

(2017) 03 AHC CK 0169

In the Allahabad High Court

Case No : 41260, 41263, 41266, 44409 of 2013 and 52329 of 2016?

Brij Mohan and others

APPELLANT

Vs

State of U.P. and others

RESPONDENT

Date of Decision : 07-03-2017

Acts Referred:

[3998](#)>Constitution of India, [3998-226](#)>Article 226 - Power of High Courts to Issue certain writs
[5681](#)>Land Acquisition Act, 1894, [5681-4](#)>Section 4, [5681-6](#)>Section 6, [5681-16](#)>Section 16, [5681-11](#)>Section 11, [5681-9](#)>Section 9, [5681-7](#)>Section 7, [5681-5A](#)>Section 5A, [5681-17](#)>Section 17, [5681-48](#)>Section 48 - Publication of preliminary notification and powers of officers thereupon. - Declaration that land is required for a public purpose - Power to take possession - Enquiry and award by Collector - Notice to persons interested - After declaration, Collector to take order for acquisition - Hearing of objections - Special powers In cases of urgency - Completion of acquisition not compulsory, but compensation to be awarded when not completed

Citation : (2017) 03 AHC CK 0169

Hon'ble Judges : Dilip Gupta, Siddhartha Varma

Bench : Division Bench

Advocate : Swetashwa Agarwal, Ravi Kiran Jain, Bhavya Tewari, Prashant Shukla, Suresh Singh, Navin Sinha, Y.K. Srivastava, Deeba Siddiquee, Pankaj Dubey, Rishu Mishra

Judgement

1. The rejection of the claim made by the petitioners that the State should withdraw from the acquisition of land under Section 48 of the Land Acquisition Act, 1894 (the Act) has led to the filing of these five petitions.

2. The State Government took a decision in the year 2001 to construct a Taj Expressway towards east of Yamuna from New Okhla Industrial Development Authority NOIDA to Agra. The project included building of a six lane access controlled 160 Kms Expressway. The Company undertaking the project was to invest the entire money for the project with a right to collect tolls for a period of 36 years on the roads to be notified by the State Government under a "Built

Operate and Transfer Scheme". The cost of construction was also to be realised by the Company undertaking the project from the five parcels of land, each of 500 hectares to be provided to it on lease along the Expressway for a period of 90 years for commercial, amusement, industrial, institutional and residential complex purpose. Thus, land had to be acquired by the State Government not only for the construction of the 160 Kms Expressway but also for providing 2500 hectares of land to the Company undertaking the project at five different locations along the Expressway.

3. It is in connection with a very small area of land situated in one of these five parcels at Aligarh that the petitioners subsequently invoked the provisions of Section 48 of the Act that provides that the State Government shall be at liberty to withdraw from the acquisition of any land of which possession has not been taken. Earlier, the representations filed by the petitioners were rejected for the reason that the State Government claimed that it had taken possession of the land and, therefore, could not withdraw from the acquisition. This order of the State Government was set aside by the High Court in the earlier writ petitions holding that possession of the acquired land had not been taken in accordance with law by the State. A direction was, accordingly, issued to the State to decide the claims afresh. The State Government has again rejected the representations.

4. In order to appreciate the controversy involved in the writ petitions as also the submissions advanced by the learned counsel for the parties, it would be appropriate to refer to relevant facts leading to the acquisition of land for construction of the 160 Kms Expressway and the five parcels of land, each measuring 500 hectares, along the Expressway.

5. Notifications were issued under section 4(1) of the Act read with section 17(1) for acquisition of land for the Expressway. They were followed by declarations made under Section 6 of the Act. These acquisitions were assailed in various writ petitions before the High Court. Writ Petition filed by Balbir Singh and another v. State of U.P. and others [2009 (10) ADJ 441] was dismissed by a Division Bench of the Court on 5 October 2009. Writ Petition filed by Nand Kishore Gupta, which was connected with seven other writ petitions, was also dismissed by a Division Bench on 30 November 2009, 2010 (2) AWC 2137. The Supreme Court dismissed Civil Appeals filed by Nand Kishore Gupta and Balbir Singh. The judgment is reported in (2010) 10 SCC 2825 Nand Kishore Gupta and others v. State of U.P. and others. The acquisition of land for the Expressway was thus upheld by High Court and the Supreme Court.

6. The State Government also issued a notification under section 4(1) read with section 17(1) of the Act for acquisition of "Land for Development" under the "Yamuna Expressway Project" through Yamuna Expressway Development Authority. The declaration under Section 6 of the Act was also made. The State Government acquired 2500 hectares of land for development at five locations along the Expressway namely at Site-I: NOIDA (Sultanpur) (500 hectares); Site-II: between Greater Noida and Dankaur (500 hectares); Site-III: between

Dankaur and proposed TEZ (500 hectares); Site IV: between proposed Airport and Tappal (500 hectares) and Site-V: near Agra (500 acres). The first three sites are situated in revenue district Gautam Budh Nagar; Site-IV situated in revenue district Aligarh and Site-V is situated in revenue district Agra. These acquisitions were assailed before the High Court. The writ petitions were dismissed on 2 July 2010 by a Division Bench of this Court and the judgment is reported in *Narendra Road Lines Pvt. Ltd. v. State of U.P. and others*, 2010 (7) ADJ 329. The Special Leave to Appeal (Civil) No.708 of 2010 filed by Narendra Road Lines Pvt. Ltd. was dismissed by the Supreme Court on 16 December 2010.

7. Some of the tenure holders affected by the aforesaid acquisitions at one of the five parcels of land located alongside the Expressway at Aligarh and who claimed that they had neither taken compensation nor executed any agreement under the provisions of U.P. Land Acquisition (Determination of Compensation and Declaration of Award by Agreement) Rules 1997 raised protests against the acquisition and the amount of compensation to be awarded though, as stated above, the notifications acquiring the land for the five locations had been upheld by the High Court. The State Government in order to bring an end to the agitation took a decision on 27 August 2010 to provide various benefits including enhanced compensation at the rate of Rs.570/- per sq. mtr. on the basis of a recommendation made by the State Level Committee. Accordingly, a Government Order dated 27 August 2010 was issued on the said subject by which nine directives were issued pertaining to these issues. One such directive was that if any person was not ready to receive compensation at the rate of Rs.570/- per sq. mtr., then his land would not be acquired without his consent.

8. A representation was submitted by such persons before the State Government on 2 November 2010 under section 48 of the Act with a prayer that the acquisition should be withdrawn and when the representation was not decided, a writ petition was filed for a direction upon the State Government to take a decision on the representation. The said petition was disposed of by a Division Bench of this Court on 21 July 2011 with a direction to the Authority concerned to consider the grievance of the petitioners. The State Government by order dated 11 October 2011 rejected the representation filed under section 48 of the Act. This order was assailed in Writ Petition No.66066 of 2011, *Brij Mohan and Others v. State of U.P. and Others* decided on 28 February 2012. Some other writ petitions were also filed. All these petitions were allowed by a common judgment dated 28 February 2012 with a direction that the State Government should take a fresh decision with regard to claim of the petitioners for release of their land under Section 48 of the Act.

9. The State Government has, by orders dated 30 May 2013, 26 June 2013 and 10 July 2013, again rejected the representations filed under section 48 of the Act. It is these orders that have been assailed in these five petitions.

10. Writ Petition No.41260 of 2013 has been filed by Brij Mohan and 36 others; Writ Petition No.41263 of 2013 has been filed by Dharamveer and 11 others and

Writ Petition No.41266 of 2013 has been filed by Sukhvair and 79 others. These petitions have been filed to assail the order dated 30 May 2013 by which the State Government has rejected the representation filed by the petitioners under section 48 of the Act for withdrawal from acquisition.

11. Writ Petition No.44409 of 2013 has been filed by Kali Charan and 3 others to assail the order dated 30 May 2013 (passed against petitioner nos.1, 2 and 3) as also the order dated 10 July 2013 (passed against petitioner no.4), while Writ Petition No.52329 of 2016 has been filed by Om Prakash and 2 others to assail the order dated 26 June 2015. The State Government has, by these orders, rejected the representations filed by the petitioners under section 48 of the Act for withdrawal from the acquisition.

12. At this stage it will be appropriate for the Court to examine the need for construction of the Expressway. The purpose and object of the project has been highlighted in the bid document containing the terms and conditions on which the contract was to be awarded. Paragraph 1.1 reads as follows:- "The absence of a major highway on the eastern side of Yamuna in U.P. is resulting in longer travel time as well as inconvenience to road users. Considering this, U.P. Government is contemplating to provide an access controlled expressway connecting New Delhi with Mathura and further Agra. The objectives of the proposed expressway are as follows:-

- (i) Provide a fast moving corridor to minimize the travel time;
- (ii) To connect the main townships/commercial centres on the eastern side of Yamuna;
- (iii) To relieve NH-2 which is already congested and runs through the hear of cities like Faridabad, Ballabgarh and Palwal."

13. Bids were invited from all the interested parties having experience in the construction/development of infrastructure projects including real estate development. The interested parties were informed that the proposed 160 kms Expressway would shorten the distance between Noida and Agra with an estimated cost of US \$ 350 million. The parties were also informed that the Expressway would pass through virgin area along the river Yamuna and that a band of 500 meters width of land at five or more locations, of which one location was to be in Noida or Greater Noida area along the Expressway, would be offered on acquisition cost along the corridor as an integral part of the Project for commercial, amusement, industrial, institutional and residential purpose. The parties also informed that the concession period would be for 7 years from the date of signing of the Concession Agreement and all the assets related to the Expressway would stand transferred on the date of signing of the Concession Agreement in favour of the successful bidder. The Bid Document also provided that the successful bidder would have the right to levy, collect and retain toll from the public using the Expressway during the concession period.

14. Tender of Jai Prakash Industries Ltd. Jai Prakash was accepted and thus it became the successful bidder as it had claimed the lowest concession period of 36 years.

