
(2008) 04 AHC CK 0180

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 15483 of 2008

Babu

APPELLANT

Vs

State of U.P.And Others

RESPONDENT

Date of Decision : 24-04-2008

Acts Referred:

Land Acquisition Act, 1894 — Section 11, 17, 4, 48, 5A

Citation : (2008) 04 AHC CK 0180

Hon'ble Judges : Anjani Kumar, J and Sudhir Agarwal, J

Final Decision : Disposed Of

Judgement

1. We have heard Sri R.C. Singh, learned counsel for the petitioner, learned Standing Counsel for respondent Nos. 1 to 3 and Sri Pradeep Kumar, learned counsel appearing on behalf of respondent No. 4.

2. With the consent of learned counsel for the parties this writ petition has been heard for final disposal at the admission stage under the Rules of the Court and is being decided at this stage itself.

3. The petitioner under Article 226 of the Constitution of India has come to this Court aggrieved by the order dated 20.2.2008 (Annexure 9 to the writ petition) of the State Government rejecting his representation whereby he claimed release of his land from acquisition under Land Acquisition Act, 1894 (hereinafter referred to as the "Act"). He has also challenged the notifications dated 31.12.2004 (Annexure 3 to the writ petition) and 5.9.2005 (Annexure 5 to the writ petition) issued under Sections 4 and 6 of the Act respectively in so far as they pertain to plot No. 222 situated in Village Sakipur, Pargana Dadri, Tehsil Sadar, District Gautam Budh Nagar (hereinafter referred to as the "land in dispute").

4. In brief, the case of petitioner is that he is a Bhumidhar of land in dispute measuring 2 bigha 9 biswa 8 biswansi. He has constructed a Pucca residential house consisting of 4 living rooms, courtyard, Verandah, cattle shed, store room

etc. and the land is surrounded by a boundary wall. The petitioner has also his own source of water inside the boundary wall of the house and living at the said residence with his family members consisting of wife, daughter, sons, daughter-in-law, grandsons and grand daughters. A notification under Section 4(1) of the Act was issued on 31.12.2004 proposing to acquire certain land including plot No. 222, i.e. the land in dispute, for the purpose of Planned Industrial Development through Greater Noida Industrial Development Authority (hereinafter referred to as the "GNIDA") The petitioner claims to have filed an objection on 11.1.2005 whereupon it is said that no order was passed by the respondents. On the contrary, the respondent State issued a notification dated 5.9.2005 under Section 6 of the Act for acquisition of the land in question. Consequently the petitioner filed writ petition No. 67852 of 2005 challenging the notifications dated 31.12.2004 and 5.9.2005. The said writ petition, however, was finally disposed of by a Division Bench of this Court vide judgment dated 3.4.2007 directing the petitioner to file a comprehensive representation before the respondent No. 1 and the said authority was required to examine his grievance and pass appropriate order expeditiously, preferably within a period of three months and till then, parties were directed to maintain status quo. In furtherance thereto, the petitioner made a representation on 19.5.2007, and, the same has been rejected by the respondent No. 1 vide impugned order dated 20.2.2008.

5. The contention of learned counsel for the petitioner is that notifications issued under Sections 4 and 6 are null and void having not been issued by complying the mandatory requirement of the Act. In any case, it is submitted that the order passed on the petitioner's representation cannot be said to be a speaking order. Moreso, it is based on presumptions and the findings recorded are nonest since without considering evidence on record the respondent No. 1 has passed the impugned order and, therefore, it is liable to be set aside.

6. Sri R.C. Singh, learned counsel appearing for the petitioner besides making oral submissions, as aforesaid, has also filed a written argument wherein the submissions raised in brief are as under:

(1) The order is not a reasoned order and being non speaking is liable to be set aside.

(2) The report dated 11.1.2005 with respect to the construction of residential building at the land in dispute has not been considered and relevant material has been ignored.

(3) Non exclusion of the petitioner's land is based on unfair and unreasonable consideration of the matter and the conclusion drawn by respondent No. 1 is perverse.

(4) The construction was existing prior to the coming into existence of GNIDA and in support thereof the electricity bills telephone bills, and ration card etc. have been filed by the petitioner but the same have not been considered and this

vitiates the impugned order.

