
(1989) 05 RAJ CK 0001

In the Rajasthan High Court

Case No : Civil Writ Petition No's. 25, 26 and 292 of 1989

Chain Singh and Others

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 25-05-1989

Acts Referred:

Constitution of India, 1950 — Article 226

Land Acquisition Act, 1894 — Section 6

Rajasthan Land Acquisition (Amendment) Act, 1987 — Section 56(2)

Citation : AIR 1991 Raj 17 : (1994) 68 FLR 373 : (1989) 2 WLN 616

Hon'ble Judges : M.C. Jain, Acting C.J.; J.R. Chopra, J

Bench : Division Bench

Advocate : D.S. Shishodia and Pallav Shishodia, for the Appellant; H.M. Parekh and P.K. Bhansali, for the Respondent

Final Decision : Dismissed

Judgement

M.C. Jain, Actg. C.J.

1. The petitioners, in the above petitions, have prayed for declaring that the land acquisition proceedings initiated and/ or continued in pursuance of the notification Annexs. 1 and 2 are wholly void and illegal and the proceedings have in fact lapsed and they have sought quashing of notifications issued u/s 4(1), 6(1) and 17(4) of the Rajasthan Land Acquisition Act, 1953 dated August 10, 1983 published in Rajasthan Raj-Patra dated 8-9-83 and notification issued u/s 17(1) dated 10-12-84 published in Rajasthan Raj Patra on the same date. They have also sought quashing of the notice u/s 9 dated 13-10-88 (Annx. 3). They have further prayed that the respondents be directed not to dispossess the petitioners from the disputed land in pursuance of the aforesaid notifications and they have further sought quashing of the General Awards dated 29-12-88 and specific award dated 30-12-88.

2. According to the petitioners, they are the Khatedars of the land described in para 2 of the writ petitions. In D.B. Civil Writ Petition No. 26 of 1989 Chainsingh

& others v. State of Rajasthan & others, the total land acquired is 23 Bighas 10 Biswas, in D.B. Civil Writ Petition No. 292/89 total land acquired is 33 Bighas 17 Biswas and in D.B. Civil Writ Petition No. 25/89 L.R."s of Shri Kishanlal & others v. State of Rajasthan, total land acquired is 33 Bighas. All these lands are situated in village Narpat Ki Khedi.

3. The petitioners have challenged the notifications u/s 4(1), 6(1), 17(4) of the Rajasthan Land Acquisition Act, 1953 (for short the Act) on the ground that a composite notification is void and illegal. The mandatory requirements of Section 4(1) and Section 4(5) of the Act have not been complied with and the provisions contained therein are mandatory and as such, the notification (Ann. 1) is bad and the entire land acquisition proceedings are void, illegal and without jurisdiction. The challenge is further on the ground that the invocation of the emergency provisions u/s 17(4) of the State Act is mala fide, arbitrary and without application of mind. Further case of the petitioner is that the Land Acquisition proceedings have lapsed by operation of law u/s 11A of the Central Land Acquisition Act, 1894 and the first part of Sub-section (4) of Section 56 of the Land Acquisition (Rajasthan Amendment) Act 1987 validates the declaration and the award, if made prior to 3-1 -87 and the second part of Sub-section (4) of Section 56 is independent of the first part and cannot be read together with the first part and so, the land acquisition proceedings lapsed as no award was made up to 2-1-87. Despite the land acquisition proceedings having been lapsed, notice u/s 9 was issued on 13-10-88, which was served on the petitioners on or about 28-10-88. Objections regarding lapse of the proceedings were filed but the objections were rejected by order dated 16-12-88. The petitioners' prayer for granting time to file the writ petition was rejected and the proceedings were fixed for filing the claim and production of the evidence on 19-12-88 and 27-12-88. The petitioners filed their claim and prayed for summoning of two witnesses with some record but the witnesses were not summoned and reasonable opportunity was not afforded and the land acquisition officer proceeded with the proceedings for passing the Award. After obtaining the necessary certified copy of the order dated 16-12-88 on 28-12-88, the writ petitions were filed on 2-1-89.

4. The respondents Nos. 1 and 2 filed reply. It was in the nature of reply to the show cause notice, although the writ petitions were admitted and no notice to show cause was issued. On the stay application, filed by the petitioner, an ad interim order was issued staying further land acquisition proceedings and giving further direction that the petitioners shall not be dispossessed from the land in question.

5. M/s Hindusthan Zinc Limited (respondent No. 3) submitted an application under Art. 226(3) of the Constitution of India along with necessary affidavits. No separate reply to the writ petitions was filed by respondent No. 3. Thus, the respondents Nos. 1 and 2 contested the writ petition on the basis of reply to the show cause notice and respondent No. 3 contested the writ petitions on the basis

of the averments made in the application under Article 226(3) of the Constitution. In the reply and in the application, the ground of challenge has been refuted and it is averred that the proceedings have not lapsed. There has been considerable delay on the part of the petitioners in challenging the notifications and on this ground, the writ petitions deserve to be dismissed. As regards the challenge to the amount of compensation, it was pleaded that the petitioners have an alternate remedy of getting a reference made u/s 18 of the Land Acquisition Act and the present writ petitions are not maintainable in respect of challenge to the Awards.

6. The respondents Nos. 1 and 2 in their reply, inter alia, averred that the proceedings for acquisition were initiated in the year 1983 but they could not be completed expeditiously as on account of paucity of funds, the Government of India could not sanction the establishment of the plant immediately and, therefore, the matter was referred for decision to the Central Cabinet Committee. In the meanwhile, M/s Hindustan Zinc Limited was asked to go ahead with the formalities of acquiring land, so that, no sooner the final approval of the Central Cabinet is received, work for installation of the plant can be immediately taken in hand. The proceedings for acquiring the land could not be taken up before 1987 and the management of M/s Hindustan Zinc Limited requested the Land Acquisition Officer for proceeding in the matter in 1988. The respondent No. 3 further pleaded that it is a Company fully owned by the Union of India. The project in question is a National Project. The land is acquired for the purpose of New Super Smelter Project. The State of Rajasthan had agreed to provide land for the said project and the Chief Secretary sent a letter dated 16-3-83 (Annex. R/2/1) to the Government of India. With regard to the ground of challenge of action u/s 17(4) for invoking emergency powers, it was stated that it was decided by the respondents that it was in the national interest to set up a Zinc Lead Smelter Plant in Chandcria District Chittorgarh and Mining area at Rampura Agucha Mines in Bhilwara District, whereafter, making detailed Mine Survey, it was found that the Lead Zinc of highest quality/grade available in the country was in abundance in that area. The Company sent its report in January 1983 to the Government of India, which in turns sent its recommendations to the Public Investment Board in March 1983. The Public Investment Board, after studying the entire project report, recommended to the Cabinet for approval and for setting up this project and at the cost of Rs. 525 Crores. The final recommendation of the Public Investment Board dated 21-4-83 is marked Annx. R/3/2. The Land Acquisition proceedings were initiated in anticipation of the sanction by the cabinet and the State Government was so requested to initiate the land acquisition proceedings urgently, so that the project could be set up with all expediency after approval of the cabinet. Issuance of the notification u/s 17(4) under the circumstances was justified. The cabinet approval could not be received and the matter was deferred to be considered in the plan. So, further proceedings could not take place. The respondents were assured that the cabinet approval will be received in 1988, hence, further proceedings u/s 9 of the Act

were commenced. The approval was given on 17-11-88 (Annex. R/3/3). The delay which has been caused was beyond the control of respondent No. 3 but there was satisfaction regarding urgency of the matter and there were no mala fides on the part of the respondents. It was averred that there is a tight schedule for completion of the project, which is now of Rs. 617.20 Crores and the project has to be completed within a period of 21/2 years. The President's approval was conveyed to finance the above investment through equity funds of Rs. 186 Crores (comprising Aid funds from U. K. of Rs. 161 Crores routed through Government and owner's equity of Rs. 25 Crores) and the remaining funds were to be generated through internal resources and through loans by issuance of bonds in the market. It was also averred by the respondent No. 3 that the amount of compensation was more than 5 lacs, so the approval of the State Government was received on 30-12-88. And thereafter separate Awards were given on 30-12-88. According to respondent No. 3, the prevailing land prices were, of Parat land @ Rs. 3500/-per bighas and of Chahi Land @ Rs. 8591/-per bighas. The above rates were got verified also from the Sub-Registrar. The petitioners have been given compensation of Parat land Rs. 10,000/- per bigha, "Chahi I" at Rupees 36,000/- per bigha and Chahi II at Rupees 27,000/- per bigha. In respect of the land situated on the road side irrespective of quality of land, the compensation was given at Rs.40,000/- per bigha. The five parties, whose land has also been acquired along with the land of the petitioners have compromised the matter and they have been awarded compensation on the same basis as given to the petitioners. Cultivators of Putholi and Ajoliya Ka Khera, whose land measuring about 200 Hectores has been acquired, were given compensation on the same basis as given to the petitioners. They had filed the writ petition but they were dismissed as withdrawn.

7. The respondents prayed that the writ petitions be dismissed.

8. We have heard Mr. D.S. Shishodia and Mr. Pallav Shishodia, learned counsel for the petitioners and Mr. H.M. Parekh, learned counsel for the respondent company and Mr. P.K. Bhansali, learned counsel for the respondents Nos. 1 and 2.

9. Mr. Pallav Shishodia, learned counsel for the petitioners vehemently urged that the notification dated 10-8-83 published in Rajasthan Raj Patra dated 8-9-83 (Annx. 1) is a composite notification under Sections 4(1), 6(1) and 17(4) of the Act. No composite notification under Sections 4(1) and 6(1) of the Act can be issued. According to him, the notification u/s 4(1) is a condition precedent for declaration u/s 6(1) of the State Act. Reliance was placed by him on some observations made in Smt. Somavanti and Others Vs. The State of Punjab and Others, . He further placed reliance on the decision in Babu Singh and Others Vs. Union of India (UOI) and Others, . These authorities permit simultaneous publication of notifications but they can be only one after the other, and one must precede the other.

10. Reference was also made to State of Uttar Pradesh Ors. Vs. Radhey Shyam Nigam and Others, . In that case the amended provisions were taken into

consideration and on the basis of use of the expression after the date it was held that the declaration u/s 6 has to be issued only after issuance of notification u/s 4 even when emergency provisions of Section 17 are invoked.

11. Mr. Shishodia also urged that Sections 4(1) and 4(5) of the State Act are mandatory in nature and mode. Mere mentioning of Section 4(1) is insufficient. The order u/s 4(1) should be in the requisite form and further compliance should be made of Section 4(5). He urged that in D.B. Spl. Appeal No. 149/75 Motichand v. State of Rajasthan decided on 12-4-81, it has been held that the publication of notification under Sub-section (1) of Section 4 is not mandatory but this view should be taken as per incurium in view of the decision of the Supreme Court in the Collector (District Magistrate) Allahabad and Another Vs. Raja Ram Jaiswal, . Earlier to Motichand's case (Supra), the said view was taken in a Bench decision of this Court in Rajasthan Udyog Vs. State of Rajasthan and Others, . These decisions have been relied upon by the learned single Judge of this Court, in Sita Ram and Vs. State of Rajasthan and Others, . According to Shri Shoshodia, the language of Section 4(1) of the State Act is in no way different from the language used in Section 4(1) of the Central Act.

12. As regards the mandatory character of Section 4(5) of the State Act, reliance has been placed on the Division Bench decision of this Court in Rajasthan Udyog Vs. State of Rajasthan and Others, and Urban Improvement Trust and etc. Vs. Balveer Singh and Others,

13. It is further urged by Shri Shishodia that invoking of the provisions of Section 17(4) was not justified and the proceedings are liable to be quashed. Reliance was placed by him on the State of Punjab and Another Vs. Gurdial Singh and Others, and Dora Phaululi Vs. State of Punjab and Others, and further reliance has been placed on some case law.

14. The project was cleared as late as 17-11-88, so there was no justification to dispense with the enquiry u/s 5A of the State Act and for invoking the emergency provisions of Section 17(4) subsequent delay in approval of the project shows the malafides and arbitrary action on the part of the respondents and it clearly establishes that there was no urgent need to take possession of the land, so, the invoking of emergency provision is not warranted. Reliance was placed by Radhey Sham Gupta and Others Vs. State of Haryana and Others, , M. Sivarama Naicher and Vs. Government of Andhra Pradesh and Another, , and State of Madhya Pradesh and Others Vs. Vishnu Prasad Sharma and Others, .

15. With regard to challenge of the notifications Annexs. 1 and 2 and other grounds of challenge made as above, Mr. H. M. Parekh, learned counsel for the respondent Company urged that the petitioners have now challenged the said notification after a lapse of more than 5 years. There have been gross laches and inordinate delay on the part of the petitioners, the petitioners are, therefore, not entitled to be heard in the writ jurisdiction, after such a considerable delay on their part, more particularly when the situation has completely changed in view

of the fact that only the lands of the petitioners remained, to be taken possession of and the other lands have already been taken over and the payment or compensation has been made. Reference in this connection was made to the decision in *Aflatoon and Others Vs. Lt. Governor of Delhi and Others*, . In that case, notification u/s 4 was issued on November 13, 1959 to the effect that an area of 34070 Acres of land was needed for a public purpose viz the planned development of Delhi. Between 1959 and 1961, about 6000, objections were filed u/s 5 A of the Act. The declaration u/s 6 was made on 18-3-1966 in respect of a portion of the area. Thereafter, in 1970, notices were issued u/s 9(1) of the Act. Thereupon, the validity of acquisition of land was challenged. It was observed that to have set on the fence and allowed the Government to complete the acquisition proceedings on the basis that the notification u/s 4 and the declaration u/s 6 were valid and then to attack the notification on grounds which were available to them at the time when the notification was published would be putting premium on dilatory tactics. The writ petition are liable to be dismissed on the ground of laches and delay on the part of the petitioners (See *Tilokchand and Motichand and Others Vs. H.B. Munshi and Another, and Rabindranath Bose and Others Vs. The Union of India (UOI) and Others*, ."

16. In *Indrapuri Griha Nirman Sahakari Samiti Ltd. Vs. The State of Rajasthan and Others*, , notice u/s 4 was issued on 13-5-60 and it was published on 9-6-60. Notice u/s 6 was published on 11-5-61 and notices were issued u/s 9 of the Act on 18-7-61. The award was made on 9-1-64 and the writ petitions were filed on 23-1-70 challenging the validity of notifications. The High Court held that the appellants were guilty of inordinate delay. It was observed that any challenge to a notification u/s 4 and a declaration u/s 6 of the Act should be made within a reasonable time, thereafter. It was expressed by the Attorney General at the threshold that if the appellants would fail on the ground of delay it was not necessary to go into the rest of the contentions in the judgment. Their Lordships agreed with the view of the High Court and it was held that the High Court had rightly dismissed the writ petition on the ground of delay.

17. In *Hari Singh and Others Vs. State of U.P. and Others*, , the writ petitions challenging the validity of Section 4 and Section 17(4) were filed after 21/2 years. It was held that the writ petitions are liable to be dismissed. It was observed that any interference in this case filed after 21/2 years with the acquisition proceedings is likely to cause serious prejudice to the public. *State of Punjab and Another Vs. Gurdial Singh and Others*, relied upon by Shri Shishodia was considered in this case. It was observed that in that decision, the main point made out was that the acquisition proceedings had been engineered mala fide by a State Minister. It was observed that "in the circumstances of this case, we do not find that there is any ground to hold that the order made u/s 17(4) of the Act emanating from the operation of Section 5A of the Act is bad in law even though there appears to be some administrative delay in commencing the construction of the market yard. Some photographs of the land produced before us, however, show that the work of construction has already been commenced."

18. Mr. H. M. Parekh, learned counsel for the respondent company further placed reliance on Babu Singh and Others Vs. Union of India (UOI) and Others, , In that case, the writ petition was filed after six years of the publication of the impugned notification. It was held that the High Court was justified in dismissing the writ petition.

19. It would not be necessary for us to examine the merits of the contentions raised on behalf of the petitioners, if we feel that the writ petitions can be disposed of on the ground of delay alone. The petitioners' case may be good on merits and there may be substance in the contentions raised on behalf of the petitioners regarding invalidity of the notifications and non-compliance of the provisions of Sections 4(1) and 4(5) of the State Act. In our opinion, the delay and laches on the part of the petitioners would come in their way. Mr. Shjshodia, learned counsel for the petitioners submitted that there has been no delay on the part of the petitioners and the delay per se is not fatal. The respondents themselves are guilty of laches, so, they should not be permitted to raise the plea of delay on the part of the petitioners. We have considered these submissions of the learned counsel for the petitioners, but we are of the opinion that in the circumstances of this particular case, these submissions are devoid of inuch force. It may be stated that the entire land acquisition proceedings are over and complete. The whole land has been acquired had taken possession except the lands of the petitioners. The cause of action accrued to the petitioners on publication of the notification. They should not have waited till the final action is taken by the respondents under the land acquisition law. The delay on the part of the respondents, has not been satisfactorily explained. Looking to the nature and vastness of the National project, for investment, necessary funds have to be arranged. In such like projects, when funds are arranged the project can be immediately implemented and in the absence of availability of funds, implementation of the project can be deferred. When investment resources are finalised the project is required to be completed within the time schedule. The petitioners, in the circumstances of the case, cannot be allowed to take advantage of the non-approval of the project by the Central Cabinet early. Full Bench decision of Punjab and Haryana High Court in Radhey Sham Gupta and Others Vs. State of Haryana and Others, in our opinion, is clearly distinguishable and has no application to the facts of the present case. In that case, two notifications were issued u/s 4 on 8-9-72 for acquisition of 134 Acres 3 Kanals and 1 Maria situated in the two separate revenue estates of Ballabgharh and Ranhera for the specific purpose of development of a Mandi Township astride the Delhi-Mathura road. 8 Kanals of land theveon were originally owned by Shri Nevalsingh, who had sold the same on 11-9-61 to one Jaswant Rai for setting up an industry. Jaswant Rai sold the land to the three petitioners by two separate sale deeds dated 20-8-80 and 29-8-80. This area adjoins the boundary wall of the factory of M/s Printers House (Pvt.) Limited. One notification u/s 6 in respect of 10 Acres 4 Kanals in the revenue estate of Ballabgarh and 25 Acres 6 Kanals in the revenue estate of Ranhera was issued on 29-11-72 . and proceedings

culminated into Award and the Colonisation Department later on even auctioned the plots in the Mandi Area.

20. On 26-7-75, two more notifications u/s 6 were issued for substantial areas within the aforesaid revenue estates. Certain areas of M/s Printers House "(P) Ltd. were covered in these notifications, which were released on representation. However, the said company approached the Colonisation Department for the transfer of lands now owned by the petitioners in order to widen the frontage of their factory on the Delhi Mathura road and to effectuate that purpose, a direction was issued to the Land Acquisition Collector to initiate proceedings for making the Award in respect of the lands now owned by the petitioners and by Naval Singh. The petitioners then challenged the proceedings subsequently taken by the Land Acquisition Collector u/s 9 in pursuance of two notifications Annx. P/4 and Annx. P/5 and the ground was that the issuance of the impugned notice u/s 9 after wellnigh 6 years of the original notification u/s 4 is a colourable exercise of power motivated by considerations entirely extraneous and collateral to the original purpose of the acquisition. It is in the context of these facts, the matter was examined. It may be stated that a colourable exercise of power was made in 1981 and so, it was held that that furnished a cause to the writ petitioners, so, there is no delay on the part of the petitioner to approach the court.

21. In *Chevuru Suryanarayana Reddy v. Govl. of Andhra Pradesh*, AIR 1983 Andh Pra 17 the question of delay in filing the writ petition was not under consideration and the merits of the notification u/s 17(4) for dispensing with the enquiry u/s 5A was examined.

22. In *the State of Madhya Pradesh and Others Vs. Vishnu Prasad Sharma and Others*, , the question which arose for consideration was as to whether number of declarations can be made u/s 6 and it is in that context the facts were examined that the project is a larger one and so, the Government should have power to make number of declarations. This contention was turned down. On the facts, this case is, therefore, distinguishable.

We are of the opinion that there has been gross and inordinate delay on the part of the petitioners in moving this Court under Article 226 of the Constitution, so it is not necessary to examine all the above contentions on merits.

23. It is further strongly urged by Shri Shishodia learned counsel for the petitioners that the entire proceedings of the land acquisition officer have lapsed by operation of law and the awards have been made beyond time. He submitted that the Land Acquisition Act 1894 as amended by Land Acquisition (Amendment), Act, 1984 (Act No. 68 of 1984) was made applicable to the State of Rajasthan w.e.f. 24-9-84 and u/s 11-A the Award is required to be made within two years from the date of publication of the declaration and if no Award is made within that period, the entire proceedings for the acquisition of the land shall lapse. According to Shri Shishodia, the proceedings lapsed on 24-9-86 and

Sub-sec. (4) of Section 56 of the Land Acquisition (Rajasthan Amendment) Act, 1987 does not in any way revive the lapsed proceedings, so, Sub-section (4) of Section 56 does not in any way render the Awards made on 30-12-88 valid.

24. In order to properly appreciate the contention and properly adjudicate the controversy it is necessary to read Section 11A and the provisions of the Land Acquisition (Rajasthan Amendment) Act, 1987. Section 11A of the Central Act reads as under:--

"11-A Period within which an award shall be made. The Collector shall make an award u/s 11 within a period of two years from the date of the publication of the declaration and if no award is made within that period, the entire proceedings for the acquisition of the land shall lapse;

Provided that in a case where the said declaration has been published before the commencement of the Land Acquisition (Amendment) Act, 1984, the award shall be made within a period of two years from such commencement.

Explanation -- In computing the period of two years referred to in this section, the period during which any action or proceeding to be taken in pursuance of the said declaration is stayed by an order of a Court shall be excluded.

25. The relevant part of the Land Acquisition (Rajasthan Amendment) Act, 1987 is as under:--

"The Land Acquisition (Rajasthan Amendment) Act, 1987 Rajasthan Act No. 8 of 1987

An Act further to amend the Land Acquisition Act, 1894 in its application to the State of Rajasthan.

Be it enacted by the Rajasthan State Legislature in Thirty Eighth years of the Republic of India as follows :--

1. Short title, extent and commencement--

(1) This Act may be called the Land Acquisition (Rajasthan Amendment) Act, 1987.

(2) It shall extend to the whole of the State of Rajasthan.

(3) It shall be deemed to have come into force on 3rd January, 1987.

2. Insertion of new Section 56 in the Land

Acquisition Act, 1894. After Section 55 of the "Land Acquisition Act, 1894 (Central Act 1 of 1894) hereinafter referred to as the principal Act, the following shall be added namely :--

"56. Provisions consequential to the extension of this Act to the State of Rajasthan (1) Consequent on this Act having been extended to the State of Rajasthan on the 24th day of September, 1984, hereinafter referred to as the date of extension, the Rajasthan Land Acquisition Act, 1953 (Rajasthan Act 24 of

1953), hereinafter referred to as the State Act, shall be deemed to have been repealed on the date of the extension.

(2) Where, in any proceeding under the State Act pending on the date of extension the State Government, the Collector or the Court has on or after the said date and before the commencement of the Land Acquisition (Rajasthan Amendment) Act, 1987 do any thing taken any action or made any order, which is at variance with that as is provided in this Act, such thing, action or order shall, subject to the other provision of this Section, be deemed to have been done, taken on made under and in accordance with the provisions of this Act and such proceedings shall not be reopened or reviewed or liable to be challenged on the ground of not being in accordance with the provisions of this Act.

(3) All things done, actions taken or orders made in regard to acquisition of any land for the Union or after the date of extension and before the commencement of the Land Acquisition (Rajasthan Amendment) Act, 1987 shall be deemed to have been done, taken or made under the direction of the Union.

(4) Where, in any proceeding pending under the State Act on the date of extension or instituted after the said date, a declaration u/s 6 or an award u/s 11 has been made after any of the respective periods as specified in Section 6 or Section 11-A as the case may be, has expired, the said period or as the case may be shall be deemed to have been extended upto the date of such declaration or award. In a proceeding pending on the date of commencement of the Land Acquisition (Rajasthan Amendment) Act, 1987 such period or periods shall be deemed to have been extended upto, and the declaration or the award as the case may be shall be made within" one year and two years respectively after such commencement."

26. It would appear from the Rajasthan Amendment Act that it has come into force on 3-1-87 and 24-9-84, is the date for extension of the Central Act to the State of Rajasthan and the State Act shall be deemed to having repealed on the date of extension viz. 24-9-84. Further under Sub-section (2) of Section 56, anything done, any action taken or any order made, which is at variance with the Central Act, have been saved subject to the other provisions of Section 56 and they will be deemed to have been done or taken or made under and in accordance with the provisions of the Central Act, and such proceedings shall not be reopened or reviewed or liable to be challenged on the ground of not being in accordance with the provisions of the Central Act. It is Sub-section (4) of Section 56, which is material for consideration in the present writ petitions. How this provision is to be interpreted, is a serious controversy.

27. Mr. Shishodia, wants us to interpret Sub-section (4) of Section 56 in the manner that Sub-section (4) is in two parts, the first part ends with the provision of deeming extension upto the date of declaration u/s 6 and of the award u/s 11A and thereafter a new science, begins. According to him, the second sentence is the second part of Sub-section (4) and two sentences have to be read

independently as they meet two different quotations. They cannot be read together. He submits that the word has been made use the present perfect tense and the first part should be read in the manner that the declaration u/s 6 or Award u/s 11 should be made before commencement of the Rajasthan Amendment Act i.e. upto 2-1-87 for the applicability of the first part. If the declaration or Award has been made upto that date the period shall be deemed to have been extended upto the date of such declaration or Award as the case may be and in case, the declaration or Award has been made unto that date the period shall be deemed to have been extended upto the date of such declaration or Award as the case may be and in case, the declaration or Award has been made after 2-1-87 then the first part of Sub-section (4) of Section 56 would not be attracted and in that situation, the proceedings shall lapse. According to him, for the proceedings shall lapse. According to him for the applicability of the first part of Sub-section (4) the declaration or the Award is required to be made between 24-9-86 to 2-1-87 and if the declaration or ward is not made within the aforesaid period, the proceedings shall lapse automatically. If not made up to 2-1-87 the deeming provision in part I of Sub-section (4) of Section 56 would not come into play. Second part of Sub-section (4) of Section 56 applied to the proceedings which have not lapsed and which are still pending for such proceedings, the period prescribed for declaration or Award is one year and two years respectively after commencement of the Rajasthan Amendment Act i.e. after 3-1-87.

28. Mr. Shishodia, learned counsel for the petitioners placed reliance for interpreting of Sub-section (4) of Section 56 on a decision in *Maradana Mosque v. Badiuddin Mahammed* (1966) 1 All ER 545). He referred to G. P. Singh's *Interpretation on Statute*, where in the above decision has been considered and he placed reliance on the following para:--

"By Section 11 of the Assisted Schools and Training College (Supplementary provision) Act, 1960 (Ceylon) the Minister of Education is empowered if he is satisfied that an unaided school "is being administered in contravention of any of the provisions of the Act, etc. to declare that such a school shall cease to be an unaided school and that the Director of Education shall be its Manager. In holding that the Minister can only take action if the school at the time of the making of the order is being carried on in contravention of the Act and not merely on the ground that a breach of the Act was committed in the past, the Privy Council (Lord. Pearce) pointed out" The present Tense is clear. It would have been easy to say "has been administered" for "in the administration of the school any breach of any of the provisions of the Act has been committed, if such was the intention but for reasons which common sense may easily supply. It was enacted that the Minister should concern himself, with the present conduct of the School not the past, when making the order."

29. It may be stated that the expression "is being administered" in contravention of the Act, were considered to be in present tense and while dealing with the

provision, it has been said that it does not cover the past Acts. It was expressed that in that situation, it would be easy to say, "has been administered" or "any breach of any of the provisions of the Act has been committed". It may be stated that the whole exercise of amendment has been made with a view to achieve certain object. The Central Act as amended was extended to the State of Rajasthan. There were no time bound provisions similar in nature as they are there in the Central Act, so, certain transitory and special provisions were considered necessary to be made for the disposal of the proceedings pending under the State Act and for payment of compensation and interest etc. in accordance with the Central Act. It is with this object in view that the provisions consequential to the extension of the Central Act have been made by Section (2) of the Rajasthan Amendment Act. whereby, Section 56 has been added in the Central Act. It may be stated that where the declaration u/s 6 is not made within one year or the Award has not been made within two years in the land acquisition proceedings pending on the date of extension, the provision has been made for such pending proceedings in Sub-section (4) and provision has also been made in respect of those proceedings, which have been instituted after the date of extension i.e. if the proceedings are pending on 24-9-84 or instituted after 24-9-84 and the periods prescribed u/s 6 or Section 11-A have expired then such period shall be deemed to have been extended upto the date of declaration or Award. In any case, if the proceedings are pending even on the date of commencement of the Rajasthan Amendment Act, the declaration or award has to be made within a period of one year and two years respectively after 3-1-87. Sub-section (4) has been enacted only for the purpose of prescribing time for declaration and award in pending proceedings, not only on the date of extension of the Central law but also on the date of commencement of the Rajasthan Amendment Act 1987. The use of the words "has been made" is in the present perfect tense and the act of declaration or award can be completed even after the commencement of the Rajasthan Act. If the declaration or award has been made after the commencement of the Rajasthan Amendment Act, such declaration or award would be valid in view of the deeming provision in the earlier part of Sub-section (4). But in the later part of Sub-section (4) what is provided is that such declaration or award has to be made within one year and two years respectively after commencement of the Rajasthan Act.

30. From the reading of Sub-section (4) as a whole and further having regard to the dominant object of the Rajasthan Amendment Act, it cannot be conceived that the Legislature ever contemplated that any proceedings will lapse on 3-1-87 and for such lapsed proceedings, no provision is to be made. The word "pending" would mean the proceedings, which have not been disposed of. For undisposed proceedings on 3-1-87 outer limit has been fixed as one year or two years after the date of commencement of the Rajasthan Act. That appears to be the intention behind Sub-section (4). That intention finds its manifestation from the words used in Sub-section (4) as well and the words "has been made" cannot be taken to mean only to have been made up to 2-1-87. If such would have the

intention of the legislature it would have been clearly stated, as has been stated in Sub-section (2) by using the expression "before the commencement of the Rajasthan Amendment Act. The Legislature could have clearly made specific provision by using the expression" has been made after any of the respective periods as specified in Section 6 or Section 11 but before the commencement of the Rajasthan Amendment Act".

31. In the Secretary, Regional Transport Authority, Bangalore and Another Vs. D.P. Sharma and Others, , the meaning of expression "has been" is considered. In that case, in Clauses (i) and (ii) of Section 3(g) the expression has been issued occurs. Learned Advocate General submitted that the expression "has been issued" used in Clauses (i) and (ii) of Section 3(g) contemplates the issuance of special permit or a temporary permit after coming into force of the Act and it does not include the issuance of a special permit or a temporary permit earlier than the date of the commencement of the Act. Reliance was placed on an English decision in re-Athlumney Ex parte Wilson (1989)2 QB 547. In that case, it was observed that "in our opinion whether the expression "has been" occurring in a provision of a statute denotes transaction prior to the enactment of the statute in question or a transaction after the coming into force of the statute will depend upon the intention of the Legislature to be gathered from the provision in which the said expression occurs or from the other provisions of the statutes" Their Lordships further observed as under:--

"In the instant case, the words "has been" contemplate the issuance of a special permit or a temporary permit as referred to in Clauses (i) and (ii) of Section 3(g) of the Act after the enactment of the Act which is clear from the exclusion Clause (ii) of Section 3(g) which excludes a stage carriage from the definition of "contract carriage" if special permits issued u/s 62(i) or Section 63(6) of the Motor Vehicles Act were in force on January 30, 1976. It is difficult to interpret Clauses (i) and (ii) of Section 3(g) as contemplating the issuance of a temporary permit or a special permit, as referred to therein before the coming into force of the Act. Merely because of the use of the words has been in Clauses (i) and (ii) of Section 3(g) such an interpretation is not possible to be made, particularly in view of the legislative intention a parent from the exclusion Clause (i) namely, that the Legislature only excluded a stage carriage in respect of which a temporary contract carriage or a special permit issued u/s 62(i) or 63(6) of the Motor Vehicles Act was in force on January 30, 1976."

32. In Seaford Court Estates Ltd. v. Asher (1949) 2 KB 481, Lord Denning observed as under:--

"Whenever a statute come up for consideration must be remembered that it is not within human powers to foresee the manifold sets of facts which may arise, and, even if it were, it is not possible to provide for them in terms free from all ambiguity. The English language is not an instrument of mathematical precision. Our Literature would be much the poorer if it were. This is where the draftman of Acts of Parliament have often be unfairly criticised. A Judge, believing himself to

be fettered by the supposed rule that he must look to the language and nothing also, laments that the draftmen have not provided for this or that, or have been guilty of some or other ambiguity. It would certainly save the judges trouble if Acts of Parliament were drafted with divine prescience and perfect clarity. In the absence of it, when a defect appears a judge cannot simply fold his hands and blame the draftsman. He must set to work on the constructive task of finding the intention of Parliament and he must do this not only from the language of the statute, but also from a consideration of the special condition which gave rise to it and of the mischief which it was passed to the remedy and then he must supplement the written word so as to give force and life to the intention of the legislature. That was clearly laid down by the resolution of the Judges in Heydon's case, and it is the safest guide today. Good practical advice on the subject was given about the same time by Plowden put into homely metaphor it is this; if the makers of the Act had themselves come across this ruck in the texture of it, how would they have straightened it out? He must do so they would have done. A judge must not alter the material of which it is woven, but he can and should iron out the creases."

33. A statute is to be construed according to the intent of them that make it and the duty of judicature is to act upon the true intention of the legislature the mens sententia legis.

34. Sub-section 4 of Section 56 if construed both from the point of view of *literale legis* or *sententia legis* the result is the same as considered above.

35. In case, the construction as sought to be placed by Mr. Shishodia on Sub-section (4) of Section 56 is accepted the whole object of the Rajasthan Amendment Act will be defeated" and in our opinion, such cannot be the intention of the legislature behind Sub-section (4) of Section 56. There is, therefore, no question of any vesting of right in the petitioners when there is no lapse of the proceedings, Sub-section (4) of Section 56 shall apply to all pending proceedings not only on the date of extension of the Central Act, but also on the date of commencement of the Rajasthan Amendment Act. In the present case, the land acquisition proceedings, in our opinion, have not lapsed in view of the construction, which we have placed on Sub-section (4) of Section 56.

36. It may be stated that so far as the amount of compensation is concerned, the respondent's case is that the Award has been made not only on the basis of market price as on the date of notification, almost three times of the market price has been given by way of compensation. That shows that bona fides of the respondent company and in case, the amount of compensation awarded is considered insufficient and inadequate, it is open to the petitioners to get the reference made to the court. The question of quantum of compensation cannot be gone into in the present writ petitions. The petitioners may avail remedy of reference.

37. No other point survives for consideration.

38. In the result, these writ petitions have no force, so they are hereby dismissed.