15. It would also be relevant to reproduce the relevant clauses of the Concession Agreement that came to be executed between Taj Expressway Industrial Development Authority and Jai Prakash and they are as follows:- "A. The Government of U.P. has set up TEA for anchoring development of Taj Expressway Project which, inter alia, includes construction of six lane, 160 Km long Super Expressway with service roads and associated facilities connecting Noida and Agra, passing through a virgin area along the Yamuna River.

B. TEA had invited bids for development of a Techno Economic Feasibility Report (TEFR) and Detailed Project Report (DPR), arrangement of finance, construction and operation of the said Expressway subject to and on the terms and conditions contained in the Notice Inviting offers and the Company had also submitted a bid on the due date i.e. 18.01.2003.

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E. TEA and the Company have mutually agreed on the terms and conditions of the Concession Agreement to be executed between the Parties.

Scope of Work

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2.2 The scope of Work also includes operation and maintenance of the Expressway, including collection and retention of Fees during the term of the Concession Period.

Grant of Concession

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3.3 The Concessionaire shall be granted, by TEA, rights for land development of 25 million sq. meters of land along the proposed Expressway for commercial, amusement, industrial, institutional and residential development. The land for the purpose of development shall be provided by TEA along the Expressway at five or more locations of which one location shall be in Noida or Greater Noida with an area of 5 million of sq. meters. The aforesaid land for development shall be in addition to the land for construction of Expressway.

3.6 The Concession Period shall commence on Commercial Operation Date and shall end on the date of expiry of period of 36 (thirty six) years plus any extensions thereto provided in accordance with the provisions of this agreement. However in case COD is not achieved within 7 (seven) years or such extended period as may be approved by TEA, after signing of this agreement solely on account of Concessionaires default, the Concession Period shall be reduced by

the period of delay in achieving the COD.

3.7 Concessionaire shall be entitled to collect and retain the Fee from the users of the Expressway between Noida and Greater Noida during the terms of the Concession Agreement.

Land

4.1 Land for construction of Expressway shall be provided by TEA to the Concessionaire, generally in a width of 100 meters along the alignment of the Expressway with additional land width, where required, for developing other facilities like Toll Plazas etc., on following terms and conditions.

a. The land for construction of Expressway shall be released as per following 3 stages:

Stage - 1 - Land for Phase 1 of Expressway within 6 (six) months of finalization of Alignment of the Expressway.

Stage - 2- Land for Phase 2 of Expressway within 12 (Twelve) months of finalization of Alignment of the Expressway.

State - 3 - Land for Phase 3 of Expressway within 18 (eighteen) months of finalization of alignment of the Expressway.

b. The land shall leased for a period of starting from the date of transfer till the end of Concession Period through such lease deed as may be mutually agreed between the parties.

c. The land shall be free from Encumbrances.

d. The sole premium of the transferred land shall be equivalent to the acquisition cost plus a lease rent of Rs. 100.00 (Rupees One hundred) only per hectare per year. The acquisition cost shall be the actual compensation paid to the land owners without any additional charge and shall be payable by the Concessionaire as per applicable rules. The lease rent shall be payable annually.

4.2 The land for development shall be released as per following 3 stages:

Stage 1: 10% land (250 hectares) for development would be made available after concessionaire makes financial arrangements for Phase-1 to the satisfaction of TEA.

Stage 2: 10% land (250 hectares) for development would be made available within 6 (six) months of stage- 1, provided the concessionaire:

- finalizes the DPR/TEFR study
- commences construction of Phase-1
- makes financial arrangements for Phase-2 to the satisfaction of TEA

Stage 3: Balance 80% land (2000 hectare) for development would be made

available within 12 (twelve) months of stage-1, provided

-TEA accepts the DPR/TEFR study prepared by Concessionaire.

- EA is satisfied with the physical progress of Phase-1 and Phase-2.

-Concessionaire makes financial arrangements for Phase-3 to the satisfaction of TEA.

4.3 Land for development shall be transferred by TEA to the Concessionaire free from all Encumbrances on following terms and conditions:

a. It shall be on lease for a period of 90 (ninety) years from the date of transfer through such lease deeds as may be mutually agreed between the parties.

b. The land to be transferred shall be as per the request and choice of the Concessionaire subject to availability, in such a manner that the Concessionaire is entitled to achieve 150 Floor Area Ratio (FAR) on such land. If due to local bye laws or other statutory provisions, it shall not be possible to achieve 150 FAR, then TEA shall evolve suitable mechanism, as may be mutually agreed between the TEA and the concessionaire, so as to enable the concessionaire to achieve 150 FAR.

c. The sole premium of the transferred land shall be equivalent to the acquisition cost plus a lease rent of Rs. 100.00 (Rupees one hundred) only per hectare per year. The acquisition cost shall be the actual compensation paid to the land owners without any additional charge and shall be payable by the Concessionaire as per applicable rules. The rent shall be payable annually for 90 (Ninety) years from the date of transfer of land.

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4.4. The Concessionaire shall be free to decide the purpose for which transferred land will be used i.e. for commercial, amusement, industrial, residential etc. and also for the area of land to be allocated for different uses. The Concessionaire shall also be free to decide whether the sub-leased land shall be in the form of plots or constructed properties. No permission of TEA shall be required either for the land use or for transfer of leasehold / sub-leasing / multiple sub-leasing of land. The land use shall however be as per applicable Master Plan and other regulations.

4.5. The rights of the sub-lessees / end-users shall not be affected by termination of this Agreement, or expiry of Concession Period and subsequent renewals.

(emphasis supplied)

16. The challenge to the acquisition of land for construction of the Expressway did not find favour of two Division Benches of the High Court in Balbir Singh and

Nand Kishore Gupta and the Supreme Court, while dismissing the Civil Appeals filed to assail these two decisions, observed in Nand Kishore Gupta that land for development which was to be provided to Jai Prakash formed part of an integrated project linked with the construction of the Expressway. The observations are as follows:- "57. The Expressway is a work of immense public importance. The State gains advantages from the construction of an Expressway and so does the general public. Creation of a corridor for fast moving traffic resulting into curtailing the traveling time, as also the transport of the goods, would be some factors which speak in favour of the Project being for the public purpose. Much was stated about the 25 million square meters of land being acquired for the five parcels of land. In fact, in our opinion, as has rightly been commented upon by the High Court, the creation of the five zones for industry, residence, amusement etc., would be complimentary to the creation of the Expressway.

58. It cannot be forgotten that the creation of land parcels would give impetus to the industrial development of the State creating more jobs and helping the economy and thereby helping the general public. There can be no doubt that the implementation of the Project would result in coming into existence of five developed parcels/centers in the State for the use of the citizens. There shall, thus, be the planned development of this otherwise industrially backward area. The creation of these five parcels will certainly help the maximum utilization of the Expressway and the existence of an Expressway for the fast moving traffic would help the industrial culture created in the five parcels. Thus, both will be complimentary to each other and can be viewed as parts of an integral scheme. Therefore, it cannot be said that it is not a public purpose.

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65. In the present case also, it was argued that the lands which are being acquired for the interchange would not at all be necessary. Further, it was argued that the five parcels of land which is being acquired for the development of five industrial townships, could not be said for the public purpose nor could it be said to be a part of the present integrated scheme. This Court had refuted this argument holding that even in case of Bangalore-Mysore highway Project, the lands even little away from the main alignment of the road, had to be a part of this Project and the Project was an integrated infrastructure development Project and not merely a highway Project. It was conceived originally as the Bangalore-Mysore Infrastructure Corridor Project, which conceived of the development of roads between Bangalore and Mysore, for which there were several interchanges in and around the periphery of the city of Bangalore, together with numerous developmental infrastructure activities along with the highway at several points. The situation is no different in the present case. Therefore, the contention that this acquisition was not for public purpose, is rejected."

(emphasis supplied)

17. The challenge to acquisition for the five parcels of land also did not succeed. The High Court in Narendra Road Lines Private Limited, (2010) 7 ADJ 329, rejected all the contentions advanced for setting aside the acquisition. The High Court found that since the chosen concessionaire was not projected to recoup the expenditure required for construction of the Expressway from toll collection in 36 years, the agreement provided to make the project financially viable by providing land to the concessionaire for development at five locations, each being of 500 hectares. The High Court further found that the project was designed in such a manner that the construction of Expressway and development of land were inextricably interlinked and were dependent upon each other for financial viability. The land for development was to be provided on the cost of acquisition and on lease rent of Rs. 100 per hectare for a period of 90 years with linkage to the progress of the construction of the Expressway. The observations of the High Court are as follows :- "85. In the present case the terms and conditions of the concessionaire agreement dated 7.2.2003 were examined by this Court in both Ashutosh Srivastava (supra) and Balbir Singh's case (supra) and nothing objectionable was found.

86. We have again examined and find that the construction of expressway of 165.537 kms with 100 meters width, and provision of 2500 hectares of land on a band of about 500 meters including 100 meters for expressway at five or more locations, is integral part of the agreement. Since the chosen concessionaire was not projected to recoup the expenditure required for construction of the expressway from toll collection from 36 years, the agreement provided to make the project financially viable, by providing development of land parcels in the project, concept and design. The basic concept, design of the project included the constructions of the expressway and the development of the land parcels. This basic concept was included in the advertisements issued both in the years 2001 and 2002 before selecting the concessionaire and also in the bid documents which required the interested parties to be experienced in both infrastructure construction, and real estate development.

87. The project was designed in the manner that the construction of expressway and development of land, was inextricably interlinked and was dependent upon each other, for its financial viability. The land for expressway is to be granted on lease. As the cost of construction of the expressway was not projected to be recovered within 36 years, the land for development was to be provided on the cost of acquisition and on lease rent Rs. 100/- per hectare for a period of 90 years with linkage to the progress of construction of expressway. The premium is equivalent to the actual compensation cost of the land acquired. The agreement provides that at the end of the concession period the expressway and all other assets are to revert back to YEIDA.

