
(2012) 02 AHC CK 0316

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No"s. 66066, 72604 of 2011, 2656 and 1341 of 2012

Brij Mohan and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 28-02-2012

Acts Referred:

Constitution of India, 1950 — Article 14
General Clauses Act, 1897 — Section 21
Land Acquisition (Companies) Rules, 1963 — Rule 3, 4
Land Acquisition Act, 1894 — Section 11A, 14(3A), 16, 17(1), 17(4)

Citation : (2012) 3 ADJ 609

Hon'ble Judges : Sunita Agarwal, J;Ashok Bhushan, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Hon"ble Ashok Bhushan, J.—These four writ petitions have been filed by the farmers of four villages, namely, Kansera, Jikarpur, Jahangarh and Tappal of district Aligarh claiming withdrawal of acquisition of their agricultural land u/s 48 of the Land Acquisition Act, 1894. The issues raised in these writ petitions being common, they have been heard together and are being decided by this common judgment.

2. Pleading in Writ Petition No. 66066 of 2011 are complete which is being treated as leading writ petition. It is sufficient to refer the facts and pleadings in Writ Petition No. 66066 of 2011 to decide all the four writ petitions, which are as follows; notification under Section4 of the Land Acquisition Act, 1894 (hereinafter referred to as the Act) dated 31st March, 2009 proposing acquisition of an area of 72.5249 hectares of land was issued. The inquiry u/s 5A of the Act was dispensed with invoking Sections 17(1) and 17(4) of the Act. The declaration u/s 6 was issued on 28th May, 2009. The aforesaid acquisition was challenged in this Court by filing writ petitions by land owners. The acquisition was made for Yamuna Expressway running from NOIDA to Agra and five parcels located

alongwith the said expressway. The writ petitions challenging the notifications dated 31st March, 2009 and 28th May, 2009 in respect of villages, namely, Jahangarh, Kansera, Jikarpur, Tappal and Kripalpur of district Aligarh were dismissed alongwith batch of writ petitions led by writ petition of Narendra Road Lines by a Division Bench of this Court vide judgment and order dated 2nd July, 2010 which is reported in 2010(7) ADJ 329. Some of the petitioners, who are the petitioners in these writ petitions, have also assailed the notifications, which writ petition was also dismissed i.e. Writ Petition No. 46617 of 2009 decided on 11th August, 2010. The petitioners neither took the compensation nor entered into any agreement as offered by the State and raised protest regarding acquisition of their land despite upholding of notifications under Sections 4 and 6 of the Act. Large number of farmers including the petitioners raised their protest against the acquisition and the amount of compensation offered for the land. The State Government took a policy decision on 27th August, 2010 with regard to five villages of district Aligarh, namely, Kansera, Jikarpur, Kripalpur, Jahangarh and Tappal providing for various benefits including compensation at the rate of Rs. 570/- per square meter on the basis of the recommendation of the State Level Committee. The Government order dated 27th August, 2010 was issued on the above subject by which nine directives were issued pertaining to acquisition of land of the aforesaid five villages. One of the decisions taken by the State Government was that if any farmer is not ready for the acquisition of his land at the rate of Rs. 570 per square meter, his land be not acquired without his consent. Petitioners claim that they are throughout in possession and sown crops over the land in dispute. Petitioners submitted representation to the State Government on 2nd November, 2010 requesting that acquisition for development of township in Tappal be cancelled and the name of villagers of the aforesaid five villages be restored in the revenue records. A writ petition being Writ Petition No. 40117 of 2011 was filed by Brij Mohan and others in this Court raising a grievance that representation submitted by the petitioners u/s 48 of the Act pending before State Government be directed to be considered and their land be directed to be released. The said writ petition was disposed of by a Division Bench of this Court by order dated 21st July, 2011 directing the authority concerned to consider the grievance of the petitioners. After the order of this Court, notice dated 27th September, 2011 was issued to various villagers of the aforesaid five villages by the Special Land Acquisition Officer, Aligarh and the petitioners were also asked to appear before the State Government on 30th September, 2011. Some of the petitioners appeared before the State Government on 30th September, 2011 and submitted their representations. In the representation they specifically referred to sub-paragraph (2) of paragraph 1 of the Government order 27th August, 2010 which provided that the land of those farmers be not acquired who do not accept the compensation at the rate of Rs. 570/- per square meter without their consent. The State Government vide its order dated 11th October, 2011 rejected the application u/s 48 of the Act and refused to release the land. The Writ Petition No. 66066 of 2011 has been filed challenging the aforesaid decision dated 11th October, 2011, praying for

following relief :

(i) Issue an appropriate writ, order or direction in the nature of certiorari quashing Order dated 11th October, 2011, passed by the Under Secretary, Industrial Development, State of U.P. contained in Annexure No. 9 to the writ petition.

(ii) Issue an appropriate writ, order or direction in the nature of Mandamus directing the Respondent Authorities not to interfere with the actual physical cultivatory possession of the Petitioners over their respective lands as mentioned in para 3 of the writ petition and not to take any coercive action against the Petitioner for their dispossession of the land in dispute.....

3. Writ Petition No. 72604 of 2011 has been filed by villagers of villages Jikarpur and Mazra Udaipura Tappal praying for following relief.:

(i) Issue a writ, order or direction in the nature of mandamus commanding the Respondent No. 1 to entertain the representation of the petitioners on being so presented and to decide it in the light of the policy decision of the State dated 27.8.2010 within a reasonable period of time, as may be fixed by this Hon"ble Court.

(ii) Issue an appropriate, writ order or direction declaring that after announcement and implementation of Policy dated 27.8.2010 (Annexure-1) the land in question stands denotified u/s 48 of the Land Acquisition Act.....

