
(2015) 02 RAJ CK 0018
In the Rajasthan High Court
Case No : Civil Writ Petition No. 12656/2014

Chhotu Ram and Others

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 25-02-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 11
Constitution of India, 1950 — Article 226
Jaipur Development Authority Act, 1982 — Section 54, 72, 83, 83(8)
Urban Land (Ceiling and Regulation) Act, 1976 — Section 10, 10(3), 10(5), 10(6), 3

Citation : (2015) 4 CDR 1657

Hon'ble Judges : Bela M. Trivedi, J.

Bench : Single Bench

Advocate : Paras Kuhad Senior Counsel and Pradeep Choudhary, for the Appellant; P.S. Narsimha, A.S.G. and Rajendra Prasad, A.A.G., Advocates for the Respondent

Final Decision : Dismissed

Judgement

Bela M. Trivedi, J.—The present petition has been filed by the petitioners under Article 226 of the Constitution seeking various directions and declarations, and also challenging the impugned notices issued by the respondent-JDA under the Jaipur Development Act, 1982 (hereinafter referred to as "the JDA Act").

2. The petitioners initially had filed the petition seeking regularisation of their lands bearing Khasra Nos. 193 and 193/248 situated in Village Beed Khatipura, Jaipur in compliance of the order dated 10.4.2002 passed by the Settlement Committee, and for restraining the respondents from taking the possession of the said lands, and from depriving the petitioners of their legitimate right of enjoyment of the said lands. The said petition was sought to be amended by the petitioners as certain wrong statements were made in the petition with regard to the khasra numbers in question, and as the respondent-JDA pending the petition had issued the impugned notices under Section 34-A and Section 72 of the JDA Act. The said amendment was permitted to be carried out as per the order dated

8.12.14. After the amendment of the petition, following prayers have been prayed for:-

"A. By an appropriate writ, order or direction, the respondents may kindly be directed to regularize the land of the petitioners bearing Khasra No. 193, 193/248 situated in Village Beed Khatipura, Jaipur in compliance of the order dated 10.4.2002 (Annex. 1) passed by the State Level Committee;

B. By an appropriate writ, order or direction, the respondents may kindly be directed not to take possession of the land of the petitioners in Khasra No. 193, 193/248 situated in Village Beed Khatipura,

C. By an appropriate writ, order or direction the respondents may kindly be directed not to deprive the petitioners of their legitimate right of enjoyment of property;

C-1. By an appropriate writ, order or direction the notices dated 20.11.2014 (Annexure-14, 15, 17 and 18) issued by the respondent No. 2 under section 72 of the JDA Act, 1982 to the petitioners may kindly be quashed and set aside and further all the notices u/s. 72 of JDA Act, 1982 dated 14.11.2014 issued regarding the shops situated on khasra No. 193 and 193/248 be also quashed and set aside and all subsequent action taken in furtherance thereof also be quashed and set aside.

C-2. By an appropriate writ, order or direction the orders dated 17.11.2014 (Annexure-9 and Annexure-11) passed by the respondent No. 1 and orders dated 20.11.2014 (Annexure-8 and Annexure-10) passed by the respondent No. 2 may be quashed and set aside.

C-3. By an appropriate writ, order or direction all the notices dated 11.11.2014 issued under section 34(A) of the Act of 1982 be also quashed and set aside.

C-4. By an appropriate writ, order or direction it may be held that the subject land of khasra No. 193 and 193/248 situated at Beedkhatipura, Jaipur is not government property and the petitioners are having legal and valid title and rights the said land.

D. Any other order or direction which this Hon"ble Court may deem fit and proper in the facts and circumstances of the case and in favour of the petitioners may also be passed.

E. Cost of the writ petition may kindly be awarded in favour of the petitioners."

3. The case of the petitioners in nutshell is that the petitioners who are the brothers, were the khatedar-tenants of the agricultural lands bearing Khasra No. 193 admeasuring 25 bighas and 2 biswas and bearing Khasra No. 193/248 admeasuring 12 bighas and 5 biswas respectively. According to them, on The Urban Land (Ceiling and Regulation) Act, 1976 (hereinafter referred to as "the ULC Act") having come into force, the proceedings under the said Act were carried out by the competent authority, though the provisions of the said Act

were not applicable to the lands in question. The petitioners had challenged the said proceedings by filing the petitions before this court and the same having been dismissed, the petitioner No. 2 had also filed SLP before the Apex Court. In the meantime, the ULC Act came to be repealed in 1999. The petitioners thereafter had made the applications before the Settlement Committee constituted under Section 83-A of the JDA Act for settling their disputes with the JDA, and the said applications were decided by the said Settlement Committee on 10.4.02. The directions given in the said decision of the Settlement Committee were also sought to be implemented by both the parties and accordingly the petitioners had deposited part of the amount i.e. Rs. 1.45 crores with the JDA pursuant to the demand notices issued by the JDA for the regularisation of the lands in question. It is further case of the petitioners that one PIL being No. 2658/03 was filed before the High Court, challenging the constitution of the Settlement Committee and hence the said committee was dissolved by the State Government on 15.9.04. The said PIL was disposed of by the High Court on 16.8.12. Thereafter the matter was being considered by the empowered committee of the State Government, as the representation was made by the petitioners on 13.8.13. Since the petitioners apprehended that the JDA would forcibly take away the possession of their lands, they had filed the petition on 11.11.14 and on the same day, the officers of the JDA pasted notices under Section 34-A of the JDA Act on the premises of the petitioners, which premises were being used by the petitioners as the marriage gardens since 2008. The present petition thereafter was sought to be amended as during the pendency of the petition the respondent-JDA had further issued notices under Section 72 of the JDA Act alleging that the petitioners had made encroachments and caused obstructions on the public land. The petitioners therefore have challenged the said notices issued by the respondent-JDA and have sought the directions and declarations as mentioned hereinabove.

4. The petition has been resisted by respondents by filing the reply giving details about the orders passed and the actions taken by the authorities under the ULC Act, as also the orders passed by the High Court in the earlier petitions filed by the petitioners. It has been further contended that the proceedings under the ULC Act had attained finality, and the vacant lands out of the said khasra numbers of the petitioners had already vested in the Government in the year 1984. According to the respondents when the petitioners did not comply with the orders passed under sub-section 5 of Section 10 of the ULC Act, the competent authority had taken over the possession of the vacant land after using necessary force on 6.12.86 and the memos - "Fard" were also prepared in this regard. The said lands thereafter were mutated in favour of the JDA on 17.8.91. It is further contended that the orders passed by the competent authority under Section 10(3) of the ULC Act were challenged by the petitioners by filing the appeals before the Divisional Commissioner, and the petitioners had also filed the petitions before the High Court on the ground that the provisions of the ULC Act were not applicable to the said lands. However, the said appeals before the

Divisional Commissioner and the writ petitions filed before the High Court having been dismissed and the special appeals filed before the Division Bench of this court also having been dismissed, the proceedings under the ULC Act had attained the finality. According to the respondents, prior to the date 7.10.99 on which the ULC Act was repealed, the lands in question had already vested in the State Government and the possession of the same was also handed over by the competent authority to the JDA on 6.12.86. The cheques for compensation were also issued to the petitioners, and therefore there was no question of petitioners" challenging the said proceedings of the ULC Act before the Settlement Committee. According to the respondents, the petitioners had suppressed the material facts before the Settlement Committee, and the Settlement Committee also did not notice that the proceedings under the ULC Act had already attained finality. Since the order of Settlement Committee was illegal and void ab initio, and since the petitioners themselves did not comply with the directions given in the said order, the question of implementation of the said decision after so many years did not arise. It is contended that there was inter se dispute going on between the petitioners as per the record of the JDA and the petitioners had not come with clean hands. Under the circumstances, the respondent-JDA was well within its rights to protect its property vested in it by issuing the notices under Section 34-A and Section 72 of the JDA Act. It is also contended that the entire case was built up by the petitioners on the concealment of facts and even otherwise, the alternative statutory remedy being available to the petitioners under Section 83 of the JDA Act, the present petition deserved to be dismissed.