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93. It is admitted by the YEIDA that the land of four sites was chosen by the Jaiprakash Industries Ltd. on 12.7.2003 under concession agreement dated 7.2.2003, under the signatures of the Managing Director of Jaiprakash Industries Ltd. to the General Manager (Project) Taj Expressway Industrial Development Authority, District Gautam Budh Nagar. The choice, however, was not at the sole discretion of the company made arbitrarily from out of any land available within 500 meters band width of the expressway. The land was chosen in consultation with YEIDA from out of the villages, Tehsils and the Districts notified under Section 2 (d) read with Section 3 of the UP Industrial Development Areas Act, 1976. By notifications dated 22.8.2001, the land of several villages in Tehsil Sadar and Jewar District Gautam Budh Nagar; Tehsil Khair in district Aligarh; Tehsil Sadar and Atmadpur in district Agra; Tehsil Sadar and Math in District Mathura were notified by the State Government. The selection of the four sites for acquisition from out of these areas was within the terms of the concession agreement dated 7.2.2003. The selection of sites for acquisition for land for development was, therefore, strictly in terms with the concession agreement dated 7.2.2003 and was made out of the notified areas.

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96. In the present case, we find that the land for development for "Yamuna Expressway Project" through "Yamuna Expressway Industrial Development Authority" is an integrated project. The land was initially acquired for the expressway and thereafter the land has been acquired for developing five parcels, as townships, as an integrated plan of development, both for compensating the concessionaire for the cost of the expressway, as well as the development of the area. The agreement provides that the parcels shall be developed strictly in accordance with the plan prepared by the YEIDA, by adhering to the bye-laws of YEIDA, and other laws applicable to development. The Jaippee Infratech Ltd. will be developing these five parcels strictly in accordance with the concessionaire agreement. The State Government was, therefore, not required to particularise, or to specify the public purpose by pointing out to the nature of the development on each plot of the land acquired for "Yamuna Expressway Project."

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110. The Chief Standing Counsel has provided a composite chart along with his written submission giving the details of the five land parcels; the total number of tenure holders affected by the acquisition for land for development under the project; the number of writ petitions and the petitioners in the writ petitions; the area affected; the number of unaffected tenure holders and the area; the

number of tenure holders, who had signed the agreement for compensation and those who have received compensation. He has pointed out that out of total number of tenure holders, and the area affected, only 32.91% of the tenure holders holding 40.20% of the total area, had not so far, accepted compensation.....

111. The majority of tenure holders have signed the settlements and have accepted the compensation. We are, therefore, of the opinion that apart from the reasons given by us in the judgment for not accepting the grounds of challenge to the proceedings for acquisition of land, the acceptance of the compensation by the majority of the tenure holders, is also a ground on which we are not inclined to interfere in these writ petitions.

(emphasis supplied)

18. The dispute in the present petition relates to a very small area of land situated in Site IV of the parcel of land situated alongside the Expressway in Revenue District Aligarh. Even after the dismissal of the writ petitions that had been filed to challenge the acquisition relating to "Land for Development", farmers resorted to agitation against the acquisition proceedings and the amount of compensation to be awarded. To put an end to the agitation, a Government order dated 27 August 2010 was issued dealing with the subject of payment of compensation to the farmers whose land had been acquired for the five parcels of land. Amongst the various issues that had been addressed by the State Government in the aforesaid Government order, one was with regard to enhancement of compensation. It provided that compensation earlier fixed at Rs. 436/- per sq. mtr. had been enhanced to Rs. 570/- per sq. mtr. and that the land will not be acquired without the consent of the farmers if they do not agree to receive the aforesaid compensation.

19. The petitioners claim to be such farmers who had not received compensation and had made a demand that the State Government should withdraw from the acquisition under Section 48 of the Act. When the representations filed by the petitioners were not decided, they filed writ petitions which were disposed of by requiring the State Government to take a decision. The State Government by order dated 11 October 2011 rejected the representations filed under Section 48 of the Act. This decision was assailed in four writ petitions namely:- (i) Writ-C No. 66066 of 2011 Brij Mohan and Others v. State of U.P. And Others.

(ii) Writ-C No. 2656 of 2012 Kali Charan and Others v. State of U.P. And Others.

(iii) Writ-C No. 1341 of 2012 Radha Charan and Others v. State of U.P. And Others

(iv) Writ-C No. 72604 of 2011 Sukhveer Singh Vs. State of U.P. And Others.

20. It was sought to be contended that possession of land had not been taken and, therefore, the State Government could withdraw from the acquisition and that the finding recorded in the impugned order that possession had been taken was factually incorrect. The Division Bench of the High Court after noticing the

provisions of Section 48 of the Act, considered it appropriate to decide, as a first issue, whether possession had been taken or not since that was a pre-condition for the exercise of power under Section 48 of the Act. After referring to the possession documents that had been filed, the Division Bench recorded a categorical finding of fact that possession had not been taken by the respondents in accordance with law and, therefore, the claim of the petitioners under Section 48 of the Act could not have been rejected merely for the reason that possession had been taken.

21. The Division Bench then examined the contention of the petitioners that the issuance of the Government order dated 27 August 2010 itself was a declaration under Section 48 of the Act for withdrawal from the acquisition and nothing more was required to be done. This contention was rejected and the observations are as follows:- "The submission of the petitioners" counsel is that the said Government order is itself a declaration under Section 48 of the Act for withdrawal of the land and the petitioners" land stood withdrawn after issuance of the Government order dated 27th August, 2010 since none of the petitioners have either accepted compensation or given their consent for acquisition at the rate of Rs.570/- per square meter. Although in the Government order the State Government came with the decision that the land of those farmers who do not agree for taking compensation at the rate of Rs.570/- per square meter shall not be acquired without their consent but it cannot be said that by the Government order itself without anything more the land stood released under Section 48 of the Act.

Thus the Government order dated 27th August, 2010 can itself not be treated to be an order withdrawing the acquisition. It is also relevant to note that although the Government order referred to five villages and provided for enhancement of compensation at the rate of Rs.570/- per square meter along with certain other benefits, the Government order cannot be read to be withdrawal of acquisition of land of the aforesaid five villages. It has come on the record that large number of villagers entered into agreement and accepted the compensation. The said Government order cannot be treated to be an order withdrawing acquisition of five villages in view of the fact that the Government order proposes to enhance the compensation and large number of land holders have entered into the agreement and accepted compensation. The Government while issuing the Government order dated 27th August, 2010 has not considered as to which of the land holders have accepted the compensation or are ready to accept compensation and which are not ready to accept compensation. Thus the Government order dated 27th August, 2010 cannot be read as an order withdrawing acquisition of land of aforesaid five villages as contended by the learned counsel for the respondents, although, as observed above, the Government order contains a clear stipulation that those villagers who are not agreeable to acquisition of their land at the rate of Rs.570/- per square meter, their land be not acquired. We are thus of the view that even after issuance of the Government order dated 27th August, 2010, the State Government is

required to consider the claim of those land holders who pray for withdrawal of their land and to decide their claim in accordance with the Government order dated 27th August, 2010."

(emphasis supplied)

22. The Division Bench did not also accept the contention of the petitioners that if the order dated 11 October 2011 was set aside, the matter should not be remanded to the State Government for taking a fresh decision and in this context, it observed as follows:- "We have already observed that Government order dated 27th August, 2010 itself cannot be read as an order withdrawing the petitioners land from acquisition and furthermore the order under Section 48 of the Act for withdrawal from acquisition is to be notified. Thus even after quashing the order dated 11th October, 2011 in leading writ petition, the withdrawal of the acquisition shall not be automatic as a specific decision of the State Government regarding withdrawal and notification thereafter shall be necessary for withdrawal of the petitioners" land from acquisition. Thus even if the order dated 11th October, 2011 is quashed, it will be necessary that the matter be again considered by the State Government and appropriate decision be taken under Section 48 of the Act."

23. The Division Bench did not also accept the contention of learned counsel for Jai Prakash that the State Government had no competence to pass an order under Section 48 of the Act as the project for development of land had been granted by the State Government to Jai Prakash and a Concession Agreement had been executed. The observations are as follows:- "There is no dispute that the project was granted and concession agreement was also executed on 7th February, 2003 between the Authority and Jay Prakash Industries Limited. The acquisition proceedings for acquiring the land in question were initiated by notification dated 31st March, 2009 resulting in declaration under Section 6 of the Act dated 28th May, 2009 i.e. much subsequent to execution of the concession agreement. Section 48 of the Act is a statutory provision which cannot be diluted by any agreement or grant of contract by the State. The grant of project or execution of concession agreement between the predecessor in interest of respondent No.7 and the State cannot eclipse the statutory power and jurisdiction given to the State Government under Section 48 of the Act. No restraint on the power of the State Government under Section 48(1) of the Act can be put by any agreement entered between the State and any other authority."

(emphasis supplied)

24. The Division Bench, however, accepted the contention of learned counsel for Jai Prakash that an opportunity was required to be given to it by the State Government in the event the matter was remanded to the State Government and the observations are as follows:- "Although present is not a case where acquisition was made under Part VII of the Act as has already been held by the

judgments of this Court as well as the Apex Court wherein acquisitions in question were challenged, but it has come on the record that the Company has been granted project for carrying out the land development and the respondents have also brought on the record the lease deeds executed by the Authority in their favour subsequent to the notifications issued under Sections 4 and 6 of the Act, the Company is thus beneficiary of the acquisition and we are of the view that it is also an appropriate party which has sufficient locus to be heard in proceedings under Section 48 of the Act. Thus the submission of the petitioners' counsel that no liberty be granted to the Company to be heard in proceedings under Section 48 of the Act cannot be accepted."