(5) The Khasra entry showing Abadi on the land in dispute has also not been considered. The order is perverse, whimsical and is based on no evidence.

(6) Since the reasons for rejecting petitioner's application are not germane, arbitrary and irrational, therefore the impugned order is liable to be set aside.

7. The respondents have disputed the above contentions. It is said that whatever documents submitted by petitioner were of the period of 2004-05 and thereafter. He could not place any material to show that the construction on the land in dispute was made by him before the constitution of GNIDA i.e. prior to 1991. In the absence of any material placed by the petitioner before respondent No. 1 it has rightly been held that the entire alleged construction is subsequent to the establishment of GNIDA. Since no permission has been obtained from the said authority, though required under law, the aforesaid construction being illegal would not confer any right upon the petitioner to sustain his claim for exclusion of land in question from acquisition. It is also contended that once the claim of a person for excluding his land from acquisition has been rejected by the Government, the Court may not delve into factual disputed questions under Article 226 of the Constitution of India as held by Hon'ble apex Court in *Ved Prakash and others v. Ministry of Industry, Lucknow and another*, AIR 2003 SC 3479; *Mandir Shree Sitaramji Alia Shree Sitararam Bhandar v. Land Acquisition Collector and others*, JT 2005 (7) SC 624, and, two Division Bench decisions of this Court in *Naresh Chandra and others v. Meerut Development Authority and another*, 2003 (52) ALR 631 and *Smt. Manju Lata Agarwal v. State of U.P. and others*, 2007(9) SCC 447. It is further said that the notifications issued under Sections 4 and 6 impugned in this writ petition, were also challenged in the earlier writ petition filed by the petitioner but such relief was not granted by this Court and, therefore, it should be deemed to have been rejected. It is thus contended that the same relief cannot be prayed again in this writ petition and to that extent this is a second writ petition hence is liable to be dismissed on this ground alone.

8. We have heard learned counsel for the parties and perused the record.

9. First, we propose to consider the question as to whether it is open to the petitioner to challenge the notifications dated 31.12.2004 and 5.9.2005 issued under Sections 4 and 6 of the Act when in this regard reliefs were sought in his earlier petition but not granted by this Court.

10. Learned counsel for the petitioner submitted that this Court did not inter into the question of validity of the aforesaid notifications and instead permitted the petitioner to make a representation to the State Government who was decided the same. However, we do not find any substance therein. Such a representation at the best could have been referable to Section 48 of the Act wherein a person whose land has been included in the notifications issued under Sections 4 and 6 of the Act but possession has not been taken may approach the Government for

release of the said land from such acquisition. The question of release of the land from acquisition presupposes acquisition of land by issuing notifications under Sections 4 and 6 of the Act but only possession was not taken. This leads to the conclusion that this Court did not accept the contention of petitioner that the notifications issued under Sections 4 and 6 were bad or liable to be set aside in any manner otherwise there was no occasion to direct to decide application for releasing the land from acquisition. It has not been disputed by learned counsel for the petitioner that there was a prayer seeking a writ of certorari for quashing the notifications dated 31.12.2004 and 5.9.2005 in the earlier writ petition filed by the petitioner but the said relief was not granted by this Court.

11. In the similar circumstances, a Division Bench of this Court in Smt. Manju Lata Agarwal (*supra*) refused to consider similar prayer in subsequent writ petition challenging notifications under Sections 4 and 6 of the Act and observed as under:

"Earlier Writ Petition No. 63724 of 2006 filed by Buddhi Ram and others, who are petitioners in Writ Petition No. 40330 of 2007, reveals that all these issues were raised. However, this Court did not quash the proceedings, nor considered it appropriate to hold that the acquisition was bad as the inquiry was dispensed but granted relief to the extent that their applications for exemption of land under Section 48 (1) of the Act may be considered. Those orders were not challenged by the said petitioners and had attained finality. Thus, it is difficult for this Court to take a view contrary to the view taken in the aforesaid cases, for the reason that even if the relief sought had not been specifically rejected by the Court, it would be deemed to have been rejected as all the submissions made in the present writ petition were agitated therein. In the present writ petition, quashing of acquisition proceedings have been sought on the same ground which had been taken in earlier writ petition....."