4. In Writ Petition No. 1341 of 2012 (Radha Charan and others v. State of U.P. and others), which has been filed by 14 villagers of village Jahangarh challenging the order dated 29th April, 2011 by which the representation of the petitioners u/ s 48(1) of the Act was rejected, following prayers have been made :

(i) Issue an appropriate, writ order or direction declaring that the Policy decision dated 27.8.2010 (Annexure 3) amounts to a decision u/s 48 of the Land Acquisition Act to withdraw the acquisition proceedings relating to the land in dispute.

(ii) Issue an appropriate writ, order or direction in the nature of certiorari quashing Order dated 29th April, 2011 contained in Annexure 9 to the Writ Petition.

(iii) Issue an appropriate writ, order or direction in the nature of Mandamus directing the respondent Authorities not to interfere with the actual physical cultivatory possession of the Petitioners over their respective lands as mentioned in para 3 of the writ petition and not to take any coercive action against the Petitioner for their dispossession of the land in dispute.....

5. Writ Petition No. 2656 of 2012 has been filed by three petitioners of Mazra Udaipura Tappal, praying for following relief :

(i) Issue an appropriate writ, order or direction in the nature of mandamus

commanding the Respondent No. 1 to consider the grievance of the Petitioners pending before it by way of representation contained in Annexure 4 to the writ petition in the light of the Policy decision of the State dated 27.8.2010 (Annexure 1) and the facts stated in para 26 of the writ petition within a reasonable period of time as may be fixed by this Hon'ble Court.

(ii) Issue an appropriate, writ order or direction declaring that after announcement and implementation of Policy dated 27.8.2010 (Annexure 1) and the facts stated in para 26 of the writ petition the land in question stands denotified u/s 48 of the Land Acquisition Act.

(iii) Issue an appropriate writ, order or direction in the nature of Mandamus commanding the respondents not to take any coercive action against the Petitioners seeking coercive action of dispossession of the Petitioners from their respective lands stated in para 2 of the writ petition and the facts stated in para 26 of the writ petition without deciding the representation about fraudulent transaction of the Respondent Authorities by a reasoned and speaking or after deciding the representation of the petitioners (Annexure 4) by a detailed and speaking reasoned order.

.....

6. From the facts and relief in the aforesaid four writ petitions, it is clear that petitioners have come to this Court praying that their land, which was included in the notifications under Sections 4 and 6 of the Act, be released by the State Government exercising its jurisdiction u/s 48 of the Act in the light of the Government order dated 27th August, 2010 by which the State Government took a policy decision not to acquire land of those farmers who are not agreeable to accept the compensation at the rate of Rs. 470/- per square meter.

7. Counter-affidavits have been filed by the State Government, Yamuna Expressway Industrial Development Authority as well as Jay Pee Infratech Limited, which has been impleaded as respondent No. 7 in Writ Petition No. 66066 of 2011. In the counter-affidavit filed by the State, it has been stated that the State Government took a decision for construction of Taj Expressway in the year 2001 towards east of Yamuna from NOIDA to Agra and subsequently Taj Expressway Authority changed the name as Yamuna Expressway Industrial Development Authority (hereinafterinafter referred to as the Authority) by notification dated 11th July, 2008. The acquisition for expressway was challenged in this Court which was dismissed in writ petition of Balbir Singh and others v. State of U.P. and others, 2009 ADJ 441. Another writ petition challenging the acquisition for interchange of the expressway was also dismissed by this Court in Nand Kishore Gupta and others v. State of U.P. and others, 2009(1) ADJ 535 and by another judgment in Narendra Road Lines Pvt. Ltd. v. State of U.P. and others, 2010(7) ADJ 329, the acquisition was upheld. The Apex Court also affirmed the land acquisition by its judgment in Nand Kishore Gupta and Others Vs. State of U.P. and Others, . Supporting the order dated 11th October, 2011 passed by the

State Government rejecting the application u/s 48(1) of the Act, it has been stated that possession of the land of Jikargarh was taken on 15th July, 2009 and possession of the land of village Jahangarh and Tappal was taken on 27th July, 2009 and the land has vested in the State and could not be released u/s 48 of the Act. It is further pleaded that the Government order dated 27th August, 2010 shall apply prospectively. It has been stated that in August, 2010 due to agitation by some farmers the scheme of development of the land was proposed to be closed. It has further been stated that several villagers have entered into agreement and taken compensation.

8. The Yamuna Expressway Industrial Development Authority has also filed a counter-affidavit. In its counter-affidavit it has raised similar pleadings. It has been stated that acquisition proceedings had been completed prior to issuance of Government order dated 27th August, 2010 and possession of the land was taken and delivered to the Authority on 15th July, 2009 and 27th July, 2009, hence the application filed by the petitioners u/s 48 of the Act has rightly been rejected. It has further been pleaded that name of the Authority has also been recorded in the revenue records. It has further been pleaded that after obtaining possession of the land, the land has been leased to the Concessionaire (M/s Jay Pee Infratech Limited), hence the petitioners do not have any right over the land in dispute.