(emphasis supplied)

The Division Bench ultimately observed :-

"In view of the foregoing discussions, it is clear that the reasons given by the State Government for rejecting the claim of the petitioners under Section 48 of the Act for release of their land, are erroneous. The State Government in its order dated 11th October, 2011 has essentially given two reasons for rejecting the claim. Firstly the possession has been taken on 15th July, 2009 and 27th July, 2009 which land is in possession of the Authority, hence the same cannot be released and secondly before issuance of the Government order dated 27th August, 2010 the acquisition of land was already complete in accordance with law. We have already held that possession of the land in dispute was not taken in accordance with law on 15th July, 2009 and 27th July, 2009 hence the findings of the State Government that release cannot be made under Section 48 of the Act is erroneous. The view of the State Government that acquisition has already completed prior to issue of the Government order dated 27th August, 2010 is also not correct. We have already repelled the submission of learned counsel for the respondents that the Government order dated 27th August, 2010 is not applicable with regard to acquisition of petitioners' land. Thus both the reasons given in the order dated 11th October, 2011 is unsustainable."

(emphasis supplied)

The writ petitions were, therefore, allowed in the following terms:-

"In view of the above, all the writ petitions stand allowed in following manner:-

(1) The order dated 11th October, 2011 impugned in Writ Petition No.66066 of 2011 and the order dated 29th April, 2011 impugned in Writ Petition No.1341 of 2012 are set aside.

(2) A writ of mandamus is issued directing the State Government to take a fresh decision with regard to claim of the petitioners in all the writ petition for release of their land under Section 48 of the Act in accordance with the Government order dated 27th August, 2010.

(3) Parties shall maintain status quo with regard to nature and possession of the

land in question as existing on the date till the matter is decided by the State Government under Section 48 of the Act. Parties shall bear their own costs."

25. Representations were again filed before the State Government. They have been rejected by order dated 30 May 2013. It is this order and two other similar orders dated 10 July 2013 and 26 June 2015 that have been assailed in these five petitions.

26. The order, while rejecting the claim of the petitioners under Section 48 of the Act, takes note of the following facts : (i) Pursuant to the directions issued by the High Court in the judgment dated 28 February 2012, comments were sought from the Authority. Land situated in certain villages of district Aligarh had been acquired for "Land for Development" after the notification under Section 4(1) of the Act was issued and the declaration was made under Section 6 of the Act. Possession of this large tract of land was taken by the Collector from the tenure holders on 15 July 2009 and transferred to the Authority on 27 July 2009. The possession certificates indicate that two independent witnesses have signed the possession certificate relating to transfer of land by the State Government to the Authority and by the Authority to the concessionaire.

(ii) The Government Order dated 27 August 2010 does not provide that the land of such farmers who have not agreed to accept compensation at the rate of Rs. 570/- per sq. mtr. would stand withdrawn from acquisition. The Government Order would not be applicable as possession of the land was taken by the State on 15 July 2009. As possession had been taken, the State Government cannot withdraw from the acquisition under Section 48 of the Act;

(iii) Large tracts of land which were acquired for the Expressway and the five parcels of land to be provided to the concessionaire formed part of an integrated project and the concessionaire had also, after taking physical possession of the land, barricaded it. The project was a time bound public project and any relief to the applicants would not only have serious effect on the implementation to the project but would also cause irreparable loss to the Authority;

(iv) Jai Prakash was chosen as concessionaire after inviting bids and thereafter the agreement was executed on 7 February 2003. The cost of the project was to be recovered by the concessionaire from the collection of tolls and development of the five parcels of land along the Expressway to be provided to it on lease. Consequently, after the execution of the lease deed and the agreement, the Concessionaire acquired rights over the land for a period of 90 years. The Concessionaire is also making payment of the annual lease rent to the Authority. The State Government would, therefore, not be legally justified in depriving the Concessionaire any of the rights that have accrued. The Concessionaire has also paid compensation to the tenure holders towards the crops for the kharif 2010, rabi 2010-11 and kharif 2011.

(v) The documents provided by the Authority and the Land Acquisition office reveal that only some farmers, whose number is very negligible as compared to

those who have executed agreements and received compensation under the provisions of 1997 Rules, have made a claim for withdrawal from acquisition. Details of the farmers who had received compensation under the 1997 Rules for the land that had been acquired for "Land for Development" in district Aligarh is as follows:-

Total No. of farmers affected by the acquisition

Area of land acquired in hectares

Number of farmers who have entered into agreement

Number of farmers who have received compensation

No. of Farmers

%age

Area in hectares

%age

No. of Farmers

%age

Area in hectares

%age

1950

510.16

1574

80.72

413.7

81.09

1524

78.15

397.25

77.87

Details of the farmers who have not received compensation/area

No. of farmers

%age

Area hectares

%age

426

21.85

112.9

22.13

27. A perusal of the order passed by the State Government and the aforesaid Chart shows that out of 1950 farmers affected by the acquisition at Aligarh, 1574 farmers have entered into an agreement under the 1997 Rules for 413.70 hectares of land and out of these 1574 farmers, 1524 farmers have also received compensation. Thus, only 376 farmers have not executed any agreement under the 1997 Rules. It needs to be noted that the 1997 Rules provide for determination of compensation and declaration of award by agreement. The Department for which the land is being acquired can at any stage settle down the terms and conditions and rate of the land under acquisition with the land owners. The agreement is executed in the form prescribed under the 1997 Rules. The award is then made under section 11(2) of the Act. It needs to be stated that under the 1997 Rules, the State had earlier agreed to pay Rs.436 per sq. mtr. but it was subsequently enhanced to Rs.570 per sq. mtr. when farmers resorted to agitation.

28. It would also be necessary for the Court to place on record certain facts that have been highlighted by the respondents. The respondents have provided a chart which indicates that out of the 136 petitioners in these five writ petitions, 21 petitioners have already taken the amount of compensation determined under the provisions of The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. Learned counsel for the respondents have also submitted a chart which indicates that 89 out of these 136 petitioners had in fact earlier filed writ petitions to challenge the acquisition proceedings. These writ petitions, as noted above, were dismissed by the High Court and the Supreme Court dismissed the Special Leave Petitions. It is after dismissal of the writ petitions that they had made a claim for withdrawal from acquisition under Section 48 of the Act. 28-A. Sri Ravi Kiran Jain, learned Senior Counsel for the petitioners assisted by Sri Swetashwa Agarwal submitted :-

i. The State Government could not have rejected the representations filed by the petitioners under Section 48 of the Act on the ground that possession had been taken by the State Government because the Division Bench of the High Court in the judgment rendered on 28 February 2012 had recorded a categorical finding that possession had not been taken by the State in accordance with law. It was also not open to the State Government to rely upon additional documents that had been filed relating to taking of possession for recording a finding that possession had been taken by the State Government on 15 July 2009 and was subsequently transferred to the Authority on 27 July 2009;

ii. Once a finding had been recorded by the Division Bench that possession had not been taken by the State Government on 15 July 2009, it was incumbent upon the State Government to have taken a decision to withdraw from the acquisition in terms of the Government Order dated 27 August 2010;

iii. The finding recorded in the impugned orders that it would not be possible for the State to withdraw from the acquisition since a lease deed had been executed in favour of Jai Prakash and a concession agreement had also been executed did not find favour of the Division Bench in the earlier round of litigation. It could not have, therefore, formed the basis for rejecting the representations filed by the petitioners under Section 48 of the Act for withdrawal from the acquisition and;

iv. In any view of the matter, in case the Court is not inclined to accept the submission that the State should withdraw from the acquisition of land, the Court can enhance the compensation in view of the decision of the Supreme Court in *Sahara India Commercial Corporation Ltd. v. State of U.P. and Another*, 2016 (12) Scale 495.

29. Dr. Y.K. Srivastava, learned Standing Counsel appearing for the State respondents submitted : i. The State Government was justified in recording a finding that possession had been taken by the State from the farmers in view of the documents that had been subsequently filed by the Authority. This was permissible as the High Court had remanded the matter to the State Government to take a fresh decision with regard to the claim of the petitioners for withdrawal from the acquisition of land under Section 48 of the Act;

ii. The State Government has given good and cogent reasons for rejecting the claim of the petitioners; and

iii. The claim of the farmers was primarily for enhancement of the compensation which the State Government had agreed to and, therefore, the State Government was justified in rejecting the representation.

30. Sri Suresh Singh learned counsel appearing for the Authority submitted : i. The acquisition proceedings for the Expressway and for the five parcels of the land had been upheld by the High Court and the Supreme Court holding that the entire project for construction of the Expressway and development of the five parcels of land was an integrated project and, therefore, the State Government was justified in rejecting the representations;

ii. The Government Order dated 27 August 2010 is not a decision by the State Government to withdraw from the acquisition;

iii. The decision of the State Government to reject the representations is based on sound reasons;

iv. The claim for withdrawal from acquisition is for only a very small area admeasuring about 73.7903 hectares as compared to 496.1438 hectares of land that had been acquired; and

v. Some of the petitioners had also filed writ petitions to challenge the acquisition proceedings, which petitions had been dismissed and some of the petitioners have also received compensation determined under the award that has been made under the 2013 Act. If they are aggrieved by the determination of the compensation, they can invoke the provisions of section 64 of the 2013 Act for enhancement of the compensation.