(Para 90)

12. Here also the notifications under Sections 4 and 6 have been challenged on the same grounds on which were raised in the earlier writ petition. Therefore, following the view taken in the above judgment in Smt. Manju Lata Agarwal (*supra*), in our view the petitioner cannot be allowed to challenge notifications dated 31.12.2004 and 5.9.2005 issued under Sections 4 and 6 of the Act in this writ petition when such relief was not granted in the earlier writ petition.

13. Now we come to the next question as to whether order passed by the State Government rejecting petitioner's request for release of land in question from acquisition has been validly passed and whether the impugned order being nonspeaking has been passed on relevant considerations or not.

14. The very first question in this regard would be as to what is the scope of power of the State Government under Section 48 with respect to release of the land and what is the right of owner of the land, which has been acquired, to enforce a claim against the State Government for release of land from acquisition.

15. Section 48 of the Act reads as under:

"48. Completion of acquisition not compulsory but compensation to be awarded when not completed.(1) Except in the case provided for in Section 36, the Government shall be at liberty to withdraw from the acquisition, of any land of which possession has not been taken.

(2) Whenever the Government withdraws from any such acquisition, the Collector shall determine the amount of compensation due for the damage suffered by the owner in consequence of the notice or of any proceedings thereunder, and shall pay such amount to the person interested, together with all costs reasonably incurred by him in the prosecution of the proceedings under this Act relating to the said land.

(3) The provisions of Part III of this Act shall apply, so far as may be, to the determination of the compensation payable under this section."

16. A bare perusal of the aforesaid provision makes it clear that once possession of the land has been taken by the State Government and land vested in the State Government, the same cannot be released from acquisition and to that extent Section 48 has no application. However, where the process of acquisition to the extent of issuance of notification under Section 6 has been completed but possession of the land has not been taken by the State Government, so long as the possession has not been taken it is open to the State Government to release the land from acquisition. In order to understand the nature of power of the State Government under Section 48 of the Act it would be appropriate to recollect the procedure of acquisition under the Act. Whenever, it appears to the Government that any land in any locality is needed or is likely to be needed for any public purpose or for a company, it shall publish a notification to that effect in the official Gazette. Besides the two daily news paper circulating in that locality of which one atleast shall be in regional language shall also contain the said notification and the Collector shall cause public notice of the substance of such notification to be given at convenient places in the said locality. However, in view of the U. P. Amendment vide U.P. Act No. 8 of 1974 an exception has been provided in respect of such land to which by virtue of a direction of the State Government under subsection (4) of Section 17 the provisions of Section 5A shall not apply and an explanation has also been inserted w.e.f. 16.10.1978 which reads as under:

"Explanation. In respect of any land in a regulated area as defined in the Uttar Pradesh (Regulation of Building Operations) Act, 1958, a notification under this subsection may be issued in anticipation of the preparation and finalisation of a scheme for the planned development of the area in which the land is situated and notwithstanding anything contained in Section 5A. it shall be sufficient to specify in such notification that the land is needed or is likely to be needed for the planned development of that area without further specification of the particulars of the proposed development.