9. A counter-affidavit has also been filed by the J.P. Infratech Limited in the leading writ petition. The case of J.P. Infratech Limited (hereinafter referred to as the Company) is that the project envisaged construction of an access controlled expressway and further development of 25 million square meters of land alongwith expressway at five different locations. A concession agreement dated 7th February, 2003 was executed between the Authority and Jai Prakash Industries Limited and the Company was incorporated as special purpose vehicle under the orders of the Authority for implementing the project. It is stated that writ petitions challenging the project have been dismissed by this Court including a public interest litigation and the notifications issued for acquisition of land were also upheld by this Court as well as the Apex Court. It is further stated that after taking possession by the Authority lease deeds were executed with regard to villages Tappal, Jahangarh and Jikarpur on 30th December, 2010 by the Authority. It has further been pleaded that once the land stands duly appropriated to the project, the State Government retains no power to release the same from the acquisition. The Authority was transferred the possession on 23rd July, 2009 and 27th July, 2009 and upon execution of the lease deeds the land has been transferred to the Company which is in physical possession and is carrying on development on the land. Certain photographs have also been filed as Annexure CA-8 to the counter-affidavit showing boundary pillars for land development. With regard to Government order 27th August, 2010 it has been pleaded that the said Government order can have only prospective application and the said Government order has no application in respect of the land which has already vested in the acquiring body.

10. Sri Ravi Kiran Jain, learned Senior Advocate, appearing for the petitioners challenging the order dated 11th October, 2011 passed by the State Government rejecting the application u/s 48(1) of the Act in the leading writ petition, submits that the said order does not contain any reason and shows complete non application of mind. It is submitted that when the State Government has taken a decision on 27th August, 2010 for not acquiring the land of those villagers who do not agree to compensation at the rate of Rs. 570/- per square meter, the land stood withdrawn from acquisition u/s 48 of the Act. Sri Jain submits that the order dated 27th August, 2010 issued by the State Government has to be treated as an order withdrawing the land from acquisition u/s 48 of the Act. The policy decision dated 27th August, 2010 has been referred to as a policy decision luring illiterate farmers to come into the trap and forego their demand against the acquisition by accepting illusory offers. It has further been submitted that possession of petitioners' land has never been taken by the respondents in accordance with law. The petitioners still continue in physical possession of their land and are sowing crops. Sri Jain further submits that there is no material brought on the record by the respondents in the counter-affidavit to indicate that at any point of time physical possession of the land has been taken. Referring to possession memo dated 27th July, 2009 (Annexure-3 to the writ petition), learned counsel for the petitioners submits that claiming transfer of possession to the Authority is not a possession memo which can be relied since it does not contain signature of any of the petitioners or any independent witness and contains only the signatures of officials of the Authority and the Special Land Acquisition Officer which possession memo cannot be accepted to be a document transferring the possession. Sri Jain further submits that possession having never been taken by the respondents, the findings recorded by the State Government that possession has been taken, hence release cannot be made u/s 48 of the Act, is erroneous and is refusal to exercise the power u/s 48 of the Act. It is further submitted by learned counsel for the petitioners that present is not a case where matter needs to be remanded to the State Government again to take a decision for release u/s 48 of the Act, rather this Court in these writ petitions itself may declare that the land stand released u/s 48 of the Act. It has further been submitted that the Company, the concessionaire, has no right before the State Government u/s 48 of the Act and the prayer made by the Company that it should be heard in proceedings u/s 48 of the Act be not accepted.

11. Sri Zafar Naiyar, learned Additional Advocate General appearing on behalf of the State, refuting the submissions of learned counsel for the petitioners, contends that the order of the State Government rejecting the application u/s 48 of the Act of the petitioners in leading writ petition is perfectly valid and justified. It is submitted that possession was taken of the land in dispute on 15th July, 2009 and 27th July, 2009 which findings have been recorded by the State Government based on the reports and materials received from the Authority and other records and the same need no interference by this Court in these writ petitions. It is submitted that possession having already been taken and the

petitioners having been dispossessed from the land in dispute, the release of land cannot be made u/s 48 of the Act. It is further submitted that name of the petitioners are not in the revenue records which fact has even been stated in the representation dated 2nd November, 2010 of the petitioners and thus they are not in possession of the land in dispute. Insofar as the Government order dated 27th August, 2010 is concerned, the said Government order does not help the petitioners since the said Government order has only prospective application and shall apply to land acquired subsequent to the said Government order. It is submitted that since the land acquisition proceedings with regard to land of the petitioners have already been finalised, no benefit can be claimed by the petitioners of the aforesaid Government order dated 27th August, 2010. Sri Naiyar further submits that the State Government having decided not to release the land, the petitioners cannot insist that their land be released.

12. Learned counsel for the Authority has also adopted the arguments of the learned Additional Advocate General and submitted that the possession has already been taken by the Authority whose name is recorded in the revenue records.

13. Sri Yashwant Varma, learned counsel appearing for the Company, submits that lease having already been executed in favour of the Company after possession has been taken by the Authority on 15th July, 2009 and 27th July, 2009, the State Government does not have any power or authority to release the land u/s 48 of the Act. He submits that entire land covered by the acquisition is a part of integrated project of six lane access expressway as well as five land parcels allocated for development and no part of it can be released, the project having already been upheld in various writ petitions by this Court. It is further submitted by Sri Varma that no benefit can be taken by the petitioners of the Government order dated 27th August, 2010 since the said Government order at best can prospectively apply and has no application to the land which was acquired earlier to the said Government order.

14. Learned counsel for the parties have referred to and relied on various judgments of this Court as well as the Apex Court which shall be referred to while considering the respective submissions of learned counsel for the parties in detail.

15. We have considered the submissions of learned counsel for the parties and have perused the record.

16. There is no dispute between the parties that acquisition of land under the Act relating to the land in question, has already been upheld by this Court as well as the Apex Court and no challenge is raised in these writ petitions regarding acquisition of land. The prayer in these writ petitions is regarding release of the land u/s 48 of the Act. Thus in these writ petitions only issue to be considered is the claim of the petitioners for release of their land u/s 48 of the Act.

17. Section 48 of the Act provides that Government shall be at liberty to

withdraw from acquisition any land of which possession has not been taken. Section 48 of the Act is quoted below :

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 there under, 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 provision of Part III of this Act shall apply, so far as may be, to the determination of the compensation payable under this section.