31. Sri Navin Sinha, learned Senior Counsel appearing for Jai Prakash assisted by Sri Prashant Shukla and Ms. Bhavya Tiwari submitted : i. Cogent reasons have been given by the State Government to reject the representations filed for withdrawal from acquisition of land under Section 48 of the Act and, therefore, the impugned order does not call for any interference by the High Court in exercise of its power of judicial review under Article 226 of the Constitution of India;

ii. The findings recorded in the impugned order that it would not be appropriate for the State Government to withdraw from the acquisition because of the terms contained in the lease deed and the concession agreement has not been assailed in the writ petition;

iii. The Government Order dated 27 August 2010 does not amount to an order for withdrawal from acquisition and the State Government was obliged to consider the claim of the petitioners in the light of the provisions contained in Section 48 of the Act;

iv. In any case, the Government Order dated 27 August 2010 could not amount to any decision of the State Government to withdraw from acquisition as the Concessionaire had not been heard.

v. Section 48 of the Act only gives liberty to the State Government to withdraw from the acquisition and does not confer any right upon the farmers to compel the State Government to withdraw from the acquisition of land merely because possession had not been taken;

vi. The State Government was obliged to provide the five parcels of land to the Concessionaire in terms of the agreement as it was a project linked with Expressway and, therefore, could not have passed an order for withdrawal of acquisition; and

vii. In the facts and circumstance of the case, particularly when most of the farmers have accepted the compensation either under the 1997 Rules or under the award made under 2013 Act and only negligible farmers are claiming withdrawal from acquisition under Section 48 of the Act, there was no good reason for the State to withdraw from the acquisition.

32. We have considered the submissions advanced by the learned counsel for the parties.

33. In order to appreciate the contentions advanced by the learned counsel for

the parties, it would be appropriate to reproduce Section 48 of the Act and analyse it. Section 48 of the Act is as follows:- 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.

34. A plain reading of section 48(1) of the Act indicates that liberty has been given to the State Government to withdraw from the acquisition of any land of which possession has not been taken. This is also clear from the Heading to the section which indicates that completion of acquisition is not compulsory but compensation should be awarded when it is not completed. This section has to be understood in the light of the earlier sections relating to acquisition of land.

35. Section 4 of the Act deals with publication of the preliminary notification for acquisition of land. Sub-section (1) provides that whenever it appears to the appropriate Government that land in any locality is needed or is likely to be needed for any public purpose, a notification to that effect shall be published in the official Gazette and in two daily newspapers circulating in that locality of which at least one shall be in the regional language and the Collector shall cause public notice of the substance of such notification to be given at convenient places in the said locality.

36. Section 5-A of the Act deals with objections. It provides that any person interested in any land which has been notified under section 4(1) as being needed or likely to be needed for a public purpose may, within thirty days from the date of the publication of the notification, object to the acquisition of the land or of any land in the locality. The Collector under sub-section (2) of Section 5-A has to give objector an opportunity of being heard and after hearing such objections and after making such further inquiry, make a report to the appropriate Government containing his recommendations on the objections and the decision of the appropriate Government on the objections shall be final.

37. Section 6 of the Act deals with declaration of intended acquisition. Section 6(1) provides that when the appropriate Government is satisfied, after considering the report, if any, made under sub-section 5-A(2), that any particular land is needed for a public purpose, a declaration shall be published in the official gazette and in two daily newspapers circulating in the locality in which the land is

situate of which at least one shall be in the regional language, and the Collector shall cause public notice of the substance of such declaration to be given at convenient places in the said locality. Sub-section (3) of Section 6 provides that the said declaration shall be conclusive evidence that the land is needed for a public purpose and after making such a declaration, the appropriate Government may acquire the land in the manner provided in the subsequent sections.

38. Section 7 provides that whenever any land has been declared to be needed for a public purpose, the appropriate Government shall direct the Collector to take order for acquisition of the land.

39. Section 9 deals with notice to persons interested. Sub-section (1) provides that the Collector shall cause public notice to be given at convenient places on or near the land to be taken, stating that the Government intends to take possession of the land, and that claims to compensation for all interests in such land may be made to him.

40. Section 11 deals with enquiry and award by Collector. It provides that the Collector shall proceed to enquire into the objections (if any) which any person interested has stated pursuant to a notice given under section 9 and thereafter make the award.

41. Section 16 deals with power to take possession. It provides that when the Collector has made an award under section 11, he may take possession of the land, which shall thereupon vest absolutely in the Government, free from all encumbrances.

42. Section 17 of the Act deals with special powers in cases of urgency. Sub-sections (1) and (4) are reproduced below:- (1) In cases of urgency, whenever the appropriate Government so directs, the Collector, though no such award has been made, may, on the expiration of fifteen days from the publication of the notice mentioned in section 9, sub-section (1), take possession of any land needed for a public purpose. Such land shall thereupon vest absolutely in the Government, free from all encumbrances.

.....

.....

(4) In the case of any land to which, in the opinion of the appropriate Government, the provisions of subsection (1) or sub-section (2) are applicable, the appropriate Government may direct that the provisions of section 5A shall not apply, and, if it does so direct, a declaration may be made under section 6 in respect of the land at any time after the date of the publication of the notification under section 4, sub-section (1).

43. A perusal of the aforesaid sub-sections of Section 17 clearly indicates that in cases of urgency, the appropriate Government can direct the Collector, though award has not been made under Section 11, to take possession of any land

needed for a public purpose on expiration of fifteen days from the publication of the notice mentioned in Section 9(1). Such land shall thereupon vest absolutely in the Government, free from all encumbrances.

44. It is, therefore, clear that both under Section 16 and under Section 17(1) of the Act, the land would vest absolutely in the Government, free from all encumbrances once possession is taken.

45. It is for this reason that Section 48 gives liberty to the State Government to withdraw from the acquisition of any land of which possession has not been taken because if possession has been taken, the land would vest in the State Government and it would be left with no power to withdraw from the acquisition. It is also important to note that under subsection (3) of section 6, the declaration made under sub-section (1) is conclusive evidence that the land is needed for public purpose and after such a declaration is made, the State Government can direct the Collector to take order for acquisition of the land. Thus, it is after the acquisition proceedings are initiated by issuance of the primary notification under section 4(1) of the Act and before possession is taken by the State Government either under section 16 or section 17(1) of the Act, that liberty is given to the State Government under Section 48 of the Act to withdraw from the acquisition.

46. In this connection, it would be useful to reproduce the observations made by the Supreme Court in *Special Land Acquisition officer, Bombay & Ors. v. M/s. Godrej and Boyce*, (1998) 1 SCC 50 and the same are as follows : "..... Under the scheme of the Act, neither the notification under Section 4 nor the declaration under Section 6 nor the notice under Section 9 is sufficient to divest the original owner of, or other person interested in, the land of his rights therein. Section 16 makes it clear beyond doubt that the title to the land vests in the Government only when possession is taken by the Government. Till that point of time, the land continues to be with the original owner and he is also free (except where there is specific legislation to the contrary) to deal with the land just as he likes, although it may be that on account of the pendency of proceedings for acquisition intending purchasers may be chary of coming near the land. So long as possession is not taken over, the mere fact of a notification under Section 4 or declaration under Section 6 having been made does not divest the owner of his rights in respect of the land or relieve him of the duty to take care of the land and protect it against encroachments. Again, such a notification does not either confer on the State Government any right to interfere with the ownership or other rights in the land or impose on it any duty to remove encroachments therefrom or in any other way safeguard the interests of the original owner of the land. It is in view of this position, that the owner's interests remain unaffected until possession is taken, that Section 48 gives a liberty to the State Government to withdraw from the acquisition at any stage before possession is taken. By such withdrawal no irreparable prejudice is caused to the owner of the land, and if at all he has suffered any damage in consequence of the acquisition proceedings or incurred costs in relation thereto, he will be compensated therefor

under Section 48(2). In this view of the matter, it does not matter even if there is lapse of considerable time between the original notification and the withdrawal under Section 48 as held in Trustees of Bai Smarth Jain Shvetambar Murtipujak Gyanodhya Trust v. State of Gujarat, AIR 1981 Guj 107 . It also follows that the State can be permitted to exercise its power of withdrawal unilaterally and no requirement that the owner of the land should be given an opportunity of being heard before doing so should be read into the provision."

(emphasis supplied)

47. It needs to be remembered that the decision of the State Government to withdraw from the acquisition under section 48(1) of the Act has to be published in the official gazette as has been held by the Supreme Court in Mutha Associates & Ors. v. State of Maharashtra & Ors.(2013) 14 SCC 304.

48. In M/s. Larsen and Turbo Ltd. v. State of Gujarat & Ors.(1998) 4SCC 387, a specific submission was made on behalf of the State that Section 48 of the Act does not provide for publication of a notification regarding the withdrawal of the acquisition proceedings unlike Sections 4 and 6 of the Act which require such a publication. The Supreme Court, however, repelled the contention and observed : "We do not think that Mr. Salve is quite right in his submissions. When Sections 4 and 6 notifications are issued, much has been done towards the acquisition process and that process cannot be reversed merely by rescinding those notifications. Rather it is Section 48 under which, after withdrawal from acquisition is made, compensation due for any damage suffered by the owner during the course of acquisition proceedings is determined and given to him. It is, therefore, implicit that withdrawal from acquisition has to be notified.

Principles of law are, therefore, well settled. A notification in the official Gazette is required to be issued if the State Government decides to withdraw from the acquisition under Section 48 of the Act of any land of which possession has not been taken."

(emphasis supplied)

49. In Shanti Sports Club & anr. v. Union of India & ors.(2009) 15 SCC 705, the Supreme Court also observed that having regard to the fact that the notification under section 4(1) and the declaration under section 6 of the Act are published in the official Gazette, it is reasonable to take a view that withdrawal from the acquisition, which may adversely affect public purpose, can be done only by issuing a notification in the official Gazette. The Supreme Court observed that this was necessary so that those interested in the fulfilment of the public purpose for which the land is acquired or the company concerned for which the acquisition is made may question such withdrawal. The observations are as follows: "37. Although, the plain language of Section 48(1) does not give any indication of the manner or mode in which the power/discretion to withdraw from the acquisition of any land is required to be exercised, having regard to the scheme of Parts II and VII of the 1894 Act, which postulates

publication of notification under Section 4(1), declaration under Section 6 and agreement under Section 42 in the official Gazette as a condition for valid acquisition of the land for any public purpose or for a company, it is reasonable to take the view that withdrawal from the acquisition, which may adversely affect the public purpose for which, or the company on whose behalf the acquisition is proposed, can be done only by issuing a notification in the official Gazette.

