
(1996) 06 PAT CK 0003
In the Patna High Court
Case No : C.W.J.C. No. 3280 of 1996

Asharfi Prasad Saha and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 03-06-1996

Acts Referred:

Citation : (1996) 06 PAT CK 0003

Judgement

Naresh Kumar Sinha, J.—The writ petitioners, 192 in all, or the members of their family are businessmen, doctors, teachers, professors, engineers, lawyers and nurses employed in the establishments in around Patna. They claim to have constructed houses on some of the plots of the land acquired by the State for the Patna improvement Trust and now the Patna Regional Development Authority (hereinafter "P.R.D.A." in Land Acquisition case No. 63/61-62 and transferred to Budhha Grih Nirman Sahyog Samiti Ltd. (hereinafter "Society". They have filed this writ application against the State of Bihar (respondent No. 1), the Collector, Patna (respondent No 2.) the P.R.D.A. (respondent No, 4), the District Land Acquisition Officer (respondent No. 5) and the Society (respondent No. 6) and have prayed for the following reliefs:

(i) Issuance of direction, order pr writ in the nature of writ of mandamus/certiorari commanding the respondents to regularise and settle the petitioners on plots of land on which their houses are existing since more than two decades and which they have constructed after observing all the formalities, which a common citizen under normal situation is expected to observe under the law.

(ii) Issuance of direction, order, writ or proper declaration commanding Society had failed to act as per the terms of agreement on which the lands were allotted to it, for the public purpose, and have acted in their personal interest ignoring the public good and in the changed circumstances, the public purpose for which the land was. sought to be acquired shall be fulfilled only by settling the residents of the locality, who are residing there, since decades after getting proper sanction from the authorities including the respondent, P.R.D.A. and Patna

Municipal Corporation.

(iii) Issuance of direction, order, writ or proper declaration commanding the respondents that no public purpose shall be fulfilled by evicting the petitioners from their respective houses constructed over the plots in the area, only for the purposes of allotment of the same land to others for permitting them to construct afresh house/houses over the said land, after fresh allotment ignoring the displacement of the petitioners from their home.

(iv) Issuance of direction order or writ in the nature of writ of mandamus/certiorari commanding the respondents that the equity also demands that the petitioners be regularised on their respective plots of land on which their respective house/houses have been constructed and demolition of the house in the locality shall cause loss of huge national wealth, resulting in the loss of life, livelihood and livery of the petitioners to settle in any part of the country within the territory of India.

(v) Issuance of any other direction or directions to which the petitioners may be entitled to in the and under the circumstances of this case.

2. The case of the petitioners is that in the year 1947 when India became independent the present township of Patna also indulged some scattered villages in the area. There were open fields in and around the town which were being used for cultivation and other purposes by the natives of the town for means of their livelihood. Since ours was a welfare State and Patna happened to be the capital of the State, the citizens from different villages and from other remote areas of the State were attracted to the State capital. Since there was no proper and adequate amenities and houses where they could live they started purchasing piece /plots of land in and around Patna for constructing their own houses with a view to settle in the capital of the State. The State Govt. with a view to have a planned development of the city of Patna established the Patna Improvement Trust, a local self body for preparing a scheme for planned development of the town. The State Govt. in co-ordination with the Patna Improvement Trust now reconstituted as the Patna Regional Development Authority acquired an area of land in the Central Patna for a planned development and establishment of a residential colony presently known as Rajendra Nagar colony. While the execution of the aforesaid scheme by the Patna Improvement Trust in the said Rajendra Nagar Colony was in progress, the unplanned development of the Boring Road area also attracted the attention of the authorities. Accordingly survey work was taken up by the Patna Improvement Trust with a view, to formulate a developed scheme for the Boring Road area. A development scheme was in fact prepared which was approved by the Board of Trustee in a meeting held on 30th September, 1957 and four alternatives were proposed. The decision of the State Govt. was sought in the matter and all these are referred to by the S.P. Verma Committee constituted for considering the development work and the function of the P.I.T. which submitted its report in 1969. A true copy of the relevant portion of the S.P. Verma