18. For exercising the power u/s 48 of the Act the pre condition is that possession of the land has not been taken. In the event possession of the land has been taken either u/s 16 or Section 17(1) of the Act, the land vests absolutely in the Government free from all encumbrances. Once the land vests in the Government, the withdrawal cannot be claimed u/s 48 of the Act either by the State Government or at the instance of the land owners. Thus the first issue to be considered is as to whether possession of the land has been taken by the State/Authority or the petitioners continue to be in possession over the land so as to claim withdrawal u/s 48 of the Act.

19. The notification u/s 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 u/s 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, 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 Vs. M.D. Bhagwat and Others, , Balmokand Khatri Educational and Industrial Trust, Amritsar Vs. State of Punjab and others, and Banda Development Authority, Banda Vs. Moti Lal Agarwal and Others, , 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. It is useful to refer to paragraphs 357 to 362 of the said judgment, which are to the following effect:

357. In Banda Development Authority's case (supra) the Apex Court again considered manner of taking possession and after considering earlier judgment following principle was laid down in paragraph 37 which is quoted as below:

37. The principles which can be culled out from the above noted judgments are:

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

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

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

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

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

358. The last judgment relied by petitioners is judgment of the Apex Court in Prahlad Singh's case. In the said case Apex Court held that no evidence was shown by the respondent to show that possession was taken in the presence of independent witness and their signatures were obtained in the Panchanama. Paras 20 and 22 which are relevant are quoted below:

20 If the present case is examined in the light of the facts which have been brought on record and the principles laid down in the judgment in Banda Development Authority's case it is not possible to sustain the finding and conclusion recorded by the High Court that the acquired land had vested in the

State Government because the actual and physical possession of the acquired land always remained with the Appellants and no evidence has been produced by the Respondents to show that possession was taken by preparing a panchnama in the presence of independent witnesses and their signatures were obtained on the panchnama.

22. Respondent Nos. 3 to 6 have not placed any document before this Court to show that actual possession of the acquired land was taken on the particular date. Therefore, the High Court was not right in recording a finding that the acquired land will be deemed to have vested in the State Government.

369. In the main writ petition No. 37443 of 2011 in the counter-affidavit filed by the State it has been stated that possession of land was transferred to Greater NOIDA on 5.9.2008 and 12.1.2009 the relevant averment regarding delivery of possession has been made in paragraph 12(e) which is quoted below:

The Greater Noida Development Authority deposited 70% of the compensation amount (10% of the compensation amount had already been deposited by the Greater Noida Authority before submitting the proposal for issuance of Section 4 Notification), as required under the Land Acquisition Act, before sending the proposal for issuance of declaration u/s 6. The proposal was sent to the State Government vide letter No. 144/10 dated 24.6.2008 and the State Government after being satisfied with the proposal issued declaration u/s 6(1)/17(1) on 30.6.2008. After the declaration u/s 6(1)/17(1), notices u/s 9 were issued to the land owners, and after expiration of fifteen days time as stipulated in the notices, possession of land was transferred to Greater Noida Development Authority on 5.9.2008, for an area of 572.592 hectares, and on 12.1.2009 for an area of 1.453 hectares. True photocopies of the possession memo dated 5.9.2008 and 12.1.2009 are being filed herewith and marked as ANNEXURE NOS. CA-5 AND CA-6 respectively to this counter-affidavit.

360. The possession memos dated 5.9.2008 and 12.1.2009 has been filed as Annexures 5 and 6 to the counter-affidavit of the State. Both the possession memos state "the possession of land as detailed below included in notification as mentioned above of Village Patwari, Tehsil Dadari is being transferred to acquiring department/greater NOIDA Industrial Development authority." (translated in English)

361. The said memo has been signed by 5 officials of greater NOIDA authority and Special Land Acquisition officer Gautam Budh Nagar. The possession memo does not contain signatures of any of the land holders or any witnesses. It is useful to refer two specific pleadings in writ petitions regarding possession. In writ petition No. 47502 of 2011 Jugendra and others v. State of U.P. following was stated in paragraph 6 of the writ petition:

That, subsequent to the acquisition proceedings a notice purporting to be a notice under Section 9 of the Act aforesaid was also issued and it is said that the possession of entire land in village Tusiyaana, Pargana and Tehsil Dadri district

Gautam Budh Nagar and being 293.015 Hectare was taken. Photo-stat copy of the procession memo as prepared and shown to have been executed between the authorities of the State Government and Greater Noida, is being filed herewith and is marked as Annexure-5 to this writ petition. As would appear from a perusal of possession memo also, none of the petitioners have signed the aforesaid possession memo and the possession memo is only a departmental document not signed by any of the petitioners. Thus at no point of time the possession of the land in dispute has been validly taken from the petitioners.

362. Copy of the possession memo as claimed by the State dated 2nd February, 2007 was also filed as Annexure 5 to the writ petition. The possession memo Annexure 5 to the writ petition also contains the statement "details of the land possession of which is being transferred to acquiring body/greater NOIDA Industrial Development authority". The said memo has again been signed by four officers of the greater NOIDA authority and Additional District Magistrate Land Acquisition, Gautam Budh Nagar. The aforesaid possession memo are not the possession memo or the document showing taking of possession by the State. There is no occasion to transfer the possession to the greater NOIDA authority by the State unless the possession is obtained by the State. Further more, as held in the judgment of the Apex Court as noticed above even if the land is vacant the State authority has to go to the spot and prepare a Panchanama which ordinarily be treated as sufficient to constitute taking of possession. The possession memo filed by the State in the counter-affidavit cannot be termed to be a Panchanama since signatures of any Panch (independent witness) are absent. Thus the taking of possession by the respondent cannot be said to be in accordance with the law. Thus we find substance in the submission of the learned counsel for the petitioners that possession was not taken by the State authorities of land in accordance with law and possession memo which has been filed by the State authorities cannot be treated to be valid possession memo evidencing taking of possession.