38. The decision to acquire the land for a public purpose is preceded by consideration of the matter at various levels of the Government. The revenue authorities conduct survey for determining the location and status of the land and feasibility of its acquisition for a public purpose. The final decision taken by the competent authority is then published in the official Gazette in the form of a notification issued under Section 4(1) of the Act. Likewise, declaration made under Section 6 of the Act is published in the official Gazette. The publication of notifications under Section 4(1) has twofold objectives. In the first place, it enables the land owner(s) to lodge objections against the proposed acquisition. Secondly, it forewarns the owners and other interested persons not to change the character of the land and, at the same time, make them aware that if they enter into any transaction with respect to the land proposed to be acquired, they will do so at their own peril. When the land is acquired on behalf of a company, consent of the appropriate Government is a must. The company is also required to execute an agreement in terms of Section 41 of the Act which is then published in the official Gazette in terms of Section 42 thereof. As a necessary concomitant, it must be held that the exercise of power by the Government under Section 48(1) of the Act must be made known to the public at large so that those interested in accomplishment of the public purpose for which the land is acquired or the company concerned may question such withdrawal by making representation to the higher authorities or by seeking court's intervention. If the decision of the Government to withdraw from the acquisition of land is kept secret and is not published in the official Gazette, there is every likelihood that unscrupulous land owners, their agents and wheeler-dealers may pull strings in the power corridors and clandestinely get the land released from acquisition and thereby defeat the public purpose for which the land is acquired. Similarly, the company on whose behalf the land is acquired may suffer incalculable harm by unpublished decision of the Government to withdraw from the acquisition."

(emphasis supplied)

50. It is equally important to note that while exercising powers under section 48 of the Act, the State Government has to provide hearing to the beneficiary affected by such withdrawal. In this connection it would be useful to reproduce the observations made by the Supreme Court in *Mutha Associates* and they are:- "Coming then to the question whether the exercise of power under Section 48 of the Land Acquisition Act required compliance with the principles of natural justice and consequently a hearing to the beneficiary affected by such withdrawal, we must at the threshold say that such a requirement is not in specific words

incorporated in Section 48 of the Act. That does not, however, make any material difference because the law is well-settled that if a statutory provision could be read consistently with the principles of natural justice, the Courts would prefer to do so. That is because it can be presumed that the legislature and the statutory authorities intend to act in accordance with such principles. In case, however, the statutory provisions either specifically or by necessary implication exclude the application of the principles of natural justice, the Court cannot ignore the mandate of the legislature and read into any such provision the principles of natural justice."

51. The Supreme Court relied upon its earlier decision in *State Government Houseless Harijan Employees' Association v. State of Karnataka*, (2001) 1 SCC 610 in which the contention that the right of hearing of the beneficiary was limited to acquisition for companies was repelled with the following observation :- "The decision in *Larsen and Toubro Ltd. v. State of Gujarat*, (1998) 4 SCC 387 which relied upon an earlier decision in *Amarnath Ashram Trust Society v. Governor of U.P.* AIR 1998 SC 477 to hold that a beneficiary has a right to be heard before a notification under Section 48(1) is issued, does not appear to be limited to acquisition for companies under Part VII of the Act as is contended by the Respondents although the acquisition in that case had been made for a company for the purpose of setting up a housing colony. Both cases have also drawn a distinction between the rights of an owner and the beneficiary of the acquisition to object to withdrawal from the acquisition for the reasons noted earlier."

It is in the light of the aforesaid principles that the submissions advanced by learned counsel for the parties have to be examined.

52. The first submission advanced by Sri Ravi Kiran Jain, learned Senior Counsel appearing for the petitioners is that the finding recorded in the impugned order that since possession had been taken, the State could not withdraw from the acquisition of land under Section 48 is factually incorrect. To support this submission, learned Senior Counsel has relied upon the observations and findings recorded by the Division Bench in the judgment rendered on 28 February 2012 in the earlier writ petitions that had been filed to assail the order passed by the State Government to reject the representation filed by the petitioners under section 48 of the Act on the ground that possession of the land had been taken by the State Government.

53. Dr. Y. K. Srivastava, learned Standing Counsel appearing for the State has, however, placed the impugned order and has stated that possession of the land was taken by the State from the tenure holders on 15 July 2009 which is clear from the possession certificate which contains the signatures of not only the Special Land Acquisition officer and other State Government officials but also of two independent witnesses, which fact has also been certified by the Revenue Inspector and Lekhpal. Learned Standing Counsel also submitted that after the State had taken possession of the land on 15 July 2009, it gave possession of the

land to the Authority on 27 July 2009. This possession certificate also contains the signatures of the Government officials and two independent witnesses. The submission of learned Standing Counsel, therefore, is that since possession of the acquired land had been taken by the State in accordance with law, the State Government could not have withdrawn from the acquisition under section 48 of the Act.

54. It is not possible to accept the contention of learned Standing Counsel that possession of the land had been taken in view of the observations and findings of the Division Bench in the judgment dated 28 February 2012. The Division Bench rejected the contention of the State that the possession had been taken and the observations are as follows : "The notification under Section 4 read with Section 17(1) and 17(4) of the Act with regard to villages Jahangarh, Tappal and Jikarpur was issued on 31st March, 2009. The declaration under Section 6 of the Act was issued on 28th May, 2009. The case of the respondents is that the possession was taken of the land of aforesaid villages on 15th and 27th July, 2009. The petitioners have filed copy of the possession memo dated 15th July, 2009 and 27th July, 2009 as Annexure-3 to the leading writ petition. A perusal of the possession memo indicate that the said possession memo contains the signatures of the Special Land Acquisition officer as well as the officials of the Authority only and there are no signatures of any independent witness or any of the land holders. The question as to how the possession of agricultural land shall be taken in the land acquisition proceedings came for consideration recently before a Full Bench of this Court in which one of us (Justice Ashok Bhushan) was also a member in the case of Gajraj and others v. State of U.P. and others reported in 2011(11) ADJ 1. The Full Bench after referring to and relying on judgments of the Apex Court in the cases of Balwant Narayan Bhagde v. M.D. Bhagwat and others reported in A.I.R. 1975 SC 1767, Balmokand Khatri Educational and Industrial Trust v. State of Punjab reported in 1996(4) SCC 212 and Banda Development Authority, Banda v. Moti Lal Agarwal & Ors, reported in (2011) 5 SCC 394, while considering similar possession memo as claimed in the present case, has held that the aforesaid possession memo are not the possession memo and such document cannot be treated to be valid possession memo/panchnama nor the same can be treated to be sufficient to constitute taking of possession.

.....

Although the State Government as well as the Authority in their counter affidavits have mentioned taking of possession on 15th July, 2009 and 27th July, 2009 but they have not referred to any other materials claiming taking of possession of the land except possession memo filed as Annexure-3 to the leading writ petition. The petitioners in the writ petitions have categorically pleaded that they are in actual physical possession and possession was never taken by any of the respondents. In the order impugned in leading writ petition, the State Government has referred to the reports received from Special Land

Acquisition officer, Aligarh stating that possession of the land of village Jikargarh was taken on 15th July, 2009 and possession of the land of the villages Jahangarh and Tappal was taken on 27th July, 2009. The State Government has, without referring to any material or giving any reason, jumped on the conclusion that the land was transferred to the Authority on 15th July, 2009 and 27th July, 2009 respectively and the same is in possession of the Authority. As stated above, the possession of the land as alleged by the respondents having not been taken in accordance with law as declared by the Apex Court in aforementioned cases, it cannot be held that the possession of land has been taken by the respondents. The view of the State Government in its order dated 11th October, 2011 (Annexure-9 to the leading writ petition) and similarly in the order dated 29th April, 2011 which is challenged in Writ Petition No. 1341 of 2012 cannot be accepted."

(emphasis supplied)

55. The Division Bench, as is clear from the observations, also noted that the State Government had relied only upon the possession memo filed as Annexure-3 to the writ petition and no other material had been placed by the State to substantiate that possession of the land had been taken.

56. The judgment of the Division Bench attained finality as the State did not challenge it before the Supreme Court. It is after recording such a finding that possession had not been taken in accordance with law that the Division Bench remanded the matter to the State Government to take a decision because the State Government could withdraw from the acquisition of land only if possession of land had not been taken.

57. In such circumstances, it was not open to the State Government to reopen the concluded finding and by placing reliance upon certain documents hold in the impugned order that possession of the land had been taken. Thus, the finding recorded in the impugned order that possession of the land had been taken by the State Government deserves to be set aside and the decision of the State Government has to be examined independently, as if possession of the land had not been taken.

58. The decision of the State Government not to exercise the liberty granted to it under section 48 of the Act to withdraw from the acquisition has been defended by Sri Navin Sinha, learned Senior Counsel appearing for Jai Prakash and Sri Suresh Singh, learned counsel appearing for the Authority by placing reliance on the reasons contained in paragraphs 11 and 12 of the impugned order dated 30 May 2013.

59. The State Government noted in the said paragraphs that large tracts of land that had been acquired for the Expressway and the five parcels adjoining the Expressway, formed part of an integrated time bound public project. The State Government also noted that Jai Prakash had been chosen as a concessionaire after a bid process and an agreement had also been executed on 7 February

2013 between the State Government and Jai Prakash. The agreement provided that the cost of construction of the Expressway was to be realised by Jai Prakash from the rights it had been given to collect the tolls and from the development of the five parcels of land that had been given to it on lease for 90 years. Jai Prakash had, therefore, acquired rights over the five parcels of land, which right cannot be legally taken away by releasing some portion of the land under section 48(1) of the Act.

60. The contention of Sri Ravi Kiran Jain, learned Senior Counsel for the petitioners is that even this issue had been decided against the State in the earlier judgment rendered on 28 February 2012 by the Division Bench while examining the contention raised on behalf of Jai Prakash that the State Government had no jurisdiction to pass an order under section 48 of the Act as the project for development of land had been granted to it and a concession agreement had also been executed.