5. From the pleadings it appears that the present petition has a chequered history and therefore it would be beneficial to narrate certain dates and events for the purpose of appreciating the issues involved in the petition. The dates and events which emerge from the record are as under:-

6. SUBMISSIONS ON BEHALF OF THE PETITIONERS.

6(i). The learned senior counsel Mr. Paras Kuhad for the petitioners taking the court to the voluminous record and to the various provisions contained in the ULC Act as well as in the JDA Act submitted that the petitioners were the Khatedar tenants of the lands in question and had filed the forms under the ULC Act, however the competent authority had passed the orders without giving sufficient opportunity of hearing to the petitioners and initiated the proceedings under Section 10 of the ULC Act. According to Mr. Kuhad, the entire proceedings conducted under the ULC Act were without jurisdiction and even otherwise had lapsed in view of the repeal of the ULC Act in the year 1999. Even during the pendency of the litigation with respect to the proceedings under the ULC Act, the disputes between the respondent No. 2 JDA and the petitioners were resolved by the decision of the Settlement Committee constituted under Section 83A of the JDA Act and the said decision was accepted and acted upon by both the parties, however, could not be fully implemented due to the judicial interdictions by the High Court in various proceedings. He further submitted that the present petition

was necessitated as the respondents for the first time in November 2014 declined to implement the decision of the Settlement Committee and sought to assert the ownership in respect of the lands in question by issuing impugned notices under Section 72 of the JDA Act.

6(ii). The learned counsel Mr. Kuhad pressing into service various provisions of the ULC Act, more particularly, Section 10 elaborately submitted that the notice under Section 10(5) of the ULC Act had to be issued and served on the person who was in possession of the land. Such notice had to be issued by the competent authority directing delivery of possession either to the State Government or to a person authorised by the State Government. The provisions contained in Section 10(6) of the ULC Act would come into play only if the person had refused or failed to comply with the order made under sub-section 5 of the said Section. According to him, a valid notice under Section 10(5) of the ULC Act was neither issued to nor served upon the petitioners and therefore the question of refusal to handover the possession did not arise and under the circumstances, the authority under the Act could not have invoked Section 10(6) of the ULC Act. The said provisions under Section 10(5) and 10(6) being mandatory in nature, the proceedings under the ULC Act were inchoate and never had the effect of divesting the petitioners of possession of the said lands. Mr. Kuhad has relied upon the decision of the Apex Court in case of State of U.P. Vs. Hari Ram, to submit that the provisions of Section 10 of the ULC Act were mandatory in nature.

6(iii). Referring to the various orders passed by the authorities under the ULC Act and the orders passed by this court, Mr. Kuhad submitted that the competent authority had passed the orders without giving sufficient opportunity of hearing to the petitioners and therefore they were not aware about the notifications issued under Section 10(3) of the ULC Act in respect of the lands in question and the petitioners came to know about the said orders only in the year 1991, when the respondents threatened the petitioners to dispossess them. The petitioners thereafter filed the appeals before the Divisional Commissioner under Section 33(1) of the ULC Act. He further submitted that the Divisional Commissioner dismissed the said appeals on the ground of delay alone. However, since the entire proceedings initiated under the ULC Act were without jurisdiction, the petitioners had filed the petitions under Article 226 of the Constitution of India contending that the provisions of the ULC Act did not apply to the subject lands. He further submitted that pending the proceedings before the High Court and the Supreme Court, the dispute was referred to the Settlement Committee constituted under Section 83-A of the said Act and the Settlement Committee had also given the finding that the lands in question being outside the Jaipur urban agglomeration at the time of coming into the force of ULC act, the said lands were outside the purview of the ULC Act. He further submitted that the said decision of the Settlement Committee was accepted and acted upon by the parties and accordingly the respondent No. 2 had also raised demand for the regularisation of the lands in question and the petitioners had deposited about

Rs. 1.45 crores. Pressing into service Sub-section (4) of Section 83-A of the JDA Act, Mr. Kuhad has submitted that the decision of the Settlement Committee was binding on the authority.

6(iv). As regards the possession of the lands in question, Mr. Kuhad vehemently submitted that the authorities under the ULC Act had never taken the possession much less forcible possession of the subject lands as contemplated under Section 10(6) of the ULC Act and even the Settlement Committee in its report had observed that the petitioners were in possession of the lands in question. According to him even the respondents in their reply to the writ petition filed by the petitioners had admitted that the possession of the said lands was of the petitioners. According to him by judicial orders in the writ petitions, the possession of the petitioners was protected. Thus the possession of the lands in question having remained undisturbed with the petitioners, the contentions of the respondents with regard to the petitioners having made encroachments over the said lands was not tenable. Mr. Kuhad has relied upon the decision of the Apex Court in case of Hiralal Moolchand Doshi Vs. Barot Raman Lal Ranchhoddas (Dead) by L.Rs., to submit that the admission made by the party in the judicial proceedings was binding on the party) making it. Mr. Kuhad referring to the various documents produced by the respondents submitted that absolutely contradictory stands were taken by the respondents with respect to taking over of possession of lands in question inasmuch as there were contradictions with regard to the manner in which the possession was allegedly taken, the date on which and the authority by which the possession was taken over by the respondents.

6(v). The learned counsel Mr. Kuhad challenging the genuineness of the "Fard" dated 6.12.86 prepared by the respondents, submitted that the said document only stated about the possession having been handed over to the respondent No. 2 and there was no reference to the petitioners having been dispossessed or the possession having been forcibly taken away from the petitioners. There were no independent witnesses present at the time of the said alleged dispossession. According to Mr. Kuhad, the said "Fard" was also inconsistent with the affidavits filed by the respondents before the Divisional Commissioner and before the High Court as also with the mutation records. He has relied upon the decision of the Supreme Court in case of Banda Development Authority, Banda Vs. Moti Lal Agarwal and Others, in support of his submission that the said "Fard" did not comply with the tests laid down by the Supreme Court for taking over the possession. Relying upon the decision in case of P.V. Radha Krishna and Others Vs. State of A.P. and Others, , he submitted that the respondents having taken one categorical stand, they were estopped from taking contrary stand at the subsequent stage.