17. Section 17 of the Act provides that in cases of emergency whenever the appropriate Government so directs the Collector on the expiration of 15 days from the date of publication of declaration mentioned in Section 9 or with the consent in writing of the person concerned at any time after publication of notification under Section 4 may take possession of any waste or arable land needed for public purpose or for a company and thereupon such land shall vest in the State Government free from all encumbrances, subsection (4) of Section 17 provides that in case where subsections (1) or (2) are applicable the provisions of Section 5A shall not apply where the Government so directs or possession of the land has been taken with consent of the person concerned. Section 5A, however, provides that where notification under Section 4 has been issued any person interested in any land which has been notified under Section 4 may file objection to the acquisition of land or of any land in the locality as the case may be. Such objection shall be made to the Collector in writing who shall give an opportunity of being heard to the person concerned or any person authorised by him and after hearing of such objections shall make further inquiry, if any, as he thinks necessary and make a report to the Government containing his recommendation on the objection together with the record of proceedings held by him for decision of the Government. The Government concerned thereafter would take a decision on the objection which shall be final. Thereafter, a notification is required to be issued under Section 6 declaring the intention of the Government for acquisition of the land covered by notification under Section 4 and it shall also authorise the Collector to take possession of the land. The Collector thereafter shall proceed to make award with respect to compensation payable to the persons whose land is acquired and after making award under Section 11 of the Act may take possession of the land under Section 16 of the Act. The procedure, therefore, prescribed under the Act shows that the scope of filing objections with respect to acquisition of land is available to the person concerned before issuance of notification under Section 6 of the Act and once a notification under Section 6 of the Act is issued, there is no provision under which the persons whose land has been acquired is permitted to take the issue again by filing objection before the Government or before other authority to object the proceeding of acquisition. The only cases in which procedure of filing objection may not be available are where the requirement of Section 5A is dispensed with by issuing notification under Section 17 of the Act on the ground of urgency and taking possession of the land after the notification issued under Section 4. The reason is quite obvious. Since the possession is already taken, therefore, even after issuance of notification under Section 6 there is no occasion to apply Section 48 of the Act since the possession of land is already taken and it is vested in the Government. Such land cannot be released thereunder. However, whenever Section 48 is applicable, since the State Government has been conferred with a liberty to denotify an area from acquisition, provided no possession has been taken, it has been made permissible in some of the matters to the persons whose land has been acquired to approach the State Government with a request to release their land from acquisition before possession is taken.

Whether the aforesaid indulgence allowed by the Courts can make inroad for creating another channel of adjudication of dispute with respect to acquisition of land and also permitting judicial review when the Government decline to release land from acquisition as if while considering such objection/representation the State Government is required to act objectively as is the case when it is required to pass an order on the objections filed under Section 5A is the moot question to be considered in this case. In our view the answer is no.

18. Section 48 of the Act gives a liberty to the Government to withdraw from acquisition of any land of which possession has not been taken. Meaning thereby so long as the land is not vested in the Government it has a discretion not to go ahead with the process of acquisition by taking possession and can withdraw from such acquisition. The choice is of the Government and whether it would act to release the land or not is within its sole discretion. So long as the land is not vested in the Government it remains the property of the owner and when right to withdraw is exercised by the Government it does not affect the owner prejudicially in any manner.

19. A question arose in *Special Land Acquisition Officer, Bombay and others v. M/s. Godrej and Boyce*, 1988 (1) SCC 50, as to whether the Government is bound to give reasons for availing its liberty of withdrawing any land from acquisition under Section 48 of the Act. The apex Court in para 6 of the judgment held:

"It is difficult to see why the State Government should at all be compelled to give any cogent reasons for a decision not to go ahead with its proposal to acquire a piece of land. It is well settled in the field of specific performance of contracts that no person will be compelled to acquire a piece of land as any breach of a contract to purchase it can always be compensated for by damages. That is also the principle of Section 48(2)..."

20. Similarly in *Amarnath Ashram Trust Society and another v. Governor of U.P. and others*, 1998 (1) SCC 591, referring to the power of Government under Section 48 of the Act in para 9 of the judgment the Court held that as a result of withdrawal from the acquisition the owner of the land is not likely to suffer any prejudice or irreparable loss. However, the company for whose benefit the land was to be acquired, if that suffer a substantial loss on account of such withdrawal, to that extent and at the instance of such beneficiary, the issue may be justiciable as to whether the Government has rightly exercised its power under Section 48 or not but so far as the owner is concerned, it was held by the apex Court that he is not likely to suffer any prejudice or irreparable loss.

21. In *Larsen & Toubro Ltd. v. State of Gujarat and others*, 1998 (4) SCC 387, the Court reiterated the above principle and said that an owner need not be given any notice of the intention of the State Government to withdraw from the acquisition and the State Government is at liberty to do so. It was further held rights of the owner are well protected by Section 48(2) if he suffer any damage in consequence of acquisition proceedings. Therefore, the Court held that the

right of Government to withdraw from acquisition can be exercised at any point of time before having possession of the land in question and such exercise of power by the Government is not justiciable since it does not affect or causes any prejudice to the owner. If that be so, we fail to understand as to how for not exercising power under Section 48 of the Act the owner would stand on a higher footing compelling the Government to assign reasons thereto. Similarly when such an order is passed by the Government giving reasons for not exercising power under Section 48, in our view, it also cannot be contended that such an order would be justiciable. If the Government is not inclined to avail its liberty under Section 48, of the Act for releasing the land from acquisition, it is not for the Court to sit in appeal as to why the Government is not inclined to avail such liberty. If this liberty has been given to the Government, it is the best judge of the facts and circumstances when such liberty it must avail and it cannot be adjudged by the Courts as if we are exercising an appellate power.