61. To appreciate this contention, it would be necessary to once again examine the two sets of acquisition, namely acquisition of land for the Expressway and the acquisition of land for the five parcels of land adjoining the Expressway.

62. As noted above, it was in 2001 that the State Government had taken a decision to construct the 160 kms. six lane access controlled Expressway. Bids were invited from all interested parties who were informed that the Company undertaking the project was to invest the money and to compensate the cost of construction, the right to collect toll charges would be given for a period of 36 years as also five parcels of land, each measuring 500 hectares, on lease for 90 so that it could develop it. The concession agreement between the State Government and Jai Prakash also deals with this issue. Clause 3.3 deals with grant of concession. It provides that the concessionaire shall be granted rights by the Authority for development of 2500 hectares of land along the proposed Expressway for commercial, amusement, industrial, institutional and residential purpose at five locations of 500 hectares each. Clause 3.7 of the agreement confers rights upon a concessionaire to collect and retain the fee from the users of the Expressway between NOIDA and Greater Noida during the term of the concession agreement. Clause 4.1 deals with land for construction of the Expressway. It provides that land for construction of the Expressway shall be given by the Authority to the concessionaire in a width of 100 mtrs. along the alignment of the Expressway on certain terms and conditions. The acquisition cost was, however, to be paid by the concessionaire. Clause 4.2 specifically provides that land for development shall be released in three stages. Clause 4.3 provides that the land for development shall be transferred to the concessionaire free from all encumbrances on certain terms and conditions and that it shall be on lease for a period of 90 years from the date of transfer.

63. It is, therefore, clear that the cost of construction of the Expressway was to be realised by the concessionaire from the collection of tolls and from development of the five parcels of land provided to it on lease for commercial,

amusement, industrial, institutional and residential complex purpose. The acquisition of land for the construction of the Expressway and acquisition of land for the five parcels of land was thus an integrated project.

64. The Supreme Court, while deciding *Nand Kishore Gupta* relating to the acquisition of land for the Expressway, also observed that the creation of five zones for industry, residence, amusement would be complimentary to the construction of the Expressway. The Supreme Court also observed that creation of land parcels would give impetus to the industrial development of the State and create more jobs. Thus, development in the five parcels will help maximum utilization of the Expressway and the existence of an Expressway for the fast moving traffic would help the industrial culture created in the five parcels. The Supreme Court, therefore, observed that development of land at five parcels was an integrated infrastructure development project and not merely an Expressway project.

65. The Division Bench of the High Court in *Narendra Road Lines Private Limited*, while rejecting the challenge to the acquisition of the land made for the five parcels of land, also observed that the construction of the 160 kms. Expressway with 100 meters width and provision of 2500 hectares of land on a band of about 500 meters at five or more locations was an integral part of the agreement and since the chosen concessionaire was not projected to recoup the expenditure required for construction of the Expressway from toll collection in 36 years, the agreement provided to make the project financially viable by providing development of land in these five parcels. It would be useful to again reproduce paragraph 96 of the judgment which is as follows : "96. In the present case, we find that the land for development for "Yamuna Expressway Project" through "Yamuna Expressway Industrial Development Authority" is an integrated project. The land was initially acquired for the expressway and thereafter the land has been acquired for developing five parcels, as townships, as an integrated plan of development, both for compensating the concessionaire for the cost of the expressway, as well as the development of the area. The agreement provides that the parcels shall be developed strictly in accordance with the plan prepared by the YEIDA, by adhering to the bye-laws of YEIDA, and other laws applicable to development."

66. Thus, when it was so clearly projected in the notice inviting bid and in the agreement that to compensate the cost of construction of the Expressway, parcels of land at five places along the Expressway for various developments would be provided to the concessionaire on lease for a period of 90 years in addition to the right to collect tolls for 36 years, then would it be prudent on the part of the State Government to withdraw from the acquisition of any portion of land situated in the five parcels. The answer would obviously be in the negative. Any reduction in the area of the land to be provided to the concessionaire in terms of the agreement would not only work to the detriment of the concessionaire in terms of completely recouping the cost of the compensation,

but would also result in modifying the terms of the agreement. This was an important factor which had to be taken into consideration by the State Government and indeed it has been considered for rejection of the claim of the petitioners.

67. The submission of Sri Ravi Kiran Jain, learned Senior Counsel for the petitioners, however, is that this aspect could not have been considered by the State Government after rejection of the submission advanced by Jai Prakash before the Division Bench in the earlier round of litigation that the State Government had no competence to pass an order under section 48(1) of the Act since an agreement had been entered into between the Authority and the concessionaire.

68. It is not possible to accept this contention of learned Senior Counsel for the petitioners. The Division Bench was examining the specific contention advanced by learned counsel for Jai Prakash that the State Government had no competence to pass an order under section 48 of the Act once the concession agreement had been executed. It is this submission that was rejected. It was always open to the State Government while considering the matter afresh to examine whether execution of the agreement would have any impact on the exercise of liberty granted to the State under Section 48(1) of the Act. Thus, merely because the concession agreement had been executed would not mean that the State could not exercise the liberty granted to it to withdraw from the acquisition under section 48(1) of the Act but certainly it could have been taken into consideration by the State to examine whether it would be appropriate to withdraw from the acquisition in view of terms and conditions set out in the agreement. The State Government, on a consideration of the aforesaid factors, decided not to withdraw from the acquisition. The decision taken by the State cannot, therefore, be said to be in conflict with the decision rendered by the Division Bench of this Court on 28 February 2012.

69. At this stage it would also be useful to examine the scope of the exercise of powers by the State Government under section 48 of the Act to withdraw from the acquisition of land. Section 48 of the Act only gives liberty to the State Government to withdraw from the acquisition. It does not confer a right upon a person whose land has been acquired to either challenge the acquisition proceedings or to seek enhancement of compensation under section 48 of the Act. Acquisition proceedings can be challenged after issuance of the notification under section 4(1) of the Act and the declaration made under section 6 of the Act by filing a writ petition. What must be remembered is that in the instant case the challenge to the acquisition proceedings had failed both in the High Court and the Supreme Court. Another opportunity is certainly not required to be given to the land owners to challenge the acquisition proceedings under section 48(1) of the Act nor does section 48 confer a right upon a land owner to contend that if adequate compensation is not given, the State must withdraw from the acquisition. A land owner can seek enhancement of compensation under section

18 of the 1894 Act or by filing an appeal before the High Court and then before the Supreme Court. It can also be availed under section 64 of the 2013 Act.

70. The scope of section 48 of the Act has been considered by a Division Bench of this Court in *Jaiveer Singh & Ors. v. State of U.P. & Ors.* Writ Petition No. 20146 of 2008 decided on 24.4.2008 and the observations are as follows : "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.

.....

.....

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."

(emphasis supplied)

71. In *Panchayat Mahajan Village Naharpur v. Lt. Governor, Delhi and Ors.* 2006 VII AD (Delhi) 383, the Delhi High Court also made similar observations : "The authorities concerned have passed the impugned orders after taking into consideration the various aspects. Section 48 does not vest any indefeasible legal right in any person to claim denotification and release of his land from acquisition proceedings. It is primarily a discretion which vests in the government and only the Government can withdraw any land from acquisition, but this discretion is also restricted to the extent that the provisions of Section 48 would not be applicable, where the possession had already been taken."

72. The Delhi High Court in *Raheja Hospital and Psychiatric Research Institute*

through its Director Dr. H.C. Raheja v. Lt. Governor of Delhi & Ors.,(2005) DLT 193 pointed out that acquisition proceedings can be challenged by filing a writ petition and that no further additional right can be given to land owners to challenge the acquisition proceedings by taking recourse to section 48 of the Act. The Court pointed out that what was sought to be achieved by the petitioners while assailing the decision taken by the State Government not to withdraw from the acquisition under section 48(1) of the Act was something on which it had already failed since the writ petition filed to challenge the acquisition proceedings had been dismissed. Such a course would not only be impermissible but would also amount to abuse of judicial process. The observations are as follows : "31. The reason for this is that a landowner already has a subsisting right to challenge a decision of the appropriate Government to go ahead with the acquisition process. Indeed, this is the very reason why the Courts have permitted a challenge to a Notification under Section 4 of the Act and a challenge to a declaration under Section 6 thereof. To say that an additional or further right is given to a landowner to challenge the continuance of the same acquisition process, by challenging a decision of the appropriate Government not to withdraw from the acquisition process by resorting to Section 48 of the Act, is a singularly different proposition altogether, and is really the subject matter of debate in this case.

32. The scheme of the Act suggests to us that an inquiry under Section 5-A thereof and a challenge to a Section 6 declaration inherently take within their fold an application of mind by the appropriate Government to discontinuing the acquisition process or denotification of the land. If objections raised by a landowner under Section 5-A of the Act are upheld, the effect would be that the acquisition process would come to a halt and the land would not be acquired. Similarly, if a challenge to a Section 6 declaration were upheld, the acquisition process would come to a halt and the land would not be acquired. An exercise of power under Section 48 of the Act by the appropriate Government does not lead to any other or different result. In other words, what is sought to be achieved by resort to a challenge to Notifications under Sections 4 and 6 of the Act is the same as what is sought to be achieved by resort to Section 48 of the Act, and vice versa. In so far as the present case is concerned, what the Petitioner is seeking to achieve by invoking Section 48 of the Act is something that it has already tried to achieve (but failed) in its first writ petition wherein a challenge was laid to the declaration under Section 6 of the Act. We are of the view that a repeated challenge is not only impermissible, but amounts to an abuse of the judicial process.

33. Additionally, we may note that the Petitioner is now trying to have the acquisition indirectly set aside, something that it was unsuccessful in doing directly through its first writ petition.

