

(1998) 08 DEL CK 0109

In the Delhi High Court

Case No : L.P.A. No. 150 of 1987, C.M. (Cross-Objection) No. 1017 of 1988 and L.P.A. No. 6 of 1987 and Ors.

Delhi Development Authority

APPELLANT

Vs

Shyama Prasad Mukherjee Park Plot Holders Welfare Association and Others

RESPONDENT

Date of Decision : 14-08-1998

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 23 Rule 1

Constitution of India, 1950 — Article 14, 226, 77

Land Acquisition Act, 1894 — Section 16, 18, 48

Citation : (1998) 3 CLT 705 : (1998) 75 DLT 169 : (1998) 47 DRJ 147

Hon'ble Judges : Y.K. Sabharwal, J;Dr. M.K. Sharma, J

Bench : Division Bench

Advocate : Jayant Bhushan and Sangeeta Chandra, for the Appellant; C.L. Narasimhan, S. Madhusudan Babu for Respondent No. 1, Arvind Nigam and Rachna Joshi Issar, for Respondent Nos. 9, 10, 11 and 16, for the Respondent

Final Decision : Allowed

Judgement

M.K. Sharma, J.—By this common judgment and order we propose to dispose of the two Letters Patent Appeals registered as LPA No. 150/1987, LPA No. 6/1988 as also Cross-Objections registered as C.M. 1017/1988. The aforesaid Letters Patent Appeals and the Cross-Objection arose out of the two writ petitions registered as Writ Petitions No. 776/1981 and 2174/1981 disposed of by learned Single Judge of this Court on 2.11.1987.

2. Before delving into the merits of the contentions raised in these appeals it would be necessary to give some background facts giving rise to the writ petitions.

In 1955 the Central Government issued an Ordinance called Delhi (Control of Building Operations) Ordinance which later on became an Act of Parliament with the same name. By the provisions of the aforesaid Act an authority called Delhi

Development Provisional Authority was established for planned development of Delhi, which was later on formed as Delhi Development Authority on 30.12.1957. Shri N.N.Verma, who allegedly acquired certain lands through purchase in Village Tatarpur and Chaukhandi, Delhi submitted a layout plan for establishment of a Colony known as Shyama Prasad Mukherjee Park to the said authority and sought for sanction of the same. The said authority sanctioned the layout plan by a resolution of 9.3.1957. In the resolution the authority sanctioning the layout plan mentioned the area of the colony as 20 acres. Same area came also to be mentioned in the letter of sanction. It may however, be indicated that original sanction plan and the file relating thereto are now not traceable.

3. In 1959 the then Prime Minister of India directed the concerned authorities to freeze large tracts of land around Delhi to control and root out speculation in land sales within Delhi. On the instructions of the Central Government the Delhi Administration issued a notification of 13.11.1959 u/s 4 of the Land Acquisition Act for acquisition of over 34,000 acres of land within Delhi including the land belonging to Shri N.N.Verma. Subsequently a notification u/s 6 of the Land Acquisition Act was also issued in respect of part of such land. The Central Government also took a policy decision that lands of the colonies whose layout plans were sanctioned and informations in regard to which were collected should be released from acquisition. A statement also came to be made by the Minister of the Ministry of Health and Works and Housing on March 10, 1960 on the Floor of the House wherein he announced that Government had decided as a measure of meeting acute housing shortage in Delhi that the colonies of the areas, layout/building plans of which had been approved by Delhi Municipal Corporation of Delhi, Delhi Development Authority or any other competent local authority might be released from the purview of the Delhi Administration's notification dated 13.11.1959. The Minister also spelt out the names of 21 colonies which included the name of Shyama Prasad Mukherjee Park Colony as well. In the said statement the area of Shyama Prasad Mukherjee Park colony was shown as 1,54,500 sq. yds. He further stated thus -

"We are also asking the Chief Commissioner, Delhi to expedite action to release the land of approved colonies from the purview of the notification in consultation with Delhi Municipal Corporation".

4. On 1.7.1960 the Delhi Administration issued a notification u/s 48 of the Land Acquisition Act for release of the land of 21 colonies mentioned in the said statement of the Minister in Parliament. Under the said notification 20 acres of land of Shyama Prasad Mukherjee Park Colony was released although in respect of 20 other colonies the entire land with slight variation was released. Number of representations were made seeking release of remaining acquired lands of Shyama Prasad Mukherjee Park.

5. It may be stated that notification u/s 4 of the Land Acquisition Act was issued on 13.11.1959 and the Minister made the statement in Parliament on 10.3.1960. Notification u/s 48 of the Land Acquisition Act releasing 20 acres of land of

Shyama Prasad Mukherjee Park Colony was issued on 1.7.1960. The awards of the Land Acquisition Collector in respect of the remaining lands of Shyama Prasad Mukherjee Park were made on 21.10.1961 and 23.8.1963. The possession of the land was alleged to have been taken by the DDA u/s 16 of the Land Acquisition Act on 27.10.1961, 4.9.1963 and 25.5.1966 although the aforesaid position is disputed by the respondents herein. Compensation for the acquired land was also paid by the Collector.

6. In October, 1963 Shri N.N.Verma made an application u/s 18 of the Land Acquisition Act for reference to the District Judge for enhancement of the compensation. The said application was however, filed without prejudice to the right of the claimants to challenge the validity and virus of the award. It is also disclosed from the records that as a matter of fact compensation for the land acquired was not paid to Shri N.N.Verma directly but the said amount due to Shri N.N. Verma towards compensation for the land acquired was adjusted towards the satisfaction of a decree and the claim of the Income Tax Department and the balance part of the compensation was deposited in the Government Treasury for satisfaction of other claims against Shri N.N.Verma.

7. As neither the Central Government nor the Delhi Development Authority took any decision in favor of Shri N.N.Verma and others on their representations, they approached this Court by way of writ petitions which were registered as Writ Petition No. 776/1981 and 2174/1981. Writ petition No. 776/1981 was filed by Shyama Prasad Mukherjee Park Plot Holders Welfare Association, the respondent No. 1 herein whereas the Writ Petition No. 2174/1981 was filed by Shri N.N.Verma and another. The reliefs sought for by both sets of writ petitioners were almost similar and common as according to them area of the acquired land of the said Shyama Prasad Mukherjee Park Colony consisted of 32.58 acres of land and Therefore, the entire land should have been released from acquisition in pursuance of the statement of the concerned Minister of the Government of India, made in the Parliament on 10.3.1960. The contention of the writ petitioners was that the Government of India, the Delhi Administration and the Delhi Development Authority released only 20 acres of land and not the balance land measuring 12.58 acres under the notification dated 1.7.1960 u/s 48 of the Land Acquisition Act. The writ petitioners, Therefore, prayed in the writ petitions that the said authorities be directed by a writ of mandamus to release the same and to refrain from tempering with the structures and services provided therein.

The petitioners in the said writ petition contended that the announcement made by the Minister on 10.3.1960 making public the Government's decision to release 1,54,500 sq. yds. roughly equivalent to 32.58 acres of Shyama Prasad Mukherjee Park Colony amounted to withdrawal from acquisition of the entire land in exercise of the power conferred by Section 48 of the Land Acquisition Act and the statement of the Minister in the Parliament itself was sufficient publication within the meaning of Section 57(4) of the Indian Evidence Act and no Gazette Notification was required to be published u/s 48 of the Land

Acquisition Act for withdrawal of the land from acquisition. According to the petitioners the said statement of the Minister in the House was itself in the nature of de-requisitioning the land and also amounted to issuance and publication of a notification u/s 48 of the Land Acquisition Act. The further contention of the petitioners was that the sanctioned plan for the Shyama Prasad Mukherjee Park Colony was for a total area of 32.58 acres and when the decision was taken by the Central Government to release the land of all the 21 colonies including the Shyama Prasad Mukherjee Park Colony and a statement to that effect was given by the Minister in the House, land measuring 12.58 acres of the Shyama Prasad Mukherjee Park Colony could not have been held back from de-requisitioning when the entire land in respect of the other 20 colonies were released as in respect of these 21 colonies layout plans also similarly stood sanctioned by the Competent Authority. According to the writ petitioners the respondents are estopped in law from raising the plea that land measuring 12.58 acres could be held back from de-requisitioning or that the statement of the Minister is not an executive order under Article 77 of the Constitution of India and that such actions on the part of the respondents, amounted to hostile discrimination and accordingly, violative of Article 14 of the Constitution of India.

8. On behalf of Delhi Development Authority, one of the respondents in the writ petitions, it was contended that the statement of the Minister in the House on 10.3.1960 cannot be held to be a final decision of the Government under Article 77 of the Constitution of India and the said statement cannot take the place of the Government Order duly authenticated and published according to the requirements of the Constitution nor could that statement be regarded as amounting to issuance and publication of a notification u/s 48 of the Land Acquisition Act. It was also contended that the writ petitions were not maintainable on the principles of res judicata since one of the petitioners, namely Shri N.N.Verma filed a suit and withdrew the same without obtaining any leave to file a separate proceedings in respect of the same subject matter. According to the DD A the petitioners in the writ petitions had already been paid the compensation in respect of the land in question in pursuance of the award made by the Reference Court. It was also submitted on behalf of the respondents in the writ petitions therein that the approved layout plan for Shyama Prasad Mukherjee Park Colony was for an area of 20 acres and not for 32.58 acres and the notification of Delhi Administration date 1.7.1960 issued u/s 48 of the Land Acquisition Act being for release of only 20 acres of land the petitioners are not entitled to claim release of the remaining land. It was also stated that possession of the land had already been taken over by the Delhi Development Authority prior to the filing of the writ petitions and Therefore, the land having vested in it a writ could not be issued by the Court after possession of the land is taken and vesting of the land is complete.

9. The learned Single Judge by his common judgment and order dated 2.11.1987 partly allowed the writ petitions holding that the land of the petitioners, according to the sanctioned plan was 28.24 acres and accordingly the remaining

land measuring about 8.4 acres was directed to be released to the petitioners and the respondents in the writ petitions were restrained from disturbing the possession and enjoyment of the said land by the petitioners.

10. Being aggrieved by the aforesaid common judgment and order these Letters Patent Appeals have been filed by Delhi Development Authority as the appellant and Shyama Prasad Mukherjee Park Plot Holders Welfare Association and Shri N.N. Verma as respondents. Cross-objections have also been filed challenging the finding of the learned Single Judge that the petitioner's land according to the sanctioned plan was 28.4 acres and not 32.58 acres.

11. Mr. Jayant Bhushan, appearing for Delhi Development Authority, the appellant forcefully argued and submitted before us that the statement of the Minister made in the Parliament was only a policy statement and did not amount to a final decision of the Central Government and could not be held to be an executive order as contemplated under Article 77 of the Constitution of India or to be a statutory notification u/s 48 of the Land Acquisition Act which could be enforced in a Court of law as of binding nature. He further submitted that the layout plan for Shyama Prasad Mukherjee Park Colony was sanctioned on 9.3.1957 for an area of 20 acres as is clear from the resolution of Delhi Development Provisional Authority and also from the sanctioning letter and Therefore, the said area having been released and de-notified from acquisition by issuing a statutory notification u/s 48 of the Land Acquisition Act, further claim of the respondents herein for release of 12.58 acres is misconceived. He further submitted that the writ petitions were not maintainable as they involved serious disputed questions of fact as to the actual area for which the layout plan was sanctioned as also to the actual area sanctioned for residential purposes and the area sanctioned for other purposes like commercial purposes etc. Learned Counsel also submitted that there is apparent waiver and acquiescence on the part of the respondents in the appeal inasmuch as compensation for the land acquired stood paid to all the claimants and Therefore, they are estopped and debarred from challenging the action of the appellants through the aforesaid writ petitions. Counsel also submitted that possession of the land was taken over by Delhi Development Authority in 1963 although according to the respondents herein the land was taken over only in 1981. As the possession of the land was taken over by the appellants no writ could have been issued by the Court after possession of the land was taken over and the vesting of the land was complete. He also submitted that the writ petitions were liable to be dismissed on the ground of laches and were also barred by the principles of constructive rest judkata.

12. The aforesaid submissions of the appellants were however, contested by the Counsel appearing for the respondents. Mr. Narasimhan and Mr. Harish Malhotra, appearing for the respondents vehemently contested the submissions of the learned Counsel appearing for the appellant. Counsel for the respondent submitted that the provisions of Article 77 of the Constitution of India are

directory and not mandatory and that the statement made by the Minister in the House was sufficient communication and amounted to substantial compliance with the requirements of de-requisitioning the entire land belonging to the respondents. They also submitted that there was neither any delay nor laches on the part of the respondents in approaching this Court on the writ side, nor according to them the writ petitions were barred by the principles of constructive res judicata. They also submitted that the issue of laches was not raised at the writ stage and the learned Single Judge did not deal with the aforesaid plea and Therefore, the appellant could not be allowed to raise it at this belated stage. They also submitted that the layout plan for Shyama Prasad Mukherjee Park Colony was sanctioned for 32 acres as is clear from the records placed with the writ petitions, and Therefore, the findings of the learned Single Judge to the effect that the area of the sanctioned plan was only 28.24 acres and not 32.58 acres was erroneous to that extent.

13. Ms. Rachna Joshi Issar, appearing for the respondents No. 9, 10 and 11 submitted that the acquisition made in respect of the aforesaid land of 32.58 acres was itself illegal and without jurisdiction as there was absence of nexus between the declared purpose which is "Development of Delhi" with the object sought to be achieved. She also submitted that no public purpose was involved which was also admitted by the Minister in the statement made in the House and Therefore, no order u/s 48 of the Land Acquisition Act was necessary as acquisition itself was non est. She also submitted that the very fact that the Government decided to release the land from acquisition proves and establishes that there is no nexus with the object sought to be achieved by the Central Government as the Government decided to release the land subsequently. According to her the release of 20 acres of land under notification issued u/s 48 of the Land Acquisition Act was itself a mistake and the entire 32 acres covered by the sanctioned plan stood released by the said notification.

14. Mr. Gurnani appearing for the applicants in C.M. Nos. 718 and 719/1973 submitted that the persons whom he is representing have filed these applications as applicants as they are tenants in respect of the aforesaid land and Therefore, by virtue of the order of the learned Single Judge directing release of balance 8.4 acres of land, possession of the same should be handed over to the tenants like the applicants, provided the said order of the learned Single Judge is upheld by this Court.

15. In the light of the aforesaid submissions several issues arise for our consideration which are discussed hereinafter in Serialtime.

Delay and Laches :

16. Counsel for the appellant submitted that the Minister made the statement in the House on 10.3.1960 and the notification u/s 48 of the Land Acquisition Act came to be issued on 1.7.1960 releasing only 20 acres of land and not the remaining land whereas the writ petitions came to be filed only in the year 15-81

after a delay of 21 years and Therefore, the writ petitions are liable to be dismissed on the ground of delay and laches.

17. Countering the aforesaid submissions the learned Counsel for the respondent submitted that subsequent to the issuance of the aforesaid notification u/s 48 on 1.7.1960 several representations came to be submitted by Shri N.N. Verma and other plot holders. The said representations were under consideration of the Government and no final decision was taken either by the appellant or by the Central Government at any point of time and the representations were not finally disposed of. According to the learned Counsel to each representation the Central Government and the appellants evaded response, and the issue with regard to the exact total area of the land and release of the remaining land was not a closed chapter at any point of time prior to the filing of the writ petitions. They further submitted that the aforesaid issue regarding delay was not raised at the writ stage and learned Single Judge had no occasion to deal with such a plea and Therefore, such a plea cannot be raised at this distant date.

18. On consideration of the rival contentions we find sufficient force in the argument of the Counsel appearing for the respondents that the aforesaid plea was not raised before the learned Single Judge. The issue with regard to the writ petition being not maintainable on the ground of delay and laches appears to have been not raised at the time of hearing of the writ petitions as the same does not find any place in the judgment of the learned Single Judge. The records available further disclose that a dispute had been raised by the respondents with regard to the actual area of the sanctioned plan and in order to ascertain the same enquiries were made at various stages. Correspondences appearing on the records show that the respondents were agitating this matter at various levels and in December, 1978 the Minister of Works and Housing suggested that there should be an arbitration of the disputes as to what is the total area of land included in the sanctioned plan. Our attention has been drawn to the letter of Shri D.R. Kohli, the then Lt. Governor dated 23/24.2.1979 addressed to the Minister of Works and Housing. The Lt. Governor was of the opinion that the statement of the Minister read in its entirety related to release of land for residential purposes and such land of the Shyama Prasad Mukherjee Park Colony measuring 20 acres has been so released and Therefore, commitment in Parliament made by the Minister stood fulfilled. He was further of the opinion that although there might be discrepancy in the figures of the area in the case but that would not lead to a claim for release of the land meant for commercial purposes as the statement made on 10.3.1960 covers land meant for residential use only. It thus appears that atleast till 1979 the Competent Authority was considering the issue of releasing more land in favor of the respondents in view of the representations filed by the petitioners and Therefore, the writ petitions ran not be thrown out on the ground of delay and laches Bar of the Writ Petitions on the Principle of Constructive res judicata:

19. Counsel for the appellant submitted that the Shri N.N.Verma filed a suit

being Suit No. 95/1981 and the said suit was withdrawn on 14.4.1981. Counsel drew our attention to the provisions of Order 23, Rule 1, CPC and relying on the ratio of the decision reported in *Sarguja Transport Service Vs. State Transport Appellate Tribunal, M.P., Gwalior and Others*, submitted that the fresh writ petition under Article 226 of the Constitution of India in respect of the same cause of action was not maintainable. He submitted that the writ petitioner withdrew the suit after the injunction was vacated by the Trial Court, without obtaining leave to file a fresh proceeding and thereafter filed the writ petition.

20. The aforesaid issue also appears to have been raised before the learned Single Judge. We have carefully considered the findings given by the learned Single Judge on the aforesaid issue holding that the writ petitions are not barred by the principles of *res judicata*. The writ petitioners filed Suit No. 95/1981 in the month of February, 1981 in the Court of Shri P.D. Jarwal, Sub Judge 1st Class, Delhi. An interim injunction was granted by the Judge but the same was subsequently vacated. Thereafter the suit was withdrawn by the petitioner and the writ petitions were filed. The copy of the plaint is on record. Contents of the said plaint disclose that the aforesaid suit was filed seeking for a decree of declaration that the action of demolition by the DDA of premises No. WZ-66, Shyama Prasad Mukherjee Park, New Delhi was illegal. In the said suit filed by Shri N.N. Verma, the plaintiff also sought for permanent injunction. A decree was also prayed for seeking permanent injunction restraining the defendants from putting barbed wires around the premises in dispute and dismantling and damaging the electrical poles, water-drainage and sewerage system in and around the premises.

On 10.2.1981 the Sub-Judge appointed a Local Commissioner to visit the site and to make a report. On 16.2.1981 after hearing the parties on the report of the local commissioner, the Sub Judge directed maintenance of status quo till the next date. The status quo order was however, vacated by the Court on 19.2.1981, and thereafter the suit was withdrawn with the leave of the Court and on 14.4.1981 the writ petition was filed in this Court by Shri N.N. Verma. The suit thus was apparently filed by Shri N.N.Verma and not by the other respondent herein namely Shyama Prasad Mukherjee Park Plot Holders Association. The only defendant in the suit was the DDA while in the writ petition Union of India, Delhi Administration, Delhi Development Authority are the respondents. In the suit the relief sought for was for declaration that the demolition was illegal and a permanent injunction was also sought for restraining the appellant herein from interfering with the property and other civil amenities. Thus the reliefs sought for in the suit as also in the writ petitions were not similar and causes of action were also separate. In that view of the matter it cannot be said that the writ petitions were barred by the principles of *res judicata* and we uphold the findings of the learned Single Judge that the writ petitions are maintainable.

Statement of the Minister made in Parliament--Whether Amounts to an Executive

Order as Contemplated under Article 77 of the Constitution or a Statutory Notification u/s 48 of the Land Acquisition Act :

21. The aforesaid issue is one of the vital issues arising for consideration in the writ petitions and was also argued at length by the Counsel appearing for the parties. We were called upon to give our anxious consideration to this issue and number of decisions of the Supreme Court as also of this Court were cited before us in support of the rival contentions of the Counsel appearing for the parties.

In response to a call attention notice in the Lok Sabha the then Minister in the Ministry of Health and Works and Housing made a Statement in the Parliament on 10.3.1960. The said statement made by the Minister is quoted by the learned Single Judge in its entirety. The relevant portion of the said statement is extracted below:

"In that statement I had also explained that the proposed large scale acquisition of 34070 acres of land was intended to ensure planned development of Delhi and also to help in preventing further speculation in land transaction which were reported to have been taking place on a large scale. A comprehensive policy regarding final acquisition and disposal of the 34000 acres of land, which has been notified for acquisition u/s 4 of the Land Acquisition Act, 1894, will be formulated in due course, in the light of the recommendations regarding land-use that might be made in the Master Plan for Greater Delhi, which is expected to be finally published by about the end of October, 1960. In the meantime, however, Government have decided, as a measure of meeting the acute housing shortage in Delhi that the colonies or areas the layout/building plans of which had been approved by the Delhi Municipal Corporation, Delhi Development Authority or any other competent local authority, may be released from the purview of the Delhi Administration's Notification No. F.15 (III)59-LSG dated 13th November, 1959. This decision was taken early in January, 1960."

We are also asking the Chief Commissioner, Delhi to expedite action to release the land of "approved" colonies from the purview of the notification in consultation with the Delhi Municipal Corporation subject to such conditions as he may consider appropriate for ensuring that the plots which are released are utilised for genuine residential purposes and are not kept unbuilt in the speculative expectation of future rise in their prices."

In the said statement the Minister also spelt out the names of 20 colonies including Shyama Prasad Mukherjee Park Colony whose lands were decided to be released. The area of Shyama Prasad Mukherjee Park is shown in the statement as 1,54,500 sq. yds. After the aforesaid statement of the Minister in the Parliament when the cases of all the 21 colonies were examined for release of land from acquisition it was found that DDPA's resolution No. 57 dated 9.3.1957, copy of which is available on record, approved the layout plan of 235 house sites and 23 shops in this colony mentioning the area of the colony as 20 acres. Thus a notification was issued u/s 48 of the Land Acquisition Act releasing 20 acres of

land from acquisition. Subsequent thereto Shri N.N. Verma and other plot holders made several representations to Delhi Administration, the Ministry of Works and Housing and other authorities. The Lt. Governor of Delhi entrusted an enquiry into the matter to Shri S.G. Bose Mullick, Vice Chairman, DDA, who in his letter dated 23.5.1970 reported that the area of the colony as verified by the officials of the erstwhile D.D.(P)A was 28.4 acres. The matter thereafter went up to the Ministry of Works and Housing, who indicated that 23 shop sites which are specifically mentioned in the DDPA's resolution are also to be released. The Administrator asked the coloniser (Shri N.N. Verma) to give an undertaking that he was not agitating the matter further provided 23 shop sites are released in their favour. No such undertaking was forthcoming from the coloniser and accordingly a report was sent by the Administrator to the Ministry of Works and Housing who indicated that the matter might be closed. In pursuance thereof the remaining land was acquired and transferred to Delhi Development Authority for developing the same into a Commercial Centre.

22. Relying on the statement of the Minister in the House, the Counsel appearing for the respondents sought to submit that the statement made by the Minister in the House was a solemn statement and (sic)ted to a final decision of the Government to the effect that the entire land of 32.58 acres was released from acquisition by the Government. It was submitted that the statement made in the house it self was sufficient communication of the intention of the Government in that regard and mere was substantial compliance with the provisions of Article 77 of the Constitution of India which is directory in view of the settled position of law in that regard. It was also submitted that the statement of the Minister has not been challenged by the appellant at any stage. In support of his contention the learned Counsel for the respondent also relied upon some of the provisions of the "Rules of Procedure and Conduct of Business in Lok Sabha" and also on some passages from "Parliamentary Practice" by Erskine May as also selective passages from "Practice & Procedure in Parliament" by Kaul and Shakdhar. Counsel relied upon the Rules of Procedure and conduct of business in the Lok Sabha to show that the documents laid in the house are public documents and that the report of the proceedings are published. Also relying on the passages from the books of Erskine May and Kaul & Shakdhar Counsel submitted that a final decision was taken by the Government on 10.3.1960 to release the entire area of land measuring 32.58 acres which was authenticated, communicated and published through the statement made by the Minister on the Floor of the House on 10.3.1960.

23. On the other hand, Counsel for the appellant submitted that the statement made by the Minister in the House could at best be said to be a policy decision of the Government and could not amount in law to an Executive order as contemplated under Article 77 of the Constitution of India. He further submitted that to be an Executive decision of the Government the same should be properly authenticated and communicated. He strongly relied upon the fact that subsequent to the statement made by the Minister in the House notification was

issued u/s 48 of the Land Acquisition Act de-notifying and releasing only 20 acres of land and submitted that decision of the Government in the instant case was to release only 20 acres of land and not the remaining land as the notification was properly authenticated and was also communicated in accordance with the provisions of law. Counsel also drew our attention to the provisions of Section 48 of the Land Acquisition Act which is extracted below:

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

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

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

24. The learned Counsel submitted that a notification for releasing land from acquisition and de-notifying thereof is necessary under the provisions of Section 48 which is also required to be published. In support of his contention the learned Counsel relied upon several decisions of this Court as also of the Supreme Court, reference to which shall be made while appreciating the contentions of the parties.

25. Article 77 of the Constitution of India provides that an Executive action of the Government of India shall be expressed to be taken in the name of the President of India and that orders and other instruments made and executed in the name of the President shall have to be authenticated in such a manner as may be specified in the Rules to be made by the President and the validity of an order or instrument if so authenticated shall not be called in question on the ground that it is not an order or instrument made or executed by the President. This provision of Article 77 is *pari materia* with the provisions of Article 166 of the Constitution of India. These provisions came to be interpreted in various decisions of the Supreme Court. One of the important cases that has been brought to our notice is the decision in the case of *Bachhittar Singh Vs. The State of Punjab*, . In the said decision it was laid down by the Supreme Court that before something could amount to an order of the State Government two things are necessary namely--that the order has to be expressed in the name of the Governor as required by Clause (1) of Article 166 of the Constitution of India and then it has to be communicated. It was further held that the Constitution requires that the action must be taken by the authorities concerned in the name of the Governor and that it is not till that formality was observed that the action

could be regarded as that of the State. Interpreting the provisions of Article 166 of the Constitution of India which is almost *pari-materia* with Article 77 of the Constitution of India, the Supreme Court further held that constitutionally speaking the Minister is no more than an adviser and that the Head of the State, the Governor is to act with the aid and advice of his Council of Ministers and Therefore, until such advice is accepted by the Government whatever the Minister or the Council of Ministers might say in regard to particular matter would not become the action of the State until the advice of the Council of Ministers is accepted or deemed to be accepted by the Head of the State. It was further held that it is possible that after expressing one opinion about a particular matter at a particular stage a Minister or the Council of Ministers might express quite a different opinion, one which might be completely opposed to the earlier opinion Therefore to make the opinion amount to a decision of the Government it must be communicated to the person concerned. It was also authoritatively laid down that it is of the essence that the order has to be communicated to the person who would be affected by that order before the State and that person can be bound by that order, for until the order is communicated to the person affected by it, it would be open to the Council of Ministers to consider the matter over and over again Therefore, till it is communicated the order cannot be regarded as anything more than provisional in character.

26. Reference may also be made to the decision in *State of Kerala Vs. Smt. A. Lakshmikutty and others*, . In paragraph 40 of the said judgment the Supreme Court held that merely because the Chief Minister briefed the Press on 31.1.1985 as regards the decision taken at the meeting of the Council of Ministers held on the previous date and the news of the Press Conference was published in the *Mathrubhoomi* and other Malyalam newspapers to the effect that the Government had decided to fill up 4 posts of District Judges, it cannot be said that there was an order of the State Government in the manner it was required by Article 166(1).

27. Our attention was also drawn to a decision of this Court in *Lights Carts (Pvt.) Ltd. Vs. Union of India and others*, . In paragraph 7 of the said decision this Court has held that the speech of the Finance Minister in his Budget Speech cannot be regarded as a piece of Legislation, subordinate or delegated. It was further held that exemption cannot be granted from the imposition of excise duty on the basis of the speech of the Finance Minister and that the validity of a notification issued under Rule 8 of the Central Excise Rules has to be adjudged with reference to the provisions of Central Excise Act, the Rules made there under and not in relation to the budget speech of the Finance Minister.

28. It is true that the Supreme Court while interpreting Articles 77 and 166 of the Constitution of India has held that in a particular case although proper authentication may not be there or if the action is not taken in the name of the Governor but if the same could be shown to have been made by the Governor even from the official file non-communication of the same in proper form may

not invalidate the order. In this connection reference could be made to the decision of the Supreme Court in *Dattatreya Moreshwar Pangarkar Vs. The State of Bombay and Others*, . In the said decision the Supreme Court held that every executive decision need not be formally expressed and this is particularly so when a superior officer directs his subordinate to act or forbear to act in a particular way but when an executive decision affects an outsider by its official communication it should squarely be expressed in the form mentioned in Article 166(1) i.e. in the name of the Governor. It was further held in that case that in considering the question of non-compliance with Clause (1) and its effect it must be remembered that this clause does not lay down how an executive action of the Government of the State is to be performed and that it only prescribes the mode in which such act is to be expressed.

29. Thus Articles 77 & 166 of the Constitution of India provide that in order to be an executive action whether by way of an order or instrument shall be expressed to be taken in the name of the President or the Governor as the case may be as the Executive Head and it has to be authenticated and communicated in the manner specified in the rules to be framed by the President or the Governor. The Constitution, however, does not require any particular words for compliance with Articles 77 and 166 of the Constitution. What the Court is to see is whether the substance of its requirements has been complied with or not. Clause (1) of Article 77 prescribes the mode in which an executive action of the Government is to be expressed whereas Clause (2) provides the ways in which the order is to be authenticated. In *Kedar Nath Bahl Vs. The State of Punjab and Others*, , it was held that an order of the Chief Minister could not give rise to any right in favor of the appellant therein as it was not expressed in the name of the Governor as required by Article 166 of the Constitution and was not communicated to the appellant.

30. When the facts of the present case are examined in the light of the aforesaid legal position it is crystal clear that the statement of the Minister in the House spells out the policy decision of the Government and so long the same is not properly authenticated and communicated the action cannot amount to an executive action of the State. It is an admitted position in the present case that no such order was authenticated and issued in accordance with the provisions of the Constitution of India releasing land beyond 20 acres of land nor any such order was communicated as required under the Constitution of India. It is also settled law that a decision of the Executive mentioned in the file but not communicated, cannot be deemed to be a final decision taken so long it is not communicated. The policy decision announced by the Minister in the House was neither authenticated nor communicated in terms of the provisions of Article 77 of the Constitution of India and Therefore, the same cannot be said to be an Executive action.

31. This issue could also be looked into from another angle. It is the admitted position of the parties that in the present case subsequent to the statement

made by the Minister on the Floor of the House on 10.3.1960 a notification u/s 48 of the Land Acquisition Act was issued and published releasing 20 acres of land from acquisition. Therefore, the said notification which satisfies the requirements of the Constitution of India could be said to be the executive action and the decision of the Government. The act of releasing only 20 acres of land and not any other land by the Government was a conscious act on the part of the Government and the same was done through the mode recognised by the Constitution and Therefore, the said action of releasing only 20 acres could be recognised as the executive action of the Government and binding.

32. Section 48 of the Land Acquisition Act provides that the Government is at liberty to withdraw from acquisition any land of which possession has not been taken. The section, however, does not lay down any particular mode or procedure for withdrawal of land from acquisition. However, while interpreting the said provision of Section 48 Along with the provisions of Sections 4 and 6 of the Land Acquisition Act the Court has carved out a mode and procedure for withdrawal of such land from acquisition. It is held by the Supreme Court that power could be exercised by the Government withdrawing land from acquisition only by publication of a notification in the Gazette. Thus by now it is settled law that publication of a notification for denitrifying and withdrawing land from acquisition is necessary u/s 48 of the Land Acquisition Act.

33. Reference in this connection may be made to the decision of the Supreme Court in Municipal Committee, Bhatinda Vs. Land Acquisition Collector and Others, . In paragraphs 8 & 9 of the said judgment the Supreme Court held that the State Government has to issue a notification for withdrawing land from acquisition and/or to abandon acquisition u/s 48 of the Act. In a Full Bench decision of this Court in Roshanara Begum Vs. Union of India, it was held that Section 48 by itself does not require publication of such an order in the Official Gazette and that as a matter of fact there is no repugnancy between the provisions of Section 48 of the Act as read with Section 21 of the General Clauses Act. This Court observed that the purpose of issuance and publication of notifications and declarations under Sections 4 & 6 of the Act in Official Gazette are that public at large should become aware of the factum that the land so notified is to be acquired for public purpose so that people at large should not suffer any monetary loss or any other inconvenience by entering into any deals in respect of such lands subject matter of compulsory acquisition. It was further held that as an analogy of the purpose enshrined in notification issued u/s 4 and declaration issued u/s 6 for their publication in Official Gazette is also linked to the order which is made u/s 48 of the Act for withdrawing from such acquisition and unless the same is also published in the manner as the original notification the said object could not be achieved i.e. of giving public notice to the public at large. In coming to the aforesaid conclusion the Full Bench of this Court relied upon and referred to a number of decisions and on appreciation thereof came to the aforesaid conclusion. We cannot resist the temptation of mentioning one of those cases namely--in State of Madhya Pradesh and Others Vs. Vishnu Prasad

Sharma and Others, . In the said decision the Supreme Court held that apart from power u/s 48 of the Land Acquisition Act the Government has power u/s 21 of the General Clauses Act to withdraw from the acquisition by cancelling the notifications under Sections 4 & 6 of the Act. It was also held that there being no repugnancy between the provisions of Section 48 of the Land Acquisition Act and Section 21 of the General Clauses Act, it is all the more essential that the power which is exercised u/s 48 should be exercised in the same manner in which notifications u/s 4 & declarations u/s 6 are published in the Official Gazette in view of the provisions of Section 21 of the General Clauses Act.

More recent is the decision of the Supreme Court in Murari and Others Vs. Union of India (UOI) and Others, . The said decision came to be delivered by the Supreme Court on appeals filed against the Full Bench decision delivered by this Court in the case of Roshanara Begum (supra). In paragraph 18 of the said judgment the Supreme Court noticed that Sub-section 1 of Section 48 of the Act contemplates that except in the case provided for in Section 36 the Government would be at liberty to withdraw from the acquisition any land of which possession had not been taken. Taking note of the aforesaid provisions of the section the Supreme Court held that the said section thus confers power on the Government to withdraw any land from acquisition but such power can be exercised only before taking possession of the land sought to be acquired. In the said case the Supreme Court upheld the Full Bench decision of this Court and observed that the view taken by the Full Bench that communication sent to the appellants therein purporting to be an order u/s 48 of the Act is invalid and the land acquisition proceedings cannot be quashed on the basis of such invalid communication, cannot be said to be erroneous calling for interference by the Supreme Court. In Murari's case (supra) the Supreme Court held that even if it is assumed that there was an order for release of certain land from acquisition the same was not given effect to in the absence of a notification de-notifying the acquisition of the land. For coming to the aforesaid conclusions the Supreme Court further considered the ratio of the decisions in the case of Chandra Bansi Singh and Others Vs. State of Bihar and Others, and in U.P. Jal Nigam, Lucknow through its Chairman and another Vs. M/s. Kalra Properties (P) Ltd. Lucknow and others, . Thus by now, the position is well settled.

34. In the present case the notification abandoning the acquisition and/or withdrawing land from the acquisition was issued and published only in respect of 20 acres of land and not 32.58 acres of land and Therefore, it cannot be said that land beyond 20 acres of land also stood released in pursuance of the aforesaid issuance and publication. Thus it is apparent and clear that decision of the Government to withdraw land from acquisition was only in respect of 20 acres in respect of which clear notification was issued and by no stretch of imagination it could be said that the Government decided and released 32.58 acres of land from acquisition. The learned Single Judge has held this issue against the appellant and in favor of the respondents holding that where a person is to be benefitted from the release of the acquired land, no form of communication is

prescribed and that Therefore, the statement of the Minister in the House amounted to sufficient compliance with the requirements. It was further held that in the present case for release of land u/s 48 of the Land Acquisition Act there was no requirement of issuance and publication of a notification. On the face of it and in the light of the aforesaid settled principles of law, the findings are erroneous and contrary to the settled principles of law and Therefore, liable to be set aside, which we hereby do. This issue is thus decided in favor of the appellant and against the respondents.

35. Since this issue is decided in favor of the appellant, the appeal practically stands decided on answering of this issue and the appeal filed by the appellant is to be allowed on this count alone. However, as lengthy arguments were also advanced on the remaining issues, we deem it necessary to give our opinion on the same as well and accordingly we discuss the same hereunder.

Whether possession of the Acquired Land was taken by the Appellant :

36. Counsel for the appellant submitted that possession of the acquired land was taken over by the appellant before filing of the writ petition. According to the appellant possession of the land was taken over in parts on 27.10.1961, 4.9.1963 and 25.5.1966. At the time of arguments of these appeals Counsel for the appellant submitted that as per the records available with DDA possession of the land was taken over in the year 1963. However, the respondents have contested the aforesaid statement and have stated that possession of the acquired land was taken over by the Delhi Development Authority only in the year 1981. Our attention was drawn to the notification dated 20.3.1974 placing the acquired land with the appellant w.e.f. 3.1.1968. It is settled law that once possession of the acquired land has been taken over and vested on the authority for whom the land was acquired provisions of Sections 16 and 48 of the Land Acquisition Act shall come into operation and the owner thereafter cannot be divested of the property and the land cannot be de-acquired . In that context we may appropriately refer to the decision of the Supreme Court in Lt. Governor of Himachal Pradesh and Another Vs. Avinash Sharma, , wherein it was held that after possession of land has been taken pursuant to a notification the land is vested in the Government and on such vesting and after possession is taken of the land, there is no provision by which the land would revert back to the owner by cancellation of the notification. Similar legal proposition was also laid down in the decision in Rajasthan Housing Board and Others Vs. Shri Kishan and Others, . In any case the notification was issued on 20.3.1974 placing the land with the appellant w.e.f. 3.1.1968. Even if we go by the pleadings of the respondents particularly in paragraphs 12 to 14 of the plaint filed in Suit No. 95/