Committee report has been filed as Annexure-1. Meanwhile the Society (respondent No. 6) was also established which sought to acquire land for construction of its housing colony. The Society registered under the Cooperative Societies Act, comprised of members who were in authority and wielded a lot of influence. The Society succeeded in acquiring a land measuring 24.52 acres. The Society entered into an agreement with the Government of Bihar published in the Bihar Gazette on 25th November 1959, and the memorandum of agreement stated the purpose of the said acquisition of the land which included construction of houses, roads, parks, tanks, play grounds, schools, library, guest house and erection of 100" statue of lord Budha. The petitioners have referred to in detail the contents of various clauses of the said agreement which among Other things contained a provision in Clause (7) that in case of any breach of the Society of arty of the terms and conditions of this agreement, the Government shall be entitled to re-enter on the whole of the said land without payment of any compensation to the Society. The petitioners have traced out the history including the back ground for the aforesaid acquisition as contained in Verma Committee report including a letter sent by the Chairman of the P.I.T. dated 12th December 1959 requesting the Director of Land Acquisition to reject the proposal for acquisition of land by the Society as the area sought to be acquired was included in the Boring Road area scheme of the P.I.T. for development of that area. Despite the fact that the Secretary, Local Self Government supported the objection of the Chairman, P.I.T. the Society succeeded in prevailing upon these objections raised by the State authorities and succeeded in getting the acquisition of the land made.

3. To cut a long story short the Society after the acquisition of the aforesaid 25.52. acres of land made a further acquisition for 32 acres of land in its vicinity and an agreement was entered into between the Society and the Government of Bihar in that regard.. However, the Hon"ble High Court set aside the acquisition with liberty to the Government to acquire the land in accordance with law. The P.I.T. again moved for acquisition of a total of 64.49 acres of land including the 32 acres of kind which was earlier acquired for the Society but was set aside by the High Court. The entire area of more than 64 acres of land was sought to be acquired u/s 17 of the Land Acquisition Act invoking the special power of the Government alleging it to be case of urgency. The Society had mismanaged the land measuring 24.52 acres which was handed over to it for the purposes indicated above. Despite the criticiom of the Society regarding its mismanagement, the Society managed an agreement with the P.I.T. for transfer of further 30 acres of land to it and for which admittedly only possession was given to the P.I.T. The petitioners claim that right and title over the said piece of land were not yet delivered to the P.I.T. and the Society agreed to take the possession of the land measuring 30 acres with the liability of encroachment over it. The petitioners submit that most of the area falling within this 30 acres of land were purchased by the intending builders for their residential houses and were already existing as admitted in the deed of agreement entered into between the

Society and the P.I.T. When the matter was brought to the notice of the State Govt. the Secretary Urban Development Department wrote a letter dated 30.3.75 to the Chairman, P.I.T. pointing out that the transfer of the land by the said agreement dated 11.1.75 by the P.I.T. to the Society was totally unwarranted. The Trust was fully aware of the fact that proper sanction to the scheme was not even given by the Government and without obtaining permission of the Government the transfer of the said lands was not proper. A true copy of the said letter dated 30.5.75 has been filed as Annexure-3. The petitioners allege that the malafide and motivated mischievous act of the Society can be gathered from the fact that while only the possession over the said 30 acres of land was handed over to the Society on 11.1.75 without any right, title and interest over it by the P.I.T. which itself Was lacking the same and further the land was handed over with a clear understanding that the Society was being given the same with liability of encroachment upon it, the Society, it is alleged, acted in a most hurried manner by allotting the plots in the said land by absolute deed of sale in favour of the alleged members in the year 1975 itself inspite of wide protest from all comers. The petitioners have enclosed a photo copy of the relevant portion, of the sale deed executed by the Society in favour of one Raj Laxmi Devi marked as Annexure-4. The sale deed was executed by the Society and column No. 5 of the said deed of sale claimed in the land had been transferred to the alleged purchasers. The petitioners alleged that this is out and a fraudulent act on the part of the Society which cannot be sustained by any principle of law, equity, or justice and the Society and its executive members were/are liable to be prosecuted criminally. They are also liable to return the amount of money which they had illegally extracted from the alleged purchasers. The irregularities committed in the allotment of the land by the society drew the attention of the general public and an enquiry committee was set up by the Bihar Legislative Counsel. The Committee was constituted after 20.3.75 after the matter was raised in the Council regarding irregularities committed by the Society in illegal allotment of the land to the persons. The committee formulated a number of issues to be considered and enquired into. The petitioners alleged that the committee in its report came to a positive conclusion that 32 acres of land was allotted to persons in a most arbitrary manner many of whom were not even members of the Society at the time of their allotment. The committee also came to the conclusion that the allotment of 32 acres of land to the Society by the P.I.T. was not proper and committee also went on to observe that by acquiring the land of the P.I.T., the society which had been reduced to a society of the capitalists and wealthy persons were intending to be benefited. The committee is reported to have observed in their report that the main culprit for the said transaction was the then chairman of the P.I.T. Sri B.N. Basu. The Committee described it to be quite strange that on 11th January, 1975 (15th January 1975 mentioned in the writ petition is an obvious mistake) the P.I.T. considered the matter, took the decision to transfer 32 acres of land to the Society by an agreement on the same day and that on that very day the agreement was entered upon and the actual transfer was also made and the entire process of