22. Referring to the above judgments namely, *M/s. Godrej and Boyce (supra)* and *Amarnath Ashram Trust Society (supra)* the apex Court in *State Govt. Houseless Harijan Employee Association v. State of Karnataka and others*, AIR 2001 SC 437 in para 32 of the judgment held that Section 48 ipso facto does not in terms exclude the principles of natural justice but it has been construed to exclude the owner's right to be heard before the acquisition is withdrawn, for the reason that his grievances are redressable under Section 48(2) if he has suffered any losses. No irreparable prejudice is caused to the owner of the land if the State Government exercises its discretion of releasing land from acquisition under Section 48 (1) but when it comes to the turn of a beneficiary of the acquisition, the position is different and such beneficiary is entitled to be heard before the land is released from acquisition. Thus so far as owner is concerned if for exercising the discretion under Section 48 a Government is not required either to hear the owner or give any reason, we fail to understand as to how the owner can insist that for not exercising jurisdiction of releasing the land from acquisition the State must afford him opportunity and give reasons therefor. This exercise, as we have already observed, in law is treated to have already been completed before the notification for acquisition of land is issued under Section 6 and thereafter for releasing the land from acquisition or not no opportunity is contemplated under law.

23. We may also refer hereat a Division Bench decision of this Court in *City Montessori School v. State of U.P. and others*, 2007 (2) AWC 1072, where after referring to the aforesaid decisions of apex Court and also Section 48 of the Act, this Court in para 58 of the judgment observed as under:

"58. Apart from this, we feel it appropriate to put on record that but for the liberty given by the Supreme Court for challenging the notification under Section 48(1) by any interested person, this Court would not have entertained the writ petition."

24. The legislature has used the word "liberty" in Section 48 of the Act which has

ascertained connotation well known in law. It has used the word "liberty" knowing it well that when a liberty is conferred upon someone, it does not correspondingly confer any right upon others to insist upon the former to avail such liberty in a particular manner or otherwise. A liberty implies absence of duty to do so or not to do so. When somebody has a liberty to do or not to do something, correspondingly it does not confer any claim upon anybody to enforce upon the former to exhaust liberty in a particular manner. We may remind ourselves the case of *M/s v. Colchester Corporation*, (1867) L.R. 2 C.R 476. The owners of oyster fishery had granted licences to fish to persons who satisfied certain conditions. The plaintiff, who satisfied them but was refused a licence, brought an action, alleging a customary claim correlative to a duty in the defendants to grant him one. The Court held that the defendants had always been exercising a discretion in the matter. This implied not only a liberty to grant licences, but also a liberty not to grant licences, which implied the absence of a duty to do so.

25. The learned William Guthrie Salmond in his "Jurisprudence" 12th Edition, Chapter VII, page 42 while dealing with the kinds of legal rights in wider sense of term has observed that "liberties" has correlative of it as "no rights" It has explained the same as under:

"1. Liberties and norights, Just as my legal rights (in the strict sense) are the benefits which I derive from legal duties imposed upon other persons, so my legal liberties (sometimes called licences or privileges) are the benefits which I derive from the absence of legal duties imposed upon myself. They are the various forms assumed by the interest which I have in doing as I please. They are the things which I may do without being prevented by the law. The sphere of my legal liberty is that sphere of activity within which the law is content to leave me alone. It is clear that the term right is often used in a wide sense to include such liberty. I have a right (that is to say, I am at liberty) to do as I please with my own; but I have no right and am not at liberty to interfere with what is another's. I have a right to express my opinions on public affairs, but I have no right to publish a defamatory or seditious libel. I have a right to defend myself against violence, but I have no right to take revenge upon him who has injured me."