20. 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.

21. The submission of the learned counsel for the respondents is that the fact that petitioners are not in possession of the land in dispute is clear from the petitioners' representation dated 2nd November, 2010 (Annexure-5 to the leading writ petition) wherein they have prayed that their names be got recorded in the revenue records. A perusal of the representation dated 2nd November, 2010 (Annexure-5 to the leading writ petition) does not indicate that petitioners at any point of time admitted that they are not in possession of the land in dispute. The petitioners have rather prayed that the declaration of the State Government dated 27th August, 2010 for cancelling the township be implemented and the name of the farmers be recorded in the revenue records. The fact that in the revenue records the name of the Authority has been recorded does not conclusively prove that the Authority is in actual physical possession of the land in dispute. The Apex Court in the case of *Narmada Bachao Andolan Vs. State of Madhya Pradesh and Another*, had occasion to consider the consequence of entries in revenue records regarding physical possession. Following was laid down by the Apex Court in paragraph 152, which is as under :

152. In view of the above, it becomes crystal clear that none of the tenure holders, so far the land in dispute is concerned, has been evicted/dispossessed. All the tenure holders are enjoying the said land without any interference. The tall claims made by the respondents before the High Court were totally false. The High Court was not justified in entertaining their applications in this regard, without verifying the factual aspects. In such a fact-situation, as the actual physical possession has not yet been taken by the authorities and the entries in the revenue records etc. are not the conclusive proof, therefore, the State Government is competent to exercise its power u/s 48 of the Act 1894. However, it will be subject to the decision on another relevant issue regarding submergence of the land in dispute permanently or temporarily which is to be considered hereinafter.

22. We thus hold that possession having not been taken by the respondents in accordance with law, the claim of the petitioners u/s 48 of the Act cannot be rejected on the ground that possession has been taken by the Authority.

23. Now comes the submission of the petitioners' counsel that by Government order dated 27th August, 2010 the land stood withdrawn from the acquisition and nothing more was required to be done for withdrawal. Learned counsel for the petitioners has placed reliance on the Government order dated 27th August, 2010 (sub-paragraph (2) of paragraph 1) where the State Government provided that if any farmer is not ready to accept the compensation at the rate of Rs.

570/- per square meter, his land be not acquired without his consent. Learned counsel for the petitioners has further attacked on various other measures as mentioned in the said Government order, which according to the petitioners' counsel was with the object of luring the farmers to forego their demand. The Government order dated 27th August, 2010, which is relevant for deciding the issues raised in these writ petitions, is to the following effect :

24. From the subject of the aforesaid Government order, as quoted above, it is clear that the Government order was issued on the subject of providing compensation of Rs. 570/- per square meter to the farmers. The Government order further mentions about the agitation of the farmers and with intend to control the agitation of the farmers, the Government order was issued providing several benefits. The said Government order further clearly contemplates in sub-paragraph (2) of paragraph 1 that if a farmer does not agree for acquisition of land at the rate of Rs. 570/-, his land be not acquired without his consent. The submission of the petitioners' counsel is that the said Government order is itself a declaration u/s 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 u/s 48 of the Act.

25. Learned counsel for the Company has placed reliance on the judgment of the Apex Court in the case of Rajinder Singh Bhatti and Others Vs. State of Haryana and Others, , where the Apex Court was considering the provisions of Sections 48(1) and 48(2) of the Act in context of lapse of acquisition u/s 11-A of the Act. It was submitted before the Apex Court that the land owners were entitled for compensation u/s 48(2) of the Act since the award was not given by the Land Acquisition Officer within the time allowed and the acquisition stood withdrawn. The Apex Court while considering the nature of withdrawal of acquisition u/s 48 and lapse u/s 11-A, laid down following in paragraphs 27 and 28 of the judgment which are as under :

27. In the context of Section 48, the word "withdraw" is indicative of the voluntary and conscious decision of the Government for withdrawal from the acquisition; statutory lapse u/s 11-A is entirely different. The object of Section 11-A is to arrest delay in making award. An obligation is cast on the Collector u/s 11-A to make the award within the time prescribed therein failing which statutory consequence follows namely, acquisition proceedings lapse automatically.

28. This Court in Abdul Majeed said:

The word "withdraws" would indicate that the Government by its own action

voluntarily withdraws from the acquisition; the Government has necessarily to withdraw from the acquisition, in other words, there should be publication of the withdrawal of the notification published u/s 4(1) and the declaration published u/s 6 by exercising the power u/s 48 (1). Sub-section (2) of Section 48 would then apply. In this case, admittedly, the Government had not exercised the power u/s 48(1) withdrawing from the notification u/s 4(1) or the declaration u/s 6. The statutory lapse u/s 11-A is distinct different from voluntary act on the part of the Government. Therefore, it must be by withdrawal of the notification by voluntary act on the part of the State u/s 48(1). Under these circumstances, the appellant is not entitled to avail of the remedy of sub-section (2) of Section 48.