transfer and registration of the land was completed on that very day. The petitioners have also extensively quoted from Committee's report wherein there is a reference to a decision of the State Cabinet dated 23rd September 1975 that the land must not be allotted to the said Society. On the contrary a decision was taken that the land instead of being released be used for the poor people living in the hutment's for their settlement and other public purposes. Irregularities in the allotment of land by the Society have also been extensively quoted by the committee in its report and the committee recorded the observation that the then Secretary of the Society had formed a caucus for grabbing the land in illegal and arbitrary manner for the members of his caucus. The co-coordinator of the fact finding committee of the Bihar Legislative council recommended that 32 acres of land transferred to the Society by the P.I.T. was not proper and also recommended" action against Sri B.N. Basu, Chairman P.I.T. as also against the then President and the Secretary of the Society for irregularities committed by them in the allotment of land and plots as per the provisions of law. The third and, the most vital recommendation of the committee in its report referred to by the writ petitioners is that the land was handed over to the Society by the P.I.T. in a most arbitrary manner and it was recommended that the land be taken back and handed over to the actual land holders. A true copy of the report submitted by the Committee in 1978 constituted by the Bihar Legislative Council has been filed as Annexure-5.

4. In view of the report (Annexure-5) submitted by the committee the Vice-Chairman of the P.R.D.A. wrote a letter dated 29.1.82 that the P.R.D.A. had decided to release the said land from acquisition. A Photostat copy of the letter dated 29.1.82 has been annexed as Annexure-6. The writ petitioners, therefore, alleged that in view of what has already been stated above the Society never acted according to the terms and conditions of the agreement and on the basis of which the lands were being provided to it by the State Govt. and on the contrary it acted in a manner prejudicial to the interest of the general -public. The purposes for which the land was earlier handed over to the Society were never fulfilled by the Society and it distributed the entire piece of land handed over to it by agreement dated 11.1.75 amongst persons with the sole purpose and intention of earning profit out of it. The Society as alleged had thus defected the purpose for which the land was acquired and handed over to the Society and that this can be verified even today by holding an enquiry into the matter. The Petitioners alleged that in the back ground of above facts and circumstances specially after submission of the report (Annexure-5) the Society surreptitiously filed a writ application bearing C.W.J.C. No. 3241/82 before this Hon"ble court. The Society intentionally suppressed the material facts which were relevant for the determination of the actual issue and came to this Court raising a technical plea that since the land was acquired for public purpose and alleged possession was handed over to it, the acquisition of the land cannot be withdrawn and the land cannot be handed over back to the, actual owners. The petitioners or other residents on the land in question were never made party in the said writ