6(vi). Mr. Kuhad further submitted that since the physical possession of the said lands was not taken over, on the repeal of the ULC Act in the year 1999, the said lands had stood restored to the petitioners, in view of the various

pronouncements of judgments by the Apex Court. In this regard, he has relied upon the judgments of the Supreme Court in case of State of U.P. Vs. Hari Ram (supra), in case of Gajanan Kamiya Patil Vs. Add. Collector and Competent Authority 2014 SCC Online SC 126. Reliance has been placed in case of State of U.P. and Others Vs. Hirendra Pal Singh etc., to submit that whenever an Act is repealed, it must be considered as if it had never existed. He has submitted that in the absence of the saving provision under Section 3 of the repeal Act, the petitioners were entitled to proceed on the premise that the ULC Act, 1976 had never come into operation, and even if an exception was carved out in the said section to protect the vesting of such lands whose physical possession had been taken over by the State Government then also the said exception was not attracted in the present case as the actual physical possession of the lands in question had remained with the petitioners and not with the State Government.

6(vii). Challenging the notices issued by the respondent No. 2 under the JDA Act, Mr. Kuhad submitted that the said notices under Section 34-A and 72 were illegal and invalid. He submitted that Section 72 of the JDA Act could not have been invoked in view of the bona fide dispute pending between the parties in respect of the lands in question and the said section being a penal provision could be attracted only in case of encroachment upon non-private land, and in the case where the State's title to the property is absolute and unquestioned. He has relied upon the decision of the Apex Court in the case of State of Rajasthan Vs. Padmavati Devi (Smt) (Dead) by Lrs. and Others, , to buttress his submission that action against the person in occupation of the Government land cannot be taken when such person raises bona fide dispute about his right to remain in occupation over the land in question.

6(viii). Mr. Kuhad lastly submitted that the petitioners have approached the court by way of present petition immediately upon the accrual of the cause of action and there were no laches at any point of time for seeking the reliefs as claimed in the present petition. According to him the touchstone for determining the question of laches is acquiescence and change of position on the respondent's part, as laid down by the Supreme Court in case of Chairman, U.P. Jal Nigam and Another Vs. Jaswant Singh and Another, . However, in the instant case the injury was caused to the petitioners when the respondents declined to implement the decision of the Settlement Committee and sought to interfere with the peaceful possession of the petitioners in November, 2014. He submitted that the respondents cannot be exempted from explaining the documents with regard to the possession on the ground that the records of the case were very old. According to Mr. Kuhad the petitioners having challenged the manifestly illegal attempt of the respondents to oust the petitioners from the lands in question under the guise of the proceedings under the ULC Act, the judicial review of such action under Article 226 of the Constitution of India was permissible. In this regard he has relied upon the decisions in the case of Vinayak Kashinath Shilkar Vs. Dy. Collector and Competent Authority and Others, , in case of Gajanan Kamiya Patil (supra) and other decisions of other High Courts.

7. SUBMISSIONS ON BEHALF OF THE RESPONDENTS.

7(i). The learned Additional Solicitor General Shri P.S. Narsimha, the learned Addl. Advocate General Mr. Rajendra Prasad and learned Addl. Advocate General Mr. S.K. Gupta have made elaborate submissions on behalf of the respondent-State as well as the JDA contending inter alia that the entire litigation by way of present petition is not only barred by the principles of laches and constructive res-judicata, the same has been filed concealing material facts. According to them, both the petitioners had filed separate proceedings before the concerned authorities under the ULC Act, before this court and before the other authorities under the JDA Act, and the petitioner Ramdas had also made complaints against the petitioner Chhoturam alleging use of forged power of attorney in conspiracy with the President of a Housing Cooperative Society, however the present petition has been filed by them jointly, which suggests that some third party interest has been created in the lands in question and the present petition has been filed as a proxy litigation, which should not be entertained. The learned ASG Mr. Narsimha submitted that the span of the litigation is spread over a period of 30 years and is fractured, sporadic and without any continuity. According to him, since the vesting of land in question had taken place as back as in January, 1984 and the possession of the vacant lands out of the lands in question was taken over as per the memos dated 6.12.86, it was not open for the petitioners to seek the declaration in the year 2014 that they are the owners of the said lands, indirectly challenging the legality and validity of the proceedings under the ULC Act, which had already been concluded 30 years ago. According to him, even as per the case of the petitioners, they had come to know about the proceedings under the ULC Act as back as in September, 1991. In the appeals filed by them, the Divisional Commissioner had specifically recorded the findings while dismissing the said appeals that the possession of the lands was taken over by the competent authority on 6.12.86, however the said orders of the Divisional Commissioner have remained unchallenged by the petitioners. The petitioners also did not succeed in the writ petitions filed by them on the ground of non-applicability of ULC Act to their lands. In the said petitions also the petitioners had not challenged the proceedings of Section 10(5) and 10(6) of the ULC Act or the orders of the Divisional Commissioner. The Division Bench had also dismissed the appeals filed by the petitioners challenging the order of the learned Single Judge and the SLP filed by the petitioner Ramdas also ultimately came to be withdrawn. Therefore according to Mr. Narsimha it was not open for the petitioners to reopen the said concluded proceedings of the ULC Act in the present petition.

7(ii). It is further submitted by the learned ASG Mr. Narsimha that though the proceedings before the Settlement Committee were pending, no plea regarding consequences of Repeal Act was taken, and though the representations were made for regularisation of the lands in question to the State Government, pursuant to the decision of the Settlement Committee, no such plea about the lapse of proceedings under the ULC Act was taken. Mr. Narsimha strongly urged

that the present petition challenging the legality of the act of the State Government taking over possession in 1986 should not be entertained after a period of almost 30 years. Mr. Narsimha relying upon the judgment of Apex Court in case of State of Maharashtra Vs. Digambar, submitted that where the relief sought under Article 226 of the Constitution by a person against the welfare State is founded on its alleged illegal or wrongful executive action, the need to explain laches or undue delay on his part to obtain such relief, should, if anything, be more stringent than in other cases, for the reason that the State due to laches or undue delay on the part of the person seeking relief, may not be able to show that the executive action complained of was legal or correct for want of records pertaining to the action or for the officers who were responsible for such action, not being available later on. He has also relied upon the decision of the Apex Court in case of Chairman, U.P. Jal Nigam and Another Vs. Jaswant Singh and Another, to submit that it is unjust to give the claimant a remedy, where, by his conduct, he has done that which might fairly be regarded as equivalent to waiver of it. Mr. Narsimha also relied upon other decisions of Supreme Court in case of Union of India (UOI) and Others Vs. Har Dayal, and in case of S.S. Rathore Vs. State of Madhya Pradesh, , to buttress his submission that merely by making representations the delay occurred in seeking relief before the appropriate forum cannot be condoned and that when a remedy by means of representations has not been provided by law, the same cannot be used as an excuse to explain the delay in seeking the remedy.

7(iii). Pressing into service the principle of constructive res-judicata Mr. Narsimha submitted that the Divisional Commissioner while dismissing the appeals of the petitioners had recorded a specific finding that the possession of the lands were taken by the competent authority on 6.12.86, and that the said finding or the said order having not been challenged by the petitioners at any point of time, they were precluded from challenging the same in the present petition. In this regard the learned counsel has relied upon the decision of the Apex Court in case of Bharat Amratlal Kothari Vs. Dosukhan Samadkhan Sindhi and Others, and in case of Dadu Dayalu Mahasabha, Jaipur (Trust) Vs. Mahant Ram Niwas and Another, . He has also relied upon the decision of the Apex Court in case of Omprakash Verma and Others Vs. State of Andhra Pradesh and Others, , to submit that the contentions which the parties might or ought to have litigated in the previous litigation, cannot be permitted to raise in the subsequent litigations.