26. One of the points for consideration before the Apex Court in the aforesaid case was "whether the decision of the Government for withdrawal of acquisition u/s 48(1) is required to be published in the Official Gazette". Relying on earlier judgments, the Apex Court held that decision of the Government for withdrawal from acquisition has to be published in the Official Gazette. Following was laid down by the Apex Court in paragraphs 30, 31 and 32 of the said judgment, which are as under :

30. The question now needs to be considered is: whether the decision of the Government for withdrawal of acquisition u/s 48(1) is required to be published in official gazette

31. It is true that Section 48 does not in express terms require the decision of the Government for withdrawal of acquisition to be published in the 18 official gazette. In Abdul Majeed, this Court has held that there should be publication of the withdrawal of the notification published u/s 4(1) and declaration u/s 6 by exercising power u/s 48(1). Even on first principles, such requirement appears to be implicit. The Act provides for the publication of notification and declaration under Sections 4 and 6 of the Act in official gazette. Obviously the withdrawal from land acquisition proceedings by taking resort to Section 48(1) of the Act also must be in the like manner. As a matter of fact, this aspect is no more res integra.

32. In M/s. Larsen and Toubro Ltd. Vs. State of Gujarat and Others, , the identical contentions which have been advanced before us by the senior counsel were raised in that case. Section 21 of the General Clauses Act, 1897 was also pressed into service there. This Court considered:

30. It was submitted by Mr. Salve that Section 48 of the Act did not contemplate issue of any notification and withdrawal from the acquisition could be by order simpliciter. He said that Sections 4 and 6 talked of notifications being issued under those provisions but there was no such mandate in Section 48. It was thus contended that when the statute did not require to issue any notification for withdrawal from the acquisition, reference to Section 21 of the General Clauses Act was not correct. Section 21 of the General Clauses Act is as under:

21. Power to issue, to include power to add to, to amend, vary or rescind,

notifications, orders, rules or bye-laws.-- Where by any Central Act, or Regulation, a power to issue notifications, orders, rules, or bye-laws is conferred, then that power includes a power, exercisable in the like manner and subject to the like sanction and conditions (if any) to add to, amend, vary or rescind any notifications, orders, rules or bye-laws so issued.

Mr. Salve said that Section 21 expressly referred to the powers being given to issue notifications etc. under an Act or Regulation and under this that power included power to withdraw or rescind any notification in a similar fashion. It was therefore submitted that when Section 48 did not empower the State Government to issue any notification and it could not be read into that provision that withdrawal had to be issued by a notification. His argument, therefore, appeared to be that on correct interpretation of Section 21 of the General Clauses Act before reaching the stage of Section 48, the State Government could withdraw notifications under Sections 4 and 6 of the Act by issuing notifications withdrawing or rescinding earlier notifications and that would be the end to the acquisition proceedings. 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.

31. 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 u/s 48 of the Act of any land of which possession has not been taken".

In view of the legal position exposited by this Court in the case of Larsen & Toubro Ltd., with which we respectfully agree, we hold, as it must be, that decision of the Government for withdrawal from acquisition has to be published in the official gazette. We answer point (two) in affirmative.

27. 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 alongwith 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.

28. The submission, which has been pressed by the learned Additional Advocate General and other counsel for the respondents, that the Government order dated 27th August, 2010 has no application with regard to acquisition in question, now needs to be considered. The submission is that the Government order dated 27th August, 2010 shall prospectively apply and the same could be applied only with regard to acquisition which is made subsequent to the Government order. The Government order dated 27th August, 2010, as quoted above, was issued on the subject of grant of compensation at the rate of Rs. 570/- per square meter to the farmers of five villages mentioned therein under the Yamuna Expressway Project. The said Government order specifically mentioned that with regard to acquisition of land in district Aligarh, no agreement could be arrived in the meeting headed by Divisional Commissioner and the said Committee submitted its report to the State Level Committee recommending increase of compensation which was considered by the State Level Committee on 27th August, 2010 and with regard to five villages approval was granted by the State Government for increasing compensation. The said Government order was, thus, clearly issued with regard to acquisition proceedings which were underway in the aforesaid five villages as no agreement could be arrived for compensation. Thus the submission of the respondents that the Government order dated 27th August, 2010 ought to have been applied prospectively and shall not be applicable on the acquisition of petitioners' land cannot be accepted since the above submission is contrary to the very purpose and object of the Government order.

29. Learned counsel for the petitioners has also attacked the policy decision dated 27th August, 2010 terming it as a policy mischievously luring the illiterate farmers to come into the trap and forego their demand under acquisition. In view of the fact that petitioners are claiming benefit of the Government order dated 27th August, 2010 insofar as it contains decision that those farmers who do not accept the compensation, their land need not be acquired without their consent, we find it unnecessary to consider the attack of the petitioners on the policy as the same is wholly irrelevant for the issues to be decided in the present writ petition.

30. Learned counsel for the petitioners has further contended that if the order dated 11th October, 2011 is set-aside, the matter need not be remanded to the State Government for deciding withdrawal of acquisition. Learned counsel for the petitioners has also placed reliance on a Division Bench judgment of this Court in the case of Ram Gopal Varshney and others v. State of U.P. and others, 2004(1) AWC 206, in which judgment following was laid down in paragraph 7 :

7.... in" Special Land Acquisition Officer, Bombay and Others Vs. Godrej and Boyce, , wherein the Hon"ble Supreme Court held that the Government is competent to withdraw from the acquisition proceedings and while doing so, the Government is neither required to afford opportunity of hearing to the land owners nor required to record any reasons for such a withdrawal. At the most, land owners may be held entitled to claim compensation under Sub-section (2) of Section 48 in such an eventuality. But notification u/s 48(1) cannot be held to be only mode of withdrawal of the proceedings. But withdrawal is permissible only prior to vesting of the land In the State free from all encumbrances.