application. On the basis of the submissions advanced by the Society this Hon''ble court was pleased to hold that since the possession of the land was delivered to the Society, the Government cannot withdraw from the acquisition of the land. The petitioners alleged that various reports of the committee including the report contained in Annexure-5 were intentionally suppressed which exposed the misdeeds of the Society and confirmed that they had acted against the public purpose and which disentitled them from claiming any right out of the said agreement with the Government. The P.R.D.A. and the State Govt. it is alleged, also failed to bring the actual facts on the record in support of the reason for the decision of the Government to withdraw from acquisition and/or to acquire the land for other public purposes including settling the same with the residents of that locality. It is stated that it was in the back ground of all this that this Hon''ble court vide its order dated 23.5.84 allowed the writ application filed by the Society and directed the Collector to prepare the award. A copy of the order dated 23.5.84 passed in C.W.J.C 3241/82 has been filed as Annexure-7. The writ petitioners have thereafter, referred to the filing of C.W.J.C 6373/88 by the Society before this Court and the judgment of this Court dated 30.7.93 disposing of the said writ application. A copy of the aforesaid judgment dated 30.7.93 has been filed as Annexure-8. The writ petitioners have referred to question No. (C) formulated for consideration in the said writ application namely whether the writ application namely whether the writ application is maintainable and the petitioners are to any relief. They have also quoted paragraphs 96 to 102 of the said judgment and have stated that it was evident therefrom that this Court gave its positive finding that the Society had suppressed material facts with a view to obtain a favourable relief and as such the reliefs were refused to the Society as they had not come up with clean hands. The writ petitioners have, however, described it as unfortunate that other facts which had been which had a direct bearing on the question of handing over of 30 acres of land to the Society were not brought to the notice of the Hon''ble Court. The writ petitioners have also referred to the judgment of the Hon''ble Supreme Court reported in *Awadh Bihari and Other Vs. State of Bihar and others*, whereby the judgment of this Court dated 30.7.93 (Annexure-8) was upheld. A photo copy of the judgment dated 31.8.95 of the Hon''ble Supreme Court has been annexed as Annexure-9. By the said judgment the Apex court had been pleased to hold that the land acquisition proceeding initiated for a laudable purpose more than 37 years ago is not complete and laudable and noble cause is delayed for more than three decades on one pretext or the other. The Hon''ble Supreme Court further directed the State of Bihar and its Officers to complete the proceeding, in the quickest possible time regarding the acquisition.

5. The writ petitioners claim to be the residents of the locality in which the acquisition proceeding is said to have been completed. They have described themselves as responsible citizens of this State who do appreciate the concern of this Hon''ble court as well as that of the Hon''ble Supreme Court regarding laudable and noble cause for constructing a well developed housing colony in the

area. However, they claim that their limited interest in the matter is that the public purpose for which the land was sought to be acquired by the Society shall be frustrated if the Society in view of their mischievous conduct and mischief played throughout with the citizens is allowed to enter into possession of the land. The petitioners submit that presently the locality in which they are residing known as Budha Colony is one of the possessed areas of Patna and has been developed in a well planned manner having proper road, serverege, communication etc. for which the land was sought to be acquired. If any of the portion of that area is found to be developed into a slum, the same may be cleaned and they undertake to co-operate with the authorities in this regard. The petitioner, however, submit that since they have constructed their houses in a natural process after taking all precautions and information with regard to the said land, including the sanction of the map by the respondent-authority and getting municipal holding number from the municipality and completing all other formalities as a common citizen required under law to do and further as they have not been objected by any authority/person in peaceful possession and construction of the houses till recently they may not be allowed to evict them which shall expose them to the vagaries and their entire family life shall be ruined. The writ petitioners have also stated that from various judgments of this Hon''ble court referred to in the writ petition, it is evident that the State Govt. has only been directed to prepare an award regarding acquisition of the land, but no court till date has given any direction to evict the petitioners and/or other residents of the locality from their houses. The contention is that the respondents-authorities in collusion with the Society by misrepresenting and misinterpreting the judgment of the Hon''ble Supreme Court were trying to evict the petitioners from their peaceful possession over the land. in question which is highly arbitrary and malafide in the facts and circumstances of the case. The writ petitioners have also referred to the judgment (Annexure-8) of this Court whereby according to the petitioners the court had given a positive finding that no order for eviction of the person/residents of the locality can be passed by this Hon''ble court and it was open to the Society to get the order in the Title Suit which the Society had filed against 357 persons vide T.S. No. 32/87 pending in, the court of the Subordinate Judge-1, Patna, and which Title Suit was still pending and which suit the Society may pursue in the light of the judgment of this Court dated 30.7.93. The writ petitioners, however, have made it clear that they were not challenging the authority of the State Govt. to acquire the land in question as directed by the Hon''ble court as also by the Hon''ble Supreme Court and their limited prayer was that in view of the equity involved in the matter in the interest of justice the settlement of the land for the residential colony be made with the respective residents of the locality who have constructed their houses on the respective plots of land as they are bonafide seekers of land for construction of house and are not land grabbers like the Society.

