actus curiae neminem gravabit*, which means the act of the court shall prejudice no one, becomes applicable in such a case. In such a fact situation the court is under an obligation to undo the wrong done to a party by the act of the court. Thus, any undeserved or unfair advantage gained by a party invoking the jurisdiction of the court must be neutralised, as the institution of litigation cannot be permitted to confer any advantage on a suitor from delayed action by the act of the court."

50. In the case of (2013) 7 SCC 416 Hon'ble Supreme Court took note of the fact that the Textile Corporation has not placed the correct facts before the Court hence the contempt petition was dismissed and the cost was quantified at Rs. 50,000/- which was payable to the Supreme Court Legal Services community.

51. In the case of Centre for Public Interest Litigation and Others Vs. Union of India (UOI) and Others, , Hon'ble Supreme Court considering the entire facts and circumstances and also the public interest, allowed the petition and directed the respondents no. 2, 3 and 9 to pay a cost of Rs. 5 crores each and further directed respondents no. 4, 6, 7 and 10 to pay a cost of Rs. 50 lakhs each, out of which 50% was payable to the Supreme Court Legal Services Committee for being used for providing legal aid to poor and indigent litigants and the remaining 50% was directed to be deposited in the funds created for Resettlement and Welfare Schemes of the Ministry of Defence.

52. In view of above, present case seems to make out a case for imposition of exemplary cost on respondents as well as Board. The same may be recovered from persons because of whose commission and omission, decision was taken with regard to acquisition as well as keeping the matter pending in spite of letter sent by the Board. The cost may be utilised by the College as fund to award the best students on academic as well as in sport having distinguished record.

53. Accordingly, we hold that the acquisition of land in question belonging to the college shall not serve public purpose but deprive the students to avail the facility of extra curriculum activities like sports etc and shall be against the constitutional ethos.

54. The observation made by the Hon'ble Supreme Court in the case of Shri Raghbir Singh Sehrawat (supra) showing its deep concern with regard to acquisition of land in an unsystematic manner depriving the citizen to carry on their ancestral property for generation to come, equally apply to present case. In any manner the acquisition is not justified. The amount or compensation paid to

farmers or citizens whose land is acquired does not meet the requirement of family which carry on the land from generation to other generation. The cash in hand always spent to meet the requirement of life but once immovable property or land is acquired it took away the right of coming generation to enjoy the family property as a source of livelihood. Such deprivation of coming generation in days to come shall result with adverse consequences. Only barren land or land not used for agriculture or surplus land under ceiling act ordinarily may be acquired.

55. In any case land of the college, hospitals and other alike establishment dealing with public subjects like education, medical, technical education, charity work, social service etc. should not be acquired except in national interest like in the event of emergency for the security purpose of the country or alike purpose.

56. T.H. White in celebrated book "The Once and Future King" rightly and poetically observed with regard to learning process to quote:-

"The best thing for being sad," replied Merlin, beginning to puff and blow, "is to learn something. That's the only thing that never fails. You may grow old and trembling in your anatomies, you may lie awake at night listening to the disorder of your veins, you may miss your only love, you may see the world about you devastated by evil lunatics, or know your honour trampled in the sewers of baser minds. There is only one thing for it then--to learn. Learn why the world wags and what wags it. That is the only thing which the mind can never exhaust, never alienate, never be tortured by, never fear or distrust, and never dream of regretting. Learning is the only thing for you. Look what a lot of things there are to learn."

57. Doris Lessing in his celebrated book "The Golden Notebook" said as under:-

"Ideally, what should be said to every child, repeatedly, throughout his or her school life is something like this: "You are in the process of being indoctrinated. We have not yet evolved a system of education that is not a system of indoctrination. We are sorry, but it is the best we can do. What you are being taught here is an amalgam of current prejudice and the choices of this particular culture. The slightest look at history will show how impermanent these must be. You are being taught by people who have been able to accommodate themselves to a regime of thought laid down by their predecessors. It is a self-perpetuating system. Those of you who are more robust and individual than others will be encouraged to leave and find ways of educating yourself--educating your own judgments. Those that stay must remember, always, and all the time, that they are being moulded and patterned to fit into the narrow and particular needs of this particular society."

58. Edward Everett rightly said "Education is a better safeguard of liberty than a standing army" and in the words of Malcom Forbes "Education"s purpose is to replace an empty mind with an open one."

59. In view of above, we feel that impugned notification and notices issued by the respondents UP Housing Board as well as Government for acquisition of the land of La Martiniere College (boys) Lucknow is not in public interest. Acquisition seems to be an incidence of abuse of process of law and suffers from vice of arbitrariness. It does not serve public purpose and is against the constitutional ethos. Moreover once Housing Board itself express inability to carry on construction over it being falling under green belt as well as heritage zone, the petition deserves to be allowed and the impugned notices are liable to be quashed.

60. Accordingly, petition is allowed.

[A] A writ in the nature of certiorari is issued quashing the impugned notification dated 22.1.1982 (Annexure-1) and notice dated 18.6.1986 (Annexure-6) as well as other notification or orders acquiring the land of La Martiniere College, Lucknow are quashed with all consequential benefit.

[B] Further a writ, order or direction in the nature of mandamus is issued commanding the respondents not to interfere with the petitioner's possession and lawful use of the land in question for the La Martiniere College (boys) and pass appropriate order keeping in view the observation made in the body of judgment within two months.

[C] Costs quantifies to Rs. 10,00,000/- (ten lacs) which shall be deposited in this Court by the respondents within two months. The trust of La Martinier College (boys) shall be entitled to withdraw the cost from this court. In the event of default it shall be recovered as arrears of land revenue within three months by the Collector, Lucknow and be remitted to this Court. Registry to take follow up action.

Writ petition is allowed accordingly.