26. In the case of Section 48 if the liberty has been granted to the Government to release a land from acquisition before possession is taken, it does not confer any obligation or a duty upon the Government to make an inquiry in the matter even after issuance of a notification under Section 6 to decide as to whether it should exercise its discretion under Section 48 or not. Simultaneously, whether the Government shall avail its liberty under Section 48 or not would not confer a right upon the person whose land has been acquired to insist upon the Government to avail such liberty or not or to act in a particular manner. Any such insistence upon the Government will change the very nature of the exercise which is to be performed by the Government under Section 48 of the Act.

Section 48, incur view, would be attracted when the Government in the facts and circumstances of the case decide to release any land from acquisition but if it does not decide to do so neither it has any occasion to consider the application of Section 48 in any manner nor it can be forced to exercise its discretion under Section 48 of releasing the land for acquisition. This is a voluntary exercise on the part of Government and it cannot and should not be forced and that too by a rigorous judicial review of an order passed by the Government declining to avail liberty as conferred under Section 48 of the Act.

27. Learned counsel for the petitioner could not show us that the State Government is under a statutory obligation to exercise its discretion under Section 48 at the instance of the owner of the land which has been acquired and notification under Section 6 has already been issued. He also could not show as to how Section 48 can be read in a manner so as to create another channel of dispute involving the acquisition of the land in question by the Government at the instance of owner of the land on the ground that the State Government is not exercising its liberty by releasing the land from acquisition.

28. The view which we have taken also find support from the Division Bench decision of this Court in Smt. Manju Lata Agarwal (*supra*) where in para 90 of the judgment this Court has said :

"The order passed by the State Government rejecting their application under Section 48(1) of the Act, for releasing the land is also challenged. This Court cannot sit in appeal against the said order passed by the State Government on their applications?."

29. Moreover, we have also perused the order and the pleadings and material placed before us by learned counsel for the petitioner and find that the petitioner has not been able to demonstrate that the construction made by petitioner was of the period anterior to the constitution of GNIDA. The entire material which has been placed before this Court is of subsequent period and that by itself cannot be of any help to the petitioner to show that the construction was made earlier. Moreover it is not disputed by learned counsel for the petitioner that even a land on which construction is existing can be acquired and there is no bar. Under the Act when a land with some construction is acquired, the owner is entitled only for compensation with respect to construction made on the land in question but mere existence of construction is no reason by itself to vitiate an acquisition proceeding. If that is so, we fail to understand as to how the petitioner can insist upon the respondents to withdraw from acquisition of the land in question simply for the reason that there existed some construction on the land in question.

30. Before parting with this matter, we find it necessary to point out an important facet closely related with this kind of matter. It is no doubt true that acquisition of land by the State is in recognition of the State's power of "eminent domain". Since it deprives the person of his property, the provisions of the statute have to be read and interpreted in strict manner. However, the fact

remains that after the amendment of the Constitution, the right to property is not a fundamental right but exist now as a constitutional right in the form of Article 300A. As held by Hon"ble Apex Court, even this right conferred by Article 300A cannot be denied to a person lightly since it has the flavour of fundamental right and, therefore, the statutory provisions must be construed very strictly. The procedure for acquisition thus, as laid down in the Act, has been made applicable and recognised and upheld by the Courts from time to time when it has been found that the acquisition has been made by the State in accordance with the Statute and not otherwise But in practice, it has been noticed that the process of acquisition in its entirety has not been allowed to be completed easily. In one or the other manner protracted litigation between the owners of the land and the State has resulted in delaying the achievement of the objective purpose for which the land is sought to be acquired by the State. Judicial cognizance can be taken of the fact that the land owners, time and again, have initiated litigation either by challenging the notification under Sections 4 and 6 of the Act, on one or the other ground or sometimes that the award is not made within prescribed time and sometimes on various other reasons. We are not making any comment on the rights of land owners in challenging the said proceedings on such grounds as permissible in law since judicial review of State action is a part of the basic feature of the Constitution but what we are intend to insist upon is that the litigation has mostly resulted in delaying the actual development process for which the land is acquired or has been acquired and all the more when most of the time such challenge fail on merits and it is found that is was thoroughly on frivolous grounds. Delay for years together has sometimes gone to the extent of decades and more. Not only this, once the process of acquisition and initial litigation is complete, before possession is taken, of late, we find another breed of litigation where certain individuals claim that their land ought not to have been acquired for one or the other reasons namely, they have raised their construction on the land in question or it was a part of Abadi and so on and such representation they address to the State Government, they claim as a matter of right that the State Government is under an obligation to decide such representation considering expediency of exercise of its liberty under Section 48 of the Act with respect to release of land from acquisition. This process is now being made as the second innings of litigation as if even after notification issued under Section 6, the land owners, as a matter of right, can approach the Government for release of land from acquisition and if unsuccessful thereat, can approach the Court for judicial review of the State's action in denying the exercise of its discretion with respect to release of land from acquisition. This system has got momentum recently, probably for the reason that when the acquisition notification is issued and the developmental activities in the area concerned are likely to be initiated, it immediately results in multifold enhancement of market rate of the land in the vicinity or in the area where such development has to be undertaken for which the land is being sought to be acquired. In these days of industrial development and global economy, the cost of land, as a result of such kind of development, increases many times. Even the