6. The P.R.D.A. issued a notice dated 9.2.96 (Annexure-10) stating that in view of the judgment of the Hon''ble Supreme Court in Civil Appeal Nos. 7802, 7808

and 7821 of 1995 and in compliance thereof unauthorised occupants of 57.72 acres of land acquitted vide land acquisition case No. 63/61-62 (hereinafter "land acquisition case") were informed that they should vacate the land within 15 days from the date of publication of the notice falling which the respondents-P.R.D.A. with the help of the Collector, Patna, shall remove the encroachments from the entire land. The aforesaid notice which was published in a local newspaper on 9.2.96 has been described as arbitrary, illegal and without jurisdiction as the Hon"ble Supreme Court in the judgment mentioned in the notice had given no such direction, The notice, it is alleged, has been published by the respondents P.R.D.A. in collusion with the respondents-society. The notice created havoc among the residents of the locality and a detailed representation signed by as many as 300 persons of the locality was filed on 26.2.96. A copy of the representation addressed to the Collector is Annexure-11. Though the representation was still pending and although this Court had stayed the operation of the impugned notice in some of the writ applications filled by the residents including C.W.J.C No. 2275/96 and C.W.J.C. No. 2290/96, the respondents-authority again visited the colony with police force on 10.3.96 and threatened to demolish the house of the persons of the locality including the petitioners. The said news was published in almost all the newspaper and a photo copy of the news item dated 30.3.96 published in the "Times of India" has been annexed as Annexure-12. The petitioners further case is that all the petitioners have got only one plot in the town and only one house standing on the said plot which they had built after disposing of their properties elsewhere and if they were evicted from their present house in pursuance of the impugned notice they shall have no shelter anywhere on the earth to live in. The action of the respondents have, therefore, been described as violative of the fundamental rights of the petitioners enshrined under Articles 14, 19(1)(d)(e) and 21 of the Constitution of India. The petitioners have also referred to the provisions of the P.R.D.A. (Disposal of Land) Rules, 1978 under the Bihar Regional Developer Authority Act. They contend that they are entitled to allotment of land in order of preference for settlement of residential plots as per Rule 17 of the said Rules and that the eviction of the petitioners from their house/and for allotment of the same to any other person shall run contrary to the provisions of the statutory Rules. The petitioners claim that they are not criminal trespassers on the land and they even undertake to pay the development cost it imposed upon them by the respondents-State authority as per the provisions of the Bihar Regional Development Authority Act and Rules framed thereunder.

7. No counter affidavit has been filed by the respondents. Howe learned Counsel for the respondents-State, P.R.D.A. and the Society submitted that the writ petitioners had produced no material whatsoever to provide the factual basis to support their case of denial of fundamental rights. In so far challenge to the legal validity of the impugned notice (Annexure-10) issued by the Vice-Chairman, P.R.D.A. and published on 9.2.96 for removal of the encroachments from the acquired land is concerned, they contend that the legality of the notice is also

under challenge in C.W.J.C. 2591/96 and other analogous cases in which the respondents have filed their counter affidavit and the said batch of writ applications has already been heard and order reserved. Their contention is that the impugned notice has been issued by the P.R.D.A. in compliance of the judgment of the Supreme Court and the P.R.D.A. have also the legal authority to issue the notice u/s 85 of the B.R.D.A. Act for removal of encroachments from the land of the P.R.D.A. It was also contended on behalf of the respondents that only possession over 3 acres of land had been handed over to the Society and the title to the entire acquired land i.e. 57.71 acres was still with the P.R.D.A. and that the land including the 30 acres handed over to the Society were public lands and the P.R.D.A under the law was competent to take steps for removal of encroachments therefrom.