(emphasis supplied)

73. Another important aspect that needs to be remembered is that the liberty to

withdraw from the acquisition under section 48(1) of the Act can appropriately be exercised by the State if the purpose for which land was acquired does not survive or that it is otherwise considered necessary not to continue with the project because in such circumstances, the State Government cannot be compelled to continue with the acquisition. This is so because the declaration under section 6(3) of the Act is conclusive evidence that the land is needed for a public purpose. The Expressway has been built and the dispute is only about a very small area of land situated in one of the five parcels of land at Aligarh that was provided to the concessionaire in terms of the agreement. It cannot, thus, be said that the land is no longer required by the Authority nor is it the case of the Authority or Jai Prakash that this area of land is no longer required. The impugned order mentions that out of the 1950 tenure holders affected by acquisition of land for site No.4, 1574 tenure holders have executed the agreement in terms of the 1997 Rules for an area admeasuring 413.7021 hectares. It has also been stated before the Court that out of 136 tenure holders who have filed these five petitions, 89 had earlier filed writ petitions to challenge the acquisition proceedings and these petitions had been dismissed. It has also been stated that subsequently the award was prepared under the provisions of 2013 Act and 21 of such tenure holders have also received compensation. The total area involved in the claims of the remaining 115 petitioners is about 65 hectares. It will not be appropriate for the State to exclude this area in such circumstances.

74. In *Ramjas Foundation v. Union of India & Ors.*, AIR 2004 Delhi 2382, the Delhi High Court pointed out that when an application under section 48(1) of the Act is rejected, it would mean that the need and public purpose both continue to operate. Thus, if it is pointed out that the land is actually required for development and the beneficiary has put the land to use, can it be said that the decision taken by the State Government is arbitrary. The Delhi high Court pointed out that powers under Article 226 of the Constitution are required to be exercised in furtherance of the interest of justice and in the matter of land acquisition, public interest is of paramount interest. The relevant observations are : "21. Rejection of an application under Section 48(1) of the Act would mean that the need and public purpose, both continue to operate. In absence of proved mala fide can a decision of Lt. Governor be challenged, more particularly by a speaking order while rejecting the application. It is pointed out that the land is required for development and before the Court beneficiary has pointed out to put the land to use for development strictly according to Master Plan.

22. Aforesaid aspect we have referred with a view to indicate that on the basis of the material placed before the competent authority, which on examination of the record arrived at a satisfaction that the land is needed for a public purpose. Then is it open on mere ipse dixit to ask the Government to exercise the power under Section 48(1) of the Act to de-notify the land from acquisition? One should note that this Court is not required to sit as an appellate Court to examine the decision rendered by the Lt. Governor. Power under Article 226 of the

Constitution are required to be exercised in furtherance of interest of justice. The Lt. Governor while passing an order was required to apply his mind to all relevant aspects and was not required to be swayed away by irrelevant aspects. The Lt. Governor has arrived at a conclusion which cannot be said to be perverse. On the basis of the material on record, when the Lt. Governor was satisfied that it is a case which requires no exercise of power, under Section 48 of the Act, and the land is required for development, it cannot be said that the Court is required to question the decision. As the respondents have pointed out that the land is required for a public purpose and that purpose is not abandoned, then in such a case it would not be permissible to the applicant to ask the authority to reopen the case by the State and in this situation it would not be open for this Court to interfere with the decision which is under challenge. In the matter of land acquisition, the Court will have to consider public interest as the paramount interest. Private interest has no place in the matter of land acquisition when a person is to be compensated. In the instant case, acquisition proceedings have been completed and unsuccessfully the petitioner has challenged the proceedings twice which has caused delay in development of land in accordance with the development plan. When the Lt. Governor has rejected the application after considering the material on record, Court should not interfere."

(emphasis supplied)

75. The Bombay High Court in Pimpri Chinchwad New Town Development Authority, Nigadi & Ors. v. State of Maharashtra & Ors. 2016 (1) Bom.CR 686 also observed : "..... Moreover, in view of Sub-Section (3) of Section 6 of the Land Acquisition Act, a declaration already made under Section 6 of the Land Acquisition Act in relation to the said lands was a conclusive evidence of the fact that the said lands were needed for the public purpose. The declaration under Section 6 of the Land Acquisition Act has attained finality. While exercising the power under Sub-Section (1) of Section 48, the declaration under Section 6 of the Land Acquisition Act by the State Government binds the State. In view of Sub- Section (3) of Section 6, while exercising the power under Sub-Section (1) of Section 48, the State Government cannot go into the issue whether public purpose was in existence on the day on which the declaration was issued under Section 6. However, the State Government can examine in a given case whether with the passage of time, the public purpose continues to exist. It is not the finding recorded that due to the events which have happened after the declaration under Section 6 of the Land Acquisition Act was made, the public purpose has ceased to exist."

(emphasis supplied)

76. Sri Ravi Kiran Jain, learned Senior Counsel for the petitioners also submitted that the effect of the Government Order dated 27 August 2010 had necessarily to be taken into consideration by the State Government while deciding the representations filed by the petitioners. To support this contention, it has been contended that when it was specifically provided in the Government Order, in

connection with the five parcels of land, that if any person was not ready to receive compensation at the rate of Rs.570/- per sq. mtr. then his land would not be acquired without his consent, the State Government had to necessarily withdraw from the acquisition as the petitioner had not agreed to receive compensation at that rate.

77. It needs to be remembered that acquisition of land for the Expressway was upheld by the High Court and the Supreme Court. The acquisition of land for the five parcels of land was also upheld by the High Court and the Supreme Court. It is after the petitions filed to challenge the acquisition for five parcels of land had been dismissed by the High Court on 2 July 2010 that some tenure holders whose lands were situated in one of the five parcels at Aligarh, resorted to agitation against the acquisition and the amount of compensation that was to be given. It needs to be also noticed that the Special Leave Petition filed by the tenure holders against the judgment of the High Court was dismissed on 10 September 2010. The State Government, in order to put an end to agitation, enhanced the compensation from Rs.436/- per sq. mtr. to Rs.570/- per sq. mtr. The Government Order, however, also provided that the land will not be acquired without the consent of the farmer if he did not agree to receive this compensation. The declaration under section 6 of the Act had already been made and even notice under section 9(1) of the Act had been issued. Though the State maintains that the possession was taken by it on 15 July 2009 and subsequently given to the Authority on 27 July 2009 but this was not accepted by the Division Bench in the earlier round of litigation. It has, therefore, to be seen whether such a condition contained in the Government Order can be said to be binding on the State Government under section 48 of the Act.

78. Once the acquisition proceedings had been initiated by issuance of the notification under section 4(1) of the Act and the declaration was also made under section 6 of the Act that the land was needed for a public purpose, then the State Government could have withdrawn from the acquisition of land under section 48 of the Act only by publication of the notification in the gazette and that too after providing an opportunity of hearing to the Authority and Jai Prakash. The State Government had not consulted the Authority or Jai Prakash before issuing the Government Order dated 27 August 2010. The Supreme Court has repeatedly held that opportunity of hearing has to be provided to the beneficiary of the acquisition so that it can point out the relevant facts including the fact that the public purpose for which the land was acquired continues to exist. The said Government Order, therefore, cannot be construed to necessarily mean that the State Government had to withdraw from the acquisition. As noted above, section 48(1) does not confer any power on the land owners to compel the State Government to withdraw from the acquisition since it only gives liberty to the State Government to withdraw from the acquisition. This apart, it is only at the instance of a very few farmers and for a very small area that a plea has been taken that the State Government should withdraw from the acquisition of land under section 48 of the Act. This is an additional ground which was required

to be taken into consideration by the State and in fact has been taken into consideration for not withdrawing from the acquisition. This is what has also been observed by the Supreme Court in Shanti Sports Club and the observations are as follows: "60. In any case, once this Court had made it clear in Murari v. Union of India, (1997) 1 SCC 15 that in a matter involving acquisition of thousands of acres of land, it would not be proper to leave out some small portions here and there over which some construction may have been made, the decision of the Government not to withdraw from the acquisition of the land in question cannot be faulted.

61. The appellants' plea that the Government ought to have denotified the land covered by the sports complex because the same has been built by spending crores of rupees and is being used by a large section of people sounds attractive, but, after having given serious thought to the entire matter, we are convinced that the Government rightly refused to exercise discretion under Section 48(1) of the Act for denotifying the acquired land and the High Court did not commit any error whatsoever by refusing to fall in the trap of alluring argument that demolition of the sports complex built by spending substantial amount will be a waste of national wealth and nobody will be benefited by it."

79. A perusal of the Government Order also indicates that it has primarily been issued for enhancement of the compensation to be paid to the farmers for the five parcels of land that had been acquired along side the Expressway as the farmers had resorted to agitation. It had been earlier decided to give compensation at the rate of Rs.436/- per sq. mtr. but it was subsequently revised to Rs.570/- per sq. mtr. In fact, Sri Ravi Kiran Jain, learned Senior Counsel for the petitioners during the course of hearing of the writ petition also placed reliance upon the judgment of the Supreme Court in Sahara India Commercial Corporation Ltd. to contend that this Court may consider it appropriate to enhance the compensation. The Supreme Court, in the aforesaid case, had issued direction so that acquisition could be saved. In the present case, the award has been made under the 2013 Act and in case the petitioners are aggrieved, they can seek enhancement of the compensation under section 64 of the 2013 Act but certainly it cannot be made a ground to compel the State Government to withdraw from the acquisition of land under section 48(1) of the Act.

80. Apart from placing reliance upon the Government Order dated 27 August 2010 and making a claim for enhancement of the compensation, no other submission has been made on behalf of the petitioners to support their claim for withdrawal from acquisition of land under section 48(1) of the Act.

81. Thus, for all the reasons stated above, the decision taken by the State Government not to withdraw from the acquisition is based on good and cogent reasons and it cannot be said that the decision is either perverse or arbitrary so as to call for any interference by this Court under Article 226 of the Constitution.

82. The writ petitions are, accordingly, dismissed. Petitions Dismissed.