mere prospect of development attracts a large number of buyers in the area who are ready to purchase land at a much higher cost. This impel the land owners whose land is sought to be acquired, to some how or the other save their land from acquisition so as to gain and enjoy the fruits of land rate inflation. The basic human nature wants to reap the benefit of such development and cannot be faulted since it is very natural. When someone can make profit on account of actual or possible development, he is entitled to reap it. However, the position would be otherwise where the property is already under the cloud having been acquired by the State and it is only the possession which has to be taken otherwise every other formality, as contemplated under the statute, is over. The right to file objection, the inquiry with respect to various objections, if any, and opportunity before the State in deciding as to whether the land must be acquired or not is already completed. For the subsequent stage we feel it strongly not to allow to open the door of a new kind of litigation by permitting the owner of the land to compel the State to release the land from acquisition. By entering into a similar kind of process as it has observed for acquisition of land after issuing notification under Section 4 of the Act. The objections, the inquiry, if any, by the Collector herein and the report of the Collector and decisions of the State Government are all the steps which have already completed and none of them in their entirety or individually should be read at the stage when only the possession is yet to be taken by the Government and the Government itself has not prompted to release the land but it is the land owners who are trying to pursue for release of the land from acquisition.

31. Unfortunately in our country where rule of law is the spirit of Constitution and must be observed by one and all, the experience shows that whenever there is any scope of corruption, it is easily infused, practised and observed with impunity. Various laws to curb it have been enacted and attempts are made at various level to remove this disease but unfortunately it has spread and has become very difficult to eradicate and control. If we allow a deeper indulgence in the manner as is being sought by the land owners, the powerful land mafias and big land owners would manage their land to be released on the pretext of the Court's order or judicial review and making this Court a party to a process and action which it never intended.

32. Normally very influential and resourceful persons who own land are able to approach the Government for release of land and continue with litigation in respect thereto. We cannot keep our eyes shut to the facts that opening of this second channel so widely is likely to create an opportunity to the scrupulous persons in the State Government in collusion with individual land owner to negotiate for release of land from acquisition or otherwise refuse to do so.

33. The purpose of Section 48 is not to confer a right upon the land owners to insist upon the State Government to consider and decide the request of land owners for release of land from acquisition but on the contrary the objective thereof is to confer a discretion upon the Government not to acquire land so long

as it is not vested in it by taking delivery if it subsequently or any later point of time but before possession found that the land may not be required by it for the purpose it has been acquired or may not achieve the objective thereto. Sometimes it may also happen that if the land is to be acquired for a company or corporation and such company or corporation finds at a later point of time, for any reason whatsoever, that it does not require such land or required lesser area, in that case the land or part of land may be released from acquisition, but, this discretion is available only so long as the land has not vested in the Government. We cannot and should not allow the provision of Section 48 to be read in such a manner so as to confer a right upon the land owners to claim release of the land from acquisition and a corresponding statutory obligation on the State Government to consider such right of the land owners in a judicious manner. As said by the apex Court in *M/s. Godrej and Boyce (supra)* that the State need not to require to give any reasons for release of the land from acquisition, we fail to understand as to how it may be compelled to do so when it is not required to exercise its discretion otherwise.

34. In view of the above discussion, we do not find any merit in this writ petition. It is accordingly dismissed. The interim order, if any, is vacated. However, there shall be no order as to costs.