8. Though the writ petitioners claim to have purchased the lands of the plots acquired in the land acquisition case and to have built houses after getting the plans sanctioned by the P.R.D.A., neither any sale deed nor any order of the P.R.D.A. sanctioning the plan had been filed. It was on this basis that counsel for the respondents had advanced the argument that no materials had been produced by the petitioners to support the averments in the writ petition that the respondents authority by their act were denying the fundamental rights of the petitioners enshrined under Articles 14, 19 and 21 of the Constitution. There is substance in the contention put forwarded on behalf of the respondents. In absence of any factual basis the allegation of denial of fundamental rights cannot be entertained rights cannot be entertained in this writ application.

9. Learned Counsel for the petitioners argued that the Society had suppressed material facts from this Court while filing C.W.J.C. 3241/82 and it was on account of such suppression of material facts and misrepresentation by the Society that this Court allowed writ application by their judgment dated 23.5.84 and directed that the Government cannot withdraw from acquisition. Thus the direction of this Court regarding preparation of the award is said to have been obtained by fraud. The admitted position is that the Society had filed another writ application- C.W.J.C. 6373/88, inter alia, for enforcing the orders and directions contained in the judgment dated 23.5.84 and C.W.J.C. 6373/88 and other analogous cases were disposal of by this Court on 30.7.93 and in which the State-authorities were given direction complete the formalities concerning preparation of the award. It is also not dispute that the Apex Court by its judgment dated 31.8.95 dismissed the challenge to the judgment of this Court dated 30.7.93 in C.W.J.C. 6373/88. The said judgment is reported in *Awadh Bihari and Other Vs. State of Bihar and others*, . The Apex Court had observed that "in allowing the prayer of the Society in C.W.J.C. 6373/88 by a common judgment dated 30.7.93, the High Court was only implementing its-earlier order and directions in C.W.J.C. 3241/82 which it was bound to do in the circumstances." The Apex Court then proceeded to hold that- "the directions and orders contained in C.W.J.C. 3241/82 which were not interfered with by this Court in SLP should be full and effectively implemented". In such circumstances can the petitioners-question the judgment of this Court

delivered more than 12 years ago on 23.5.84 that the judgment was obtained by the Society as a result of fraud committed? The allegation of fraud relates to suppression of material facts by the Society regarding alleged irregularities committed by the Society in allotting plots to its members from 30.02. acres of land acquired and handed over to the Society. The circumstances in which the Patna Improvement Trust handed over possession over the land to the Society in 1975 creating serious doubts about the bonafide of the transaction were also withheld by the Society. It is pointed out that the irregularities and illegality s committed by the Society in the matter had already been highlighted in the report of the Verma Committee as also by the Committee constituted by the Bihar Legislative Council. The contention is that all this information was deliberately withheld by the Society from the court and the judgment was, therefore, obtained by the playing fraud upon the court.

10. Learned Counsel for the petitioners argued that where the judgment of the court is being challenged on the ground of fraud committed by the petitioners, delay in making the challenge is immaterial. He also argued that such challenge can be made at any stage and even if the judgment obtained by fraud had been up-held by the High Court of the land. Learned Counsel has relied on a decision of the Apex Court in *S.P. Chengalvaraya Naidu (dead) by L.Rs. Vs. Jagannath (dead) by L.Rs. and others*, wherein it was observed, to quote:

...It is the settled proposition of law that a judgment or decree obtained by playing fraud on the court is a nullity and non est in the eyes of law. Such a judgment/decre by the first court or by the highest court has to be treated as a nullity by every court whether superior or inferior. It can be challenged in any court even in collateral proceedings.