31. Reliance has also been placed on the judgment of the Apex Court in the case of Special Land Acquisition Officer, Bombay and Others Vs. Godrej and Boyce, , wherein the Apex Court has held that Government is competent to withdraw acquisition and while doing so no reason is required. It is submitted that no particular mode of withdrawal has been prescribed u/s 48 of the Act. The Government order dated 27th August, 2010 amounts withdrawal and the matter need not be remanded. Reliance has also been placed on the judgment of the Apex Court in the case of Mulla Gulam Ali and Safiabai D. Trust Vs. Deelip Kumar and Co., , which was a case regarding exemption from operation of rent Act qua a Public Charitable Trust. The Apex Court did not accept the prayer to remand the matter to the High Court for deciding the question of waiver. The reason for not accepting the prayer for remand has been mentioned by the Apex Court itself in following words :

We do not think so. The question has been answered by the Trial Court and the First Appellate Court categorically to the effect that after the termination of the rental agreement what was paid were only arrears of rent for prior period. We do not think any useful purpose will be served in sending the matter back to the High Court on this appeal.

32. The above matter arose out of a suit in which evidence was led and there was judgment of the trial Court and first appellate Court and on the said background the Apex Court took the view that trial Court and first appellate Court having answered the issue, no purpose would be served in remitting the matter to the High Court. The said case does not help the petitioners in the present case.

33. 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 u/s 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 u/s 48 of the Act.

34. Learned counsel for the petitioners has also referred to two judgments on the scope of purposive interpretation. There is no dispute to the proposition, as referred to by the learned counsel for the petitioners, on the principle of statutory interpretation. The submission of learned counsel for the petitioners that no useful purpose shall be served in remanding the matter back to the State Government, thus, cannot be accepted. The reconsideration of the petitioners' claim u/s 48 of the Act and thereafter notifying the order, if any, is necessary for completing the withdrawal from acquisition. The submission of the petitioners' counsel that by Government order dated 27th August, 2010 the acquisition stood lapsed or withdrawn cannot be accepted.

35. The submission of Sri Yashwant Varma, learned counsel for respondent No. 7 is that the State Government has no competence to pass any order u/s 48 of the Act in view of the fact that the project of land development has already been granted by the State to the respondent No. 7 and concession agreement has already been executed between the Authority and the respondent No. 7. The submission is that the land having been appropriated to the project, the State Government retains no power to release the same from the acquisition. 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 u/s 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 u/s 48 of the Act. No restraint on the power of the State Government u/s 48(1) of the Act can be put by any agreement entered between the State and any other authority. The submission of Sri Varma that the State does not retain its power u/s 48 of the Act to withdraw from the acquisition cannot be accepted. Thus the submission of learned counsel for the respondent No. 7 that the State cannot exercise power u/s 48 of the Act cannot be accepted. The power u/s 48 of the Act exercised by the State despite execution of any agreement or grant of project in appropriate cases.

36. Now comes the last submission of the petitioners' counsel that respondent No. 7 in leading writ petition (J.P. Infratech Limited) be not given an opportunity

before the State Government in the event the matter is remanded back to the State Government for reconsideration. Learned counsel for the petitioners has relied on the Division Bench judgment of this Court in Ram Gopal Varshney's case (supra) where this Court laid down that the Government while withdrawing from acquisition is not required to record any reason. In this context, it is relevant to notice two decisions of the Apex Court. In Larsen and Toubro's case (supra) the acquisition was proceeded under Part VII of the Act for the company which was withdrawn by the Government by issuing an order. One of the submissions made before the Apex Court that the Company for whose benefit the acquisition was being made, was not given an opportunity before decision was taken by the Government for withdrawal from acquisition. The Apex Court after noticing its earlier judgment in the case of Special Land Acquisition Officer, Bombay and others v. M/s Godrej and Boyce, laid down that Special Land Acquisition Officer, Bombay and others v. M/s Godrej and Boyce, case was no authority laying down the proposition that in all cases where power was exercised u/s 48 of the Act, it was open to the State Government to act unilaterally. It is useful to quote following observations of the Apex Court in Larsen and Toubro's case (supra), which are in paragraphs 29, 30 and 31 :

29.....This Court observed that the decision in Godrej and Boyce case was no authority laying down the proposition that in all cases where power was exercised u/s 48 of the Act it was open to the State Government to act unilaterally and that it could withdraw from acquisition without giving any reason or for any reason whatsoever. The Court observed as under:

In an acquisition under Part VII of the Act, Position of the company or the body for which the land acquired is quite different from that of the owner of the land. As a result of withdrawal from the acquisition whereas the owner of the land is ordinarily not likely to suffer any prejudice or irreparable loss, the company for whose benefit the land was to be acquired, may suffer substantial loss.

The Court examined the reasons given by the State withdrawing from acquisition and held that the decision of the Government to withdraw from acquisition was based upon misconception of the correct legal position and that such a decision had to be regarded as arbitrary and not bona fide. Then the Court said as under:

Particularly, in a case where as a result of a decision taken by the Government other party is likely to be prejudicially affected, the Government has to exercise its power bona fide and not arbitrarily. Even though Section 48 of the Act confers upon the State wide discretion it does not permit it act in an arbitrary manner. Though the State cannot be compelled to acquire land compulsorily for a company its decision to withdraw from acquisition can be challenged on the ground that power has been exercised mala fide or in an arbitrary manner. Therefore, we cannot accept the submission of the learned counsel for the State that the discretion of the State Government in this behalf is absolute and not justiciable at all.

30. It was submitted by Mr. Salve that Section 48 of the Act did not contemplate issue of any notification and withdrawal from the acquisition could be by order simpliciter. He said that Sections 4 and 6 talked of notification being issued under those provisions but there was no such mandate in Section 48. It was thus contended that when statute did not require to issue any notification for withdrawal from the acquisition, reference to Section 21 of the General Clauses Act was not correct. Section 21 of the General Clauses Act is as under:

21. Power to issue, to include power to add to, amend, vary or rescind, notifications, orders, rules or bye-laws.-- Where by any Central Act, or Regulation, a power to issue notification orders, rules, or bye-laws is conferred, then that power includes a power exercisable in the like manner and subject to the like sanction, and conditions, if any, to add to, amend, vary or rescind any notifications, orders, rules or bye-laws so issued.

Mr. Salve said that Section 21 expressly referred to the powers being given to issue notifications etc. under an Act or Regulations and under this that power included power to withdraw or rescind any notification in the similar fashion. It was therefore submitted that when Section 48 did not empower the State Government to issue any notification and it could not be read into that provision that withdrawal had to be issued by a notification. His argument, therefore, appeared to be that on correct interpretation of Section 21 of the General Clauses Act before reaching the stage of Section 48, the State Government could withdraw notifications under Sections 4 and 6 of the Act by issuing notification withdrawing or rescinding earlier notifications and that would be the end to the acquisition proceedings. 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 notification. 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.

31. 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 u/s 48 of the Act of any land of which possession has not been taken. An owner need not be given any notice of the intention of the State Government to withdraw from the acquisition and the State Government is at liberty to do so. Rights of the owner are well protected by sub-section (2) of Section 48 of the Act and if he suffered any damage in consequence of the acquisition proceedings, he is to be compensated and sub-section (3) of Section 48 provides as to how such compensation is to be determined. There is, therefore, no difficulty when it is the owner whose land is withdrawn from acquisition is concerned. However, in the case a company, opportunity has to be given to it to show cause against any order which the State Government proposes to make withdrawing from the acquisition. Reasons for this are not far

to seek. After notification u/s 4 is issued, when it appears to the State Government that the land in any locality is needed for a company, any person interested in such land which has been notified can file objections u/s 5-A(1) of the Act. Such objections are to be made to the collector in writing and who after giving the objector an opportunity of being heard and after hearing of such objections and after making such further enquiry, if any, as the Collector thinks necessary, is to make a report to the State Government for its decision. Then the decision of the State Government on the objections is final. Before the applicability of other provisions in the process of acquisition, in the case of company, previous consent of the State Government is required u/s 39 of the Act nor unless the company shall have executed the agreement as provided in Section 41 of the Act. Before giving such consent, Section 40 contemplates a previous enquiry, then compliance with Rules 3 and 4 of the Land Acquisition (Company) Rules, 1963 is mandatorily required. After the stage of Sections 40 and 41 is reached, the agreement so entered into by the company with the State Government is to be published in the Official Gazette, This is Section 42 of the Act which provides that the agreement on its publication would have the same effect as if it had formed part of the Act. After having done all this, State Government cannot unilaterally and without notice to the company withdraw from acquisition. Opportunity has to be given to the company to show-cause against the proposed action of the State Government to withdraw from acquisition. A declaration u/s 6 of the Act is made by notification only after formalities under part VII of the Act which contains Section 39 to 42 have been complied and report of the Collector u/s 5-A(2) of the Act is before the State Government who consents to acquire the land on its satisfaction that it is needed for the company. A valuable right, thus, accrues to the company to oppose the proposed decision of the State Government withdrawing from acquisition. The State Government may have sound reasons to withdraw from acquisition but those must be made known to the company which may have equally sound reasons or perhaps more which might persuade the State Government to reverse its decision withdrawing from acquisition. In this view of the matter it has to be held that Yadi (Memo) dated 11.4.1991 and Yadi (Memo) dated 3.5.1991 were issued without notice to the appellant (L&T Ltd.) and are, thus, not legal.

37. 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 u/s 48 of the Act. Thus the submission of the petitioners' counsel that no liberty be granted to the Company to be heard in proceedings u/s 48 of the Act cannot be accepted.

38. The Apex Court in the case of Hari Ram and Another Vs. State of Haryana and Others, , had occasion to consider Section 48 of the Act. The Apex Court laid down following in paragraphs 13 and 41 of the said judgment which are as under :

13. Section 48 of the Act empowers the Government to withdraw from the acquisition of the land provided possession has not been taken. The said power is given to the Government by a statutory provision and is not restricted by any condition except that such power must be exercised before possession is taken. The statutory provision contained in Section 48 does not provide for any particular procedure for withdrawal from acquisition.

41. The Government has obligation of acting with substantial fairness and consistency in considering the representations of the landowners for withdrawal from acquisition whose lands have been acquired under the same acquisition proceedings. The State Government cannot pick and choose some landowners and release their land from acquisition and deny the same benefit to other landowners by creating artificial distinction. Passing different orders in exercise of its power u/s 48 of the Act in respect of persons similarly situated relating to same acquisition proceedings and for same public purpose is definitely violative of Article 14 of the Constitution and must be held to be discriminatory.

39. In view of the foregoing discussions, it is clear that the reasons given by the State Government for rejecting the claim of the petitioners u/s 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 u/s 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.

40. Similarly in Writ Petition No. 1341 of 2012 order dated 29th April, 2011 has been challenged. The State Government in the said order has relied upon the lease agreement executed in favour of the Company and it was held that under the Government order dated 27th August, 2010 the land cannot be released. The order dated 29th April, 2011 relates to village Tappal with regard to which possession was claimed to have been taken on 27th July, 2009 which possession memo has already been considered while deciding leading writ petition. The

possession memo has been brought on record as Annexure-10 to the Writ Petition No. 1341 of 2012 which is the same possession memo which has been considered in the leading writ petition. Thus for the aforesaid reasons, the view of the State Government that possession stood transferred to the Company cannot be accepted and the order dated 29th April, 2011 deserves to be set-aside on the same ground. 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 u/s 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 u/s 48 of the Act.

Parties shall bear their own costs.