7(iv). Relying on the latest decision of the Apex Court in case of State of Assam Vs. Bhaskar Jyoti Sarma decided on 27.11.2014 in Civil Appeal No. 10565 of 2014, he submitted that though the competent authority under the ULC Act had followed the due procedure under Section 10, even assuming that the notices under Section 10(5) were not served upon the petitioners, then also the said proceedings under the ULC Act could not get vitiated merely because the notice under Section 10(5) was not served upon the person in possession of the land. He further submitted that the possession of the lands in question was validly taken by the competent authority as per the memos dated 6.12.86 after

preparing proper Panchnama with the signatures of the witnesses, as indicated in the decision of the Apex Court in case of Banda Development Authority Vs. Motilal Agarwal (supra). He has also relied upon the decision in case of Omprakash Verma Vs. State of Andhra Pradesh (supra) wherein it was held that where the possession is of a large track of land, then it is permissible to take possession by properly executed Panchnama. The learned AAG Mr. Rajendra Prasad, taking the court to the said memos prepared on 6.12.86 submitted that the possession of vacant lands was taken by the competent authority, after leaving the retainable land of 1500 sq. Meters as described therein, and the same were prepared in presence of the witnesses who had also put their signatures.

7(v). The learned counsels for the respondents have further submitted that after the possession was taken by the competent authority under the ULC Act, the subsequent retention of possession by the petitioners would tantamount to illegal and unlawful possession only, as held by the Apex Court in case of Balmokand Khatri Educational and Industrial Trust, Amritsar Vs. State of Punjab and others, . According to them, though there were alleged contradictions pointed out by the petitioners on the factum of taking over of possession by the respondents, the same have been explained by the respondents and even otherwise the validity of statutory documents like possession memo have or be examined on its own merits without reference to the pleadings or statements made thereunder.

7(vi). As regards the decision of the Settlement Committee Mr. Narsimha learned ASG, submitted that the said committee was to mediate or resolve the disputes between the JDA and the other parties, and merely because the decision has been made binding to the JDA, the proceedings before the Settlement Committee cannot be treated as having the trappings of a court or Tribunal and the findings recorded by the said committee could not override the findings recorded by the statutory authorities under the ULC Act, as regards the possession of the lands. As regards the regularisation of the lands, the learned AAG Mr. S.K. Gupta relying upon the provisions of the JDA Act, more particularly of Section 54 of the JDA Act submitted that the JDA could not regularise any land dehors the procedure established by the State in that behalf and that as per the circular dated 16.2.2002, the State Government had reserved the power to examine the matter for regularisation on case to case basis. Apart from the fact that the petitioners had failed to comply with the order of Settlement Committee, the committee itself was dissolved by the State Government pursuant to the PIL filed in the High Court challenging the validity of the constitution of the said committee. The counsels have submitted that the said decision of the Settlement Committee could not be directed to be implemented after a period of 12 years in the present proceedings.

7(vii). As regards the notices under Section 34-A and Section 72 of the JDA Act issued by the respondent-JDA, it was submitted by the learned counsels that the

petitioners had carried out unauthorised development, and made encroachments over the public land by putting up construction of shops, and hence the respondent-JDA was perfectly justified in taking the action under the JDA Act. They also submitted that the power under Section 72 of the JDA Act to remove the encroachment/obstruction on the public property is in addition to the prosecution and not in derogation and since the notice under Section 72 being in compliance of the principles of natural justice, the challenge of said notices by way of present petition is premature. Lastly it was submitted that there being statutory appeal provided under Section 83 of the JDA Act, which is an alternative efficacious remedy for adjudication of the issues involved in the petition, the present petition deserves to be dismissed.

8. Having regard to the submissions made by the learned counsels for the parties and to the pleadings and the documents on the record, it appears that the petitioners had filed the petition on 11.11.14 apprehending that the respondent No. 2-JDA would take forcible possession of the lands in question from the petitioners, as on 10.11.14 some officers had come to their lands and had threatened them that JDA will take the possession of the said lands. As stated hereinabove, on 11.11.14 the JDA had also sought to serve notices under Section 34-A of the JDA Act for sealing the six marriage gardens being run on the lands bearing Khasra No. 193/248 and two marriage gardens, not functioning, however situated at the land bearing Khasra No. 193. The court considering the nature of notices and considering the hardship that might be caused to the persons who had booked the said marriage gardens for their marriages on the said dates, had directed the respondent No. 2 to remove the seals put on the said marriage gardens in question, however had permitted the respondents to take action against the petitioners for the alleged unauthorised development after following the due process of law. The said respondent No. 2-JDA thereafter issued the notices under Section 72 of the JDA Act on the ground that the petitioners had made unauthorised encroachments, by putting up construction of shops and had caused obstruction upon the public land. The petitioners thereafter had carried out the amendment in the original petition challenging the action of the respondent No. 2 in issuing the said notice under Section 72 of the JDA Act and also praying for other reliefs as stated hereinabove. It is pertinent to note that when the court heard the matter on 14.11.14, the learned AAG Mr. S.K. Gupta had raised the preliminary objection on the maintainability of the petition, however considering the urgency in the matter the court had passed the order for removing the seals put on the marriage gardens, keeping the issue of maintainability of the petition open.

9. In this regard it is required to be stated that the State Government has constituted the Tribunal under Section 83 of the JDA Act, empowering the Tribunal to decide the appeal or any dispute referred to it under the provision of the said Act, making the decision of the Tribunal final and binding on the parties. Section 83(8) of the JDA Act reads as under:-

"83. Constitution of Tribunal-

(8) Except as otherwise provided;

(a) any person aggrieved by an order or notice of the Authority may file an appeal in the Tribunal within thirty days of the communication of such order or notice to him; and

(b) any person aggrieved by any threatened act or injury from the Authority affecting his rights may refer the dispute to the Tribunal within thirty days of the communication or knowledge of such threatened act or injury; and the decision of the Tribunal shall be final."

10. In view of the said provision contained in Section 83(8) of the JDA Act, the petitioners being aggrieved by the threatened action of the respondent-JDA was required to approach the Tribunal by referring the dispute to the said Tribunal or by filing the appeal against the issuance of the impugned notices. There being statutory remedy provided under the JDA Act, the court finds substance in the objection raised by the learned counsel for the respondents on the maintainability of the petition. However, it is settled position of law that existence of alternative remedy would itself not be a bar from entertaining petition filed under Article 226 of the Constitution of India. Even otherwise, since the petition has been heard finally at the admission stage, and the learned counsels for the parties have also made their submissions in detail on all the issues involved in the petition, the preliminary objection raised on the maintainability of the petition does not survive.

11. At the outset, it is required to be mentioned that as transpiring from the record, both the petitioners, so far had filed separate proceedings in respect of their respective lands, before the ULC authorities, before the High Court and Supreme Court, and before the Settlement Committee. It also appears that some disputes had also arisen between the petitioners and their third brother Jutharam, inasmuch as the petitioner No. 2 Ramdas and his son Shaitansingh had submitted a letter (Annex. RR/1) to the respondent-JDA requesting it to file a complaint against the petitioner No. 1 Chhoturam, his brother Jutharam, one Jagdish Sharma, President of Navjivan Grih Nirman Cooperative Society and the officers of the JDA, alleging that they had forged power of attorney, in the name of the petitioner Ramdas and conspired to grab his land. The said petitioner through his advocate had also published public notices in the local dailies as transpiring from the letter Annexure-RR/2. Now, from the impugned notices (collectively annexed as Annex. 12 to the petition) issued by the respondent-JDA under Section 72 of the JDA Act, it further appears that number of illegal shops have been constructed on the lands in question, and the same are being run in different names, collectively known as Roshan Market. Many marriage gardens are also being run in different names on the subject lands. It is stated in the reply to the said notices (Annex. 13) filed by the shopkeepers that they had taken the said shops on rent from the present petitioners. All these shops appear

to have been put up by the petitioners and let out to the third parties without obtaining any permission from the concerned authorities. Hence, from the aforesaid documents, the court is constrained to hold that this common petition filed by the petitioners is nothing but a proxy litigation, filed to protect the vested interest of some third parties in the lands in question. Having said that, let us examine the merits of the petition.

12. The bone of contention raised by the learned ASG Mr. Narsimha is that the petitioners, under the guise of challenging the impugned notices issued by the respondent-JDA, have tried to reagitate and reopen the proceedings of the ULC Act, which had already stood concluded long back, and that the present petition is barred by laches and constructive res-judicata. In order to appreciate this contention, it will be necessary to recapitulate certain facts. As stated hereinabove, on the ULC Act having come into the force, the forms were submitted by the petitioners under Section 6 disclosing their holdings, and the competent authority after processing the said forms had issued notifications under Section 10(3) of the ULC Act, determining the nature and extent of the claims made by the petitioners and declaring the excess vacant land. It is needless to say that as per the provisions contained in Section 10(3), upon the publication of such declaration by the competent authority as regards the excess vacant land, the same was deemed to have been acquired by the State Government, and such land was deemed to have vested absolutely in the State Government free from all incumbrances. The notifications dated 4.1.84 and 28.1.84 issued by the competent authority under Section 10(3) of the ULC Act in respect of Khasra No. 193 and 193/248 are produced by the respondents at Annex. RR/5 and RR/6 respectively. Thereafter the competent authority under the ULC Act appears to have issued notices under Section 10(5) of the Act on 31.8.84, however according to the petitioners the said notices were not served upon them. The competent authority thereafter appears to have proceeded further under Section 10(6) for taking forcible possession of Khasra No. 193 and Khasra No. 193/248 as per the proceedings recorded at Annexures-30 and 31. According to the petitioners these proceedings under Section 10(6) were also conducted by the competent authority without the knowledge of the petitioners. Thereafter, the competent authority had allegedly taken forcible possession of the said Khasra Nos. 193 and 193/248 on 6.12.86, by preparing the memos which are collectively annexed as Annex. 28. The legality and the validity of the said memos dated 6.12.86 shall be discussed hereinafter, while dealing with the issue whether the possession of the lands in question was in fact taken by the respondents or not. The said memos are referred at this juncture only for the purpose of appreciating the issue of delay and laches. According to the petitioners, they came to know about the said proceedings only when the respondents along with the police force had come to the lands in question on 23.9.91 to take possession. Thereafter they preferred appeals before the Divisional Commissioner, challenging the orders dated 28.1.84 and 4.1.84 passed by the competent authority under Section 10(3) of the ULC Act. The respondents

had filed replies in the said appeals to the effect that though the possession of the said lands was handed over to the JDA on 6.12.86 after following the procedure under Section 10(6), the petitioners were causing obstructions in the implementation of the scheme of the JDA, and therefore the action to dispossess them was taken. The Divisional Commissioner i.e. the appellate authority dismissed both the appeals by passing separate orders on 29.3.93 on the ground of delay, however, with the specific finding that the possession of the lands in question was already taken over by the competent authority as per the said memos dated 6.12.86 and handed over to the JDA. The said orders are at Annex. 24 and 27. Be that as it may, the said orders dated 29.3.93 passed by the Divisional Commissioner dismissing the appeals of the petitioners remained unchallenged till this date and therefore had attained finality.

13. Although the petitioners had filed the petitions being SBCWP No. 2008/93 and 2009/93 on the same day i.e. 29.3.93, when their appeals were dismissed by the Divisional Commissioner, the said orders were not challenged in the said petitions. Of course, the applicability of the ULC Act to the lands in question was under challenge in those petitions. Both the petitions came to be dismissed by the Single Bench of the High Court, vide the common order dated 26.4.97 (Annex. RR/20). Being aggrieved by the said order, the petitioner No. 1 Chhotu Ram filed DB Special Appeal No. 1117/98 and the petitioner No. 2 Ramdas filed DB Special Appeal No. 836/98. The said appeal of the petitioner No. 2 Ramdas came to be dismissed vide order dated 19.12.2000 (Annex. 28). The SLP(C)CC-5097/01 preferred by him before the Supreme Court challenging the said order dated 19.12.2000, came to be dismissed as withdrawn vide order dated 8.5.02 (Annex. 39). The DB Special Appeal No. 1117/98 filed by the petitioner Chhotu Ram also came to be dismissed as withdrawn, vide order dated 8.5.02 (Annex. 40).

14. It is significant to note at this juncture that when the special appeals were pending before the Division Bench of this court, the ULC Act, 1976 came to be repealed by the Repeal Act of 1999, with effect from 7.10.99, however the petitioners did not take up the contention in the said appeals to the effect that the proceedings held against the petitioners under the ULC Act had lapsed in view of the said Repeal Act, as sought to be taken in the present petition. When the respondent-State Government had filed the replies in response to the writ petitions filed by the petitioners stating that the proceedings were undertaken by the competent authority under the ULC Act and the Divisional Commissioner had also dismissed the appeals of the petitioners, and when the Single Bench while dismissing the said writ petitions had observed that the petitioners had not cared to file any of the documents of any of the proceedings, nor the order of the Divisional Commissioner and therefore in absence of proper documents, no adjudication could be made, it was incumbent on the part of the petitioners to submit before the Division Bench in the special appeals filed by them that the proceedings under the ULC Act had lapsed in view of the Repeal Act. The Division Bench while dismissing the appeal of the petitioner Ramdas on 19.12.2000 had

confirmed the order passed by the Single Bench. Therefore, in the opinion of the court, the petitioners having failed to raise the contention and seek relief which they ought to have raised in the earlier proceedings, they cannot be permitted to raise the same now in the present petition, and that too after a period of fourteen years. The learned counsel for the respondents has rightly relied upon the ratio laid down by the Apex Court in case of Omprakash Verma and Others vs. State of Andhra Pradesh (supra) in which the Apex Court in similar circumstances has made apt observations, which are reproduced as under:-

"75. As pointed out by the learned Attorney General, the matter can be looked at from another angle. The proceedings in the instant case are barred by the principle of constructive res judicata. The validity of the ULC Act was squarely in issue. The effect of allowing the State appeals in Audikesava Reddy case is that all contentions which parties might and ought to have litigated in the previous litigation cannot be permitted to be raised in subsequent litigations.

76. In Forward Construction Co. v. Prabhat Mandal this Court held that an adjudication is conclusive and binding not only as to the actual matter determined but as to every other matter which the parties might and ought to have litigated and have had it decided. The following portion of the judgment is relevant which reads as under:

"20. So far as the first reason is concerned, the High Court in our opinion was not right in holding that the earlier judgment would not operate as res judicata as one of the grounds taken in the present petition was conspicuous by its absence in the earlier petition. Explanation IV to Section 11 CPC provides that any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit. An adjudication is conclusive and final not only as to the actual matter determined but as to every other matter which the parties might and ought to have litigated and have had it decided as incidental to or essentially connected with the subject-matter of the litigation and every matter coming within the legitimate purview of the original action both in respect of the matters of claim or defence. The principle underlying Explanation IV is that where the parties have had an opportunity of controverting a matter that should be taken to be the same thing as if the matter had been actually controverted and decided. It is true that where a matter has been constructively in issue it cannot be said to have been actually heard and decided. It could only be deemed to have been heard and decided."

77. In Hoystead v. Taxation Commr. the privy council observed:

"...Parties are not permitted to begin fresh litigations because of new views that they may entertain of the law of the case, or new versions which they present as to what should be a proper apprehension by the court of the legal result either of the construction of the documents or the weight of certain circumstances. If this were permitted, litigation would have no end, except when legal ingenuity is

exhausted. It is a principle of law that this cannot be permitted, and there is abundant authority reiterating that principle."

78. As rightly observed by the High Court, what is of utmost relevance is the final judgment of the superior court and not the reason in support of that decision. Apart from the legal position and the effect of allowing of the appeals and dismissing the writ petitions by this Court, the contention with regard to the land being agricultural land was raised in the writ petitions which were the subject-matter of the appeals filed in this Court. In these proceedings, the State categorically took the stand that the lands are not agricultural. It was brought to our notice that the present appellants as respondents in the earlier round did not urge this plea before this Court and no such arguments were advanced before this Court. In view of the same, the appellants are not entitled to raise any such contention now. The effect of allowing the said appeals is that W.Ps. Nos. 18385 of 1993 and 238 of 1994 stood dismissed.

79. Inasmuch as the writ petitions having been dismissed, the orders passed under the ULC Act have attained finality. The declarations which had been made and statements filed on 6.9.1976 and 25.7.1977 stand till today and these declarations are not even sought to be withdrawn. In those circumstances, as rightly contended by the learned Senior Counsel appearing for the respondents, the prayer on the part of the owners in WP No. 4141 of 2006 made for the first time in 2006 after 32 years of filing of the statements under Section 6 and after 26 years of the conclusion of the ULC proceedings was completely misconceived and was rightly rejected."

15. Though it was sought to be submitted by the learned counsel for the petitioners that the matter was under consideration before the Settlement Committee constituted under Section 83-A of the JDA Act and thereafter before the respondent-authorities, the court is not impressed with the said submission. It is pertinent to note that the Settlement Committee was constituted on 26.5.2001 i.e. after the Division Bench dismissed the special appeal of the petitioner on 19.12.2000. When the appeals before the Divisional Commissioner were dismissed, when the writ petitions filed by the petitioners were dismissed by the High Court, and when the petitioners had failed to raise the contention in the special appeals before the Division Bench, with regard to lapse of proceedings in view of the Repeal Act, it was not open for the Settlement Committee, nor the said committee had any authority or jurisdiction to consider whether the ULC Act was applicable to the lands of the petitioners or not, or whether the said proceedings had lapsed in view of the Repeal Act or not. The submission of Mr. Kuhad that the decision of Settlement Committee was binding to the JDA as per Section 83-A(4) of the JDA Act also does not deserve any consideration, as the Division Bench, in the PIL had directed the State Government not to implement the decisions of the said Settlement Committee. Even otherwise, the JDA could have implemented the said directions of the Settlement Committee only subject to the conditions and restrictions laid down

by the State Government in view of Section 54 of the JDA Act. Further, apart from the fact that the decision of the Settlement Committee in respect of the lands in question was never implemented in the letter and spirit by the petitioners as well as by the respondent-JDA, and apart from the fact that the said Settlement Committee itself was dissolved by the State Government in view of the observations made by the High Court in the PIL, the petitioners had also not filed any proceedings in the court of law seeking declaration in respect of their title over the lands in question, though as transpiring from the said decision of the Settlement Committee, a specific contention was raised by the JDA to the effect that the lands in question had already been vested in the Government and the possession thereof was also taken over on 6.12.86. The Apex Court in case of U.P. Jal Nigam Vs. Jaswant Singh and Anr. (Supra) has observed that:

"it is unjust to give the claimant a remedy where, by his conduct, he has done that which might fairly be regarded as equivalent to a waiver of it; or where by his conduct or neglect, though not waiving the remedy, he has put the other party in a position in which it would not be reasonable to place him if the remedy were afterwards to be asserted. In such cases lapse of time and delay are most material. Upon these considerations rests the doctrine of laches". 16. The submission of the learned counsel Mr. Kuhad for the petitioners that the representation of the petitioners was pending before the State Government for implementation of the decision of the Settlement Committee, and therefore the petitioners did not take any action, also cannot be accepted. The Settlement Committee itself had negatived the prayer of the petitioners to direct the JDA to release their lands from the acquisition, and had directed the JDA to consider the case of the petitioners for regularisation in view of the circular dated 26.5.2000 of the State Government, subject to the conditions mentioned in the said decision. When the Settlement Committee had also not accepted the contention of the petitioners that the proceedings of ULC Act had lapsed in view of the Repeal Act and that their lands should be released from the acquisition, the petitioners ought to have filed proceedings in the court of law seeking declaration in respect of the title of the lands in question, however instead of doing so, they made representation to the respondents for implementation of the decision of the Settlement Committee. Further, pendency of representation could not be said to be an excuse for not asserting their right in the court of law. The learned counsel for the respondents has also rightly relied upon the decisions of Apex Court more particularly in case of UOI and Ors. Vs. Hardayal (supra) and in case of State of Assam Vs. Bhaskar Jyoti Sarma (supra) to contend that merely making representations would not condone the delay in seeking relief before the appropriate forum, which would neither extend the limitation, nor wipe out delay and laches. It is also held by the Apex Court in case of S.S. Rathore Vs. State of M.P. (supra) that when a remedy by means of representation has not been provided by law, the same cannot be used as an excuse to explain the delay in seeking the remedy. In the instant case also there being no statutory remedy provided under any Statute to make representations, the pendency of

representation made by the petitioners could not be said to be an excuse to explain the delay occurred in seeking the declaration and injunction in respect of the title and possession of the lands in question, when the proceedings under the ULC Act had already stood concluded long back. It is pertinent to note that by seeking declaration and injunction in respect of the lands in question in the present petition, the petitioners have indirectly tried to reopen the proceedings which had stood concluded atleast 12 years back.

17. It was strenuously urged by Mr. Kuhad that the mandatory provisions of Section 10 of the ULC Act having not been followed by the respondents, the proceedings were inchoate, and never had the effect of divesting the petitioners of possession of the said lands. As regards the possession of the lands in question, reliance was also placed by Mr. Kuhad on the observations made by the Settlement Committee in its decision dated 10.4.02. In this regard it is required to be noted that the observations made by the Settlement Committee to the effect that the petitioners were in possession of the subject lands, were not only without any authority of law and without any basis, the said observations were utterly in disregard and contrary to the findings recorded by the Single Bench in the petitions filed by the petitioners. The Single Bench vide its order dated 26.4.97 had discussed and dealt with at length the provisions of the ULC Act in the light of the decision of Apex Court in case of Smt. Atia Mohammadi Begum Vs. State of U.P. and others[OVERRULED], , and had dismissed the petitions of the petitioners by holding that the petitioners had not cared to file any document or any of the proceedings nor had filed the order of the Divisional Commissioner by which their appeals were dismissed. The said findings recorded by the Single Bench were also confirmed by the Division Bench in the DB Special Appeal No. 836/98 filed by the petitioner Ramdas. The Settlement Committee therefore did not have any authority or jurisdiction to sit in appeal over the said orders passed by the Single Bench as well as by the Division Bench, and record such incongruous and extraneous findings in favour of the petitioners. It is also very pertinent to note that the said Settlement Committee was constituted to resolve the disputes between the JDA and the aggrieved persons, and was not empowered to adjudicate the disputes, much less to sit in appeal over the orders passed by the Division Bench of the High Court. Such findings being totally unwarranted and without any authority of law could not be relied upon by the petitioners.

18. It further appears from the letter dated 8.9.2003 of the concerned counsel of the JDA (Annex. 7/C), that the Division Bench, headed by the then Chief Justice had passed an oral order in one PIL filed by the petitioner Ramcharan Singh, whereby the JDA was directed not to implement any decision of the Settlement Committee. It is also relevant to mention at this juncture that the said PIL being DB Civil Writ Petition No. 2658/03 was filed by one petitioner Ramcharan Singh challenging the notification issued by the State Government appointing the said Settlement Committee under Section 83-A of the JDA Act and to declare its decisions as invalid and illegal. The said petition came to be disposed of by the

Division Bench vide order dated 16.8.12, on the statement made by the Addl. Govt. Counsel appearing on behalf of the respondent-State to the effect that the said committee having been dissolved on 15.9.04, the pending cases would not be processed further and would stand dropped. The Division Bench had observed in the said order that with respect to the other cases, where the settlements have attained finality, the petitioner of the said petition would be at liberty to file fresh writ petition, after impleading the affected persons, in case necessity so arises. In case of the petitioners also the decision of the Settlement Committee having not attained finality as it was not implemented fully by the petitioners as well as by the JDA, the State Government was not bound to implement the said decision, more particularly when the said Settlement Committee itself had stood dissolved as back as on 15.9.04.

19. It was also vehemently submitted by the learned senior counsel Mr. Kuhad for the petitioners that the orders dated 6.12.86 at Annex. 28 and 29 respectively were subsequently prepared to make a show that the possession was forcibly taken by the Government, under Section 10(6) of the ULC Act, and that even the said orders were not consistent with the other documents produced by the respondents like the correspondence dated 7.9.91 made by the Tehsildar at Annex. RR-14 for mutating the name of JDA, in which the date of possession was shown as 30.10.84. According to him the orders dated 6.12.86 were prepared only to show the paper possession and the actual physical possession had remained with the petitioners all throughout. He also submitted that apart from the fact that the petitioners were not served with the notices as contemplated under Section 10(5) of the ULC Act, the alleged forcible possession under Section 10(6) of the said Act was never taken by the competent authority. He also relied upon the decision of Apex Court in case of State of U.P. Vs. Hari Ram (supra) and in case of Gajanan Kamiya Patil Vs. Addl. Collector (supra) to submit that the requirement of notices under Section 10(5) and 10(6) was mandatory. The said submissions of Mr. Kuhad though appear to be very attractive, the same could not be accepted. There could not be any disagreement to the proposition of law laid down by the Apex Court in the cases relied upon by Mr. Kuhad, however in the instant case, as held hereinabove, the said memos dated 6.12.86 prepared under Section 10(6) of the ULC Act have remained unchallenged all throughout at the instance of the petitioners since 1991, when they came to know about the existence of the said documents, till the filing of the present petition. In none of the earlier proceedings filed by the petitioners in the High Court, such a contention about the alleged concoction of the said memos/orders has been raised. Hence, it is too late in the light of the day for the petitioners to challenge the said proceedings under Section 10(6) of the ULC Act in the present petition. In any case, as rightly submitted by the learned ASG Mr. Narsimha, it is difficult for the respondents to explain the documents which are more than 30 years old, as to how and under what circumstances the same were executed. In this regard, a very pertinent observations have been made by the Apex Court in case of State of Maharashtra Vs. Digambar (supra), which are

reproduced as under:-

"Moreover, how a citizen claiming discretionary relief under Article 226 of the Constitution against a State, could be relieved of his obligation to establish his unblame worthy conduct for getting such relief, where the State against which relief is sought is a welfare State, is also difficult to comprehend. Where the relief sought under Article 226 of the Constitution by a person against the welfare State is founded on its alleged illegal or wrongful executive action, the need to explain laches or undue delay on his part to obtain such relief, should, if anything, be more stringent than in other cases, for the reason that the State due to laches or undue delay on the part of the person seeking relief, may not be able to show that the executive action complained of was legal or correct for want of records pertaining to the action or for the officers who were responsible for such action - not being available later on." 20. In any case, from the bare reading of the said orders dated 6.12.86 (produced at Annexs. 28 and 29 by the petitioners and at Annexs. RR/9 and RR/10 produced by the respondents) it appears that the competent authority had taken the possession of the vacant land out of the total area of the Khasra No. 193 and 193/248, after leaving 1500 sq. meters of land from each of the khasra numbers as described in the said orders. It was also stated in the said orders that the said possession was taken forcibly in view of the powers conferred under Section 10(6) of the ULC Act, on the petitioners having failed to handover the possession within 30 days of the notices dated 6.7.84 and 31.8.84 issued to the petitioners. It was also stated that the possession of land admeasuring 61975 sq. meters out of Khasra No. 193 and the possession of land admeasuring 194310 sq. meters out of Khasra Nos. 193/248 and 204 was handed over to the Tehsildar-JDA, Jaipur, in presence of the three witnesses, who had also put their signatures on the said orders. The said action of the respondents in taking over possession is absolutely in conformity with the procedure laid down by the Apex Court in case of Banda Development Authority, Banda Vs. Motilal Agarwal and Others (supra), wherein it has been held inter alia that action of the State authorities of going to the spot and preparing Panchnama was sufficient for recording a finding that actual possession of the entire acquired land had been taken over and handed over to the concerned development authority. It has also been held that 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 land, and it will be sufficient that symbolic possession is taken by preparing appropriate document in presence of independent witnesses and getting their signatures on such document. The respondents having followed the said procedure by preparing memos dated 6.12.86, and the said memos having remained unchallenged all through out at the instance of the petitioners till the filing of the present petition, though the petitioners had ample opportunities to challenge the same, it does not lie in the mouth of the petitioners to say that the said memos were illegal or that the possession of the subject lands was not taken by the respondents as per the said memos.

21. Much reliance was also placed by the learned senior counsel Mr. Kuhad for the petitioners on the reply filed by the respondents to the writ petitions filed by the petitioners before the Single Bench, wherein the respondents had not disputed the possession of the petitioners. In this regard, it is required to be stated that the petitioners having challenged the order passed by the competent authority by filing appeals before the Divisional Commissioner on the ground that the petitioners were not heard by the competent authority before passing the order on 4.1.84 in case of Chhotu Ram and the order dated 28.1.84 in case of Ramdas, the Divisional Commissioner had passed the orders on 15.10.91 in the said appeals to maintain status-quo in respect of the lands in question. In the said appeals, the respondents had filed reply stating inter alia that the respondent authority had sought to dispossess the petitioners on 23.9.91 because the petitioners had continued to cause obstruction in the implementation of the scheme of the JDA though the possession was already taken over from them on 6.12.86. The said order of maintaining status-quo had continued till 29.3.93, when the said appeals were dismissed by the Divisional Commissioner. On the same day i.e. on 29.3.93, the petitioners had filed the writ petitions before the Single Bench, in which the Single Bench, while issuing notices to the respondents had passed an ex-parte order on 6.4.93 to the effect that the petitioners shall not be dispossessed. Hence when the respondents filed the replies in the said petitions, it was stated that the possession of the petitioners was not disputed. However, in the said replies, the proceedings undertaken under the ULC Act were specifically narrated by the respondents. Hence, merely because the petitioners had remained in possession of the lands in question even after the forcible possession was taken by the respondents under Section 10(6) of the ULC Act, such possession of the petitioners could not be said to be a legal possession. Mr. Narsimha has rightly relied upon the decision of Apex Court in case of Balmokand Khatri Vs. State of Punjab (supra) in which it has been held that:

"It is now well settled legal position that it is difficult to take physical possession of the land under compulsory acquisition. The normal mode of taking possession is drafting the Panchnama in presence of Panchas, and taking possession and giving delivery to the beneficiaries is the accepted mode of taking possession of the land. Subsequent thereto, the retention of possession would tantamount only to illegal or unlawful possession." 22. Mr. Kuhad, learned senior counsel has further sought reliance on the decision of the Apex Court in case of State of U.P. Vs. Hirendra Pal Singh (supra) to submit that whenever an Act is repealed, it must be considered as if it never existed and therefore on repeal, the earlier provisions stand obliterated and wiped out wholly, except for certain purposes as provided under clause 6 of the General Clauses Act, 1897. There cannot be any disagreement to the said settled legal position, however the said decision also would not be helpful to the petitioners. In the instant case, the Repeal Act, 1999, repealed the Principal ULC Act of 1976, however it provided for the saving provision in Section 3 thereof. The relevant part of Section 3 of the Repeal Act

reads as under:-

"Section 3. Saving-(1) The repeal of the principal Act shall not affect-(a) the vesting of any vacant land under sub-section (3) of Section 10, possession of which has been taken over the State Government or any person duly authorised by the State Government in this behalf or by the competent authority." 23. Thus, in view of Section 3(1)(a), the repeal of the principal Act did not have any effect if the vesting of vacant land had taken place under Section 10(3) of the ULC Act and the possession of such land had taken over by the State Government or any person duly authorised by the State Government or by the competent authority. As held hereinabove, no contention with regard to the effect of Repeal Act was ever taken by the petitioners in the petitions/appeals pending before the High Court till they were dismissed. In any case, when the vacant lands had already vested in the Government as per the notifications dated 4.1.84 and 28.1.84 issued under Section 10(3) of the ULC Act, when the possession thereof was also taken over as per the memos dated 6.12.86 issued under Section 10(6) of the said Act and when the said proceedings under the Principal Act had attained finality, the Repeal Act did not have any effect on the lands in question. As held by the Apex Court in case of State of Rajasthan Vs. Mangilal Pindwal, , as a result of repeal of a Statute, the Statute as repealed, ceases to exist with effect from the date of such repeal but the repeal does not affect the previous operation of law which has been repealed during the period it was operative prior to the date of such repeal.

24. The challenge made by the petitioners to the notices issued by the respondent-JDA under Section 34-A and Section 72 of the JDA Act has also no substance. As transpiring from the documents produced by the petitioners themselves, there are marriage gardens operating and number of shops constructed over the said lands. There is no explanation coming forth as to with whose permission the said constructions were carried out. It also appears that the said marriage gardens and the shops are run in the names of third parties and therefore it appears that the interest of third party has also been illegally created by the petitioners on the said lands. The respondent-JDA therefore was perfectly justified in taking action against the petitioners for carrying out unauthorised developments, as contemplated in Chapter-VI and taking action for making encroachments and causing obstructions upon the public lands in question, as contemplated in Chapter-XI of the JDA Act. Though the petitioners have produced certain documents to show that the respondent-JDA had issued licences to the petitioners for operating the marriage gardens as per Annex. 7B and the petitioners were also paying the Government levies and taxes to the JDA for the said shops, there is no document whatsoever produced to show, if any permission was granted by any authority to put up so many shops on the lands in question, for which the JDA has issued notices under Section 72 of the JDA Act. It is settled legal position that merely because the illegally constructed buildings or structures are assessed to taxes and the taxes are collected by the concerned authority, it would not mean that the authority had given up its right

to take action against the wrongdoers who had allegedly carried out unauthorised development and illegal encroachments on public land by putting up such structures. If the laws are not enforced or are ignored, it would lead to lawlessness in the society. The courts can neither be oblivious to such illegal and unauthorised developments nor can grant any relief to the wrongdoers who have carried out such illegal encroachments and construction over the public lands, more particularly while exercising equitable jurisdiction under Article 226 of the Constitution of India. It is needless to say that the respondent-authorities are also expected to follow due process of law while taking action against the persons, who have allegedly carried out unauthorised development, and encroachments over the public lands.

25. Lastly, Mr. Kuhad, relying upon the decision of the Apex Court in case of State of Rajasthan Vs. Padmawati Devi, (supra) has submitted that when the petitioners had raised bona fide disputes about their right to remain in occupation over the subject lands, the respondent-JDA should not have issued the notices pending this petition. He also submitted that Section 72 of the JDA Act being penal provision, the impugned notices were issued without any application of mind. From the impugned notices were issued under Section 72 of the JDA Act, it appears that the petitioners by the said notices were called upon to show cause as to why the encroachments made thereon should not be removed, or to submit their objections if any, against the said notices within three days of the receipt of the notices. Since the said notices were issued pending the present petition, either party does not appear to have proceeded further pursuant to the said notices. However, now since the court has not found any substance in the present petition, it will be open for the respondent-JDA to take action against the petitioners after following due process of law as contemplated under the JDA Act.

26. In that view of the matter, it is required to be held that the petitioners are not entitled to any relief, as claimed in the petition. The petition being devoid of merits deserves to be dismissed and is accordingly dismissed.