In course of the said judgment it was also observed that the courts of law are meant for imparting justice between the parties. One who comes to the court, must come with clean hands, and "We have no hesitation to say that a person whose case is based falsehood, has no right to approach the court," and "he can be summarily thrown out at any stage of the litigation." In my opinion the aforesaid decision of the Apex Court is of no help to the petitioners. A fraud is an act of deliberate deception with the design of securing something by taking unfair advantage of another. It is deception in order to gain by another's loss. It is a cheating intended to get an advantage. The materials alleged to have been suppressed by the Society were matters of public knowledge and were in any case within the knowledge of the respondents-State and the P.R.D.A. The I judgment of this Court in *C.W.J.C. 3241/82* was essentially based on a question of I law where after possession had been delivered in a land acquisition case under : emergency provision, the State can withdraw from the acquisition. It is, therefore, doubtful whether the allegations against the Society with regard to irregularities or illegalities committed by the Society in the matter of allotment of plots to its members had any direct bearing on the matter in issue in the said writ application. It is, therefore, doubtful whether on the facts alleged any case

of fraud is made out against the respondents-Society at all. Otherwise also since the judgment delivered in 1984 has already been up-held by the Supreme Court, the petitioners cannot be permitted to challenge it on the ground of fraud after 12 years. As already observed earlier the material facts and said to have been suppress from the court were matters of public knowledge and the petitioners cannot make out a case that they came to know about such materials only recently. Thus the ground that the judgment was obtained by frauds by the Society is not available to the petitioners which is also barred by delay and laches.

11. The interesting aspect of the case is that petitioners clear averment in the writ application is that they do not challenge the legality of the acquisition made. What they challenge is the decision of the Patna Improvement Trust now tire P.R.D.A. to hand over possession over 30.02 acres of land to the Society, Such possession had been handed over to the Society in January 1975. At the time of acquisition of the lands itself there was a clear understanding that 32.48 acres from the land acquired was for the Society and the Society had also cleared its monetary liabilities in the matter. The Society filed C.W.J.C. 3241/82 on the above basis and obtained a favourable judgment regarding preparation of the award in the land acquisition case. All this cannot be challenged after 21 years and the challenge can and should be rejected on grounds of delay and laches alone. There is otherwise also no merit in the contention for possession over the land because it had to be handed over to the Society as the acquisition of 64.49 acres of land was made by State for the P.I.T. (P.R.D.A.) on the clear understanding that 32.40 acres out of said land was for the Society.

12. The petitioners have challenged the legal validity of the general notice (Annexure-10) issued by the Vice-Chairman, P.R.D.A. published in the newspaper dated 9.2.96. The notice is in Hindi and its English translation reads as follows:

Public Notice

In compliance of the order passed in Civil Appeal Nos. 7803 and 7821 of 1995 by Hon"ble the Supreme Court it is hereby informed to those persons, who are in unauthorised possession of 57.72 acres of land acquired vide L.A. Case No. 63/61-62 within Thana No. 4, Mauza Dujra, to make all the acquired land free from encroachment within 15 days from the date of publication of this notice, otherwise encroachment shall be removed from the acquired land by the P.R.D.A. with the help of the Collector, Patna.

Vice-Chairman, Patna Regional Development Authority.

The question has been considered in detail after hearing the petitioners in C.W.J.C. 2591/96 and other analogous cases in which the respondents-State, the Land Acquisition Officer, the P.R.D.A. and the Budha Grih Nirman Sahyog Samti Ltd. had also filed counter affidavits. The said batch of writ applications has been disposed of by an order passed today in which only a portion of the impugned notice threatening to remove the encroachment with the help of the Collector it

the persons in unauthorised possession did not remove the encroachments within 15 days of the publication of the notice has been quashed. This Court had upheld the argument advanced on behalf of the petitioners that even if the petitioners were in unauthorised occupation of the acquired land, the law of the land required that their possession could not be taken away by the State in an unauthorised manner and that a person in unauthorised occupation can invoke the jurisdiction of the High court under Articles 226 and 227 of the Constitution if he is being evicted in a manner not authorised by law in this connection paragraphs 20 and 21 of the order dated 3.6.96 passed in C.W.J.C. No. 2591/96 and other analogous cases are reproduced below:

20. It is not necessary to dwell on this aspect of the case for neither the State nor the Authority has put forward any argument that persons found to have encroached upon the acquired land which is in the nature of a public land can be removed from the land in the process of removing the encroachment without following any procedure established by law. The Authority which issued the impugned notice calling upon the persons in unauthorised occupation to remove the encroachment have themselves stated in the counter affidavit that they are taking action in accordance with law and the provisions of Section 85(4)(ga) of the B.R.D.A. Act 1981 were specifically referred to by them in that behalf. The question is whether the impugned notice deserves to be quashed on the ground that no provision of law under which it was issued had been mentioned therein. If this Court had found on more than one occasion that those found in unauthorised occupation of any portion of the acquired land had no right title and interest except receiving the amount of compensation and the decision of this Court had also been upheld by the Apex Court on several occasions, what was wrong on the part of the P.R.D.A. for whose benefit the acquisition had been made and to whom the land belonged after the award was prepared, to issue a public notice calling upon the person in such unauthorised occupation to remove the encroachments? There is another aspect of the case. The admitted position is that a large number of persons had encroached upon the acquired land and only some of them had figured as petitioners and respondents in a number of cases before the High Court and the Apex Court. All of them may not be even aware of the decision of this Court and the Apex court adversely affecting their interest, although as already held by the courts they were bound by such decision. If a Public notice is issued calling upon them to remove the encroachment it is only fair to the persons concerned as it gives them an opportunity to remove the encroachment before being subjected to any proceeding drawn under the law for removal of the encroachment made by them. The acquired lands have been found to be public land which were in possession of the Authority ever since 1962 and the land belonged to the Authority for whom it was acquired by the State after completion of the award. If the Authority had chosen to issue such a public notice giving information to the concerned persons after the matter had been finally settled by the Apex Court in *Awadh Bihari Yadav's case* (supra), no legal flaw or lack of jurisdiction on the

part of the Authority can be found. The stand, of some of the writ petitioners that since they were in possession of the land and had built houses and were living there for more than 35 years, the State or its Authority had no power to remove them cannot be accepted for the simple reason that if the land was public land and had already vested in the State after the acquisition and the title to the public land was now with the P.R.D.A. the authorities of the P.R.D.A. could take action under the law for removal of such encroachments since possession of the petitioners in the facts and circumstances of the case give them no right to continue with their unauthorised possession howsoever long it may be.

21. The next important question for consideration is whether that part of the notice which mentioned that if the encroachments are not removed within 15 days of the publication of the notice, the encroachment shall be removed with the help of the Collector can be held to be within the authority of the Vice-Chairman of the P.R.D.A. to issue. The only possible answer to the question would be in the negative. It is one thing to call upon the persons concerned in the light of the judgment of the Apex Court to vacate the land from their unauthorised occupation and free the land from the encroachment but to tell them that if they do not do so the encroachment shall be removed with the help of the Collector is quite a different thing. As already noticed earlier even the persons who had encroached upon the land could be removed only in accordance by law. The P.R.D.A. Act were authorised to take such action for removal of the encroachment and in doing so they were required to comply with the provisions of the Bihar Public Land Encroachment Act. Since the impugned notice does not say that on their failure to remove the encroachment action will be taken in accordance with law, the notice in so far it says that On the failure of the persons to remove the encroachment, the encroachment shall be removed with help of the Collector is in excess of the jurisdiction of the Vice-Chairman of the Authority and the aforesaid portion of the notice deserves to be quashed and I order accordingly. It must, however, be held that the P.R.D.A. is competent to take action in accordance even if the Society had filed a land encroachment case as also a Title Suit for removal of such encroachment for the Authority is not bound by any act of the Society and since the Public Land belonged to the Authority and not to the Society to which only possession had been transferred, the Authority would be within its jurisdiction in taking action in accordance with law to remove the encroachment. Only because some of the writ petitioners happened to be made parties to the land encroachment proceeding or the Title Suit as defendants by the Society could not clothe them with any right to deny the authority of a statutory body like the P.R.D.A. to take such action as is permissible under the law for removal of the encroachment made by them. In other words the pendency of the land encroachment case or the Title Suit filed by the Society for removal of encroachments will not prevent the P.R.D.A. from exercising its statutory powers under the B.R.D.A. Act.

13. Thus in terms of the order of this Court in C.W.J.C. 2591/96 and other analogous cases that portion of the impugned notice (Annexure-10) threatening

to remove the encroachment with the help of the Collector if the encroachments were not removed by those in unauthorised possession within 15 days of the publication of the notice is hereby quashed with liberty to the P.R.D.A. to proceed in accordance with law for removal of the encroachment. This writ application is thus allowed in part to the extent mentioned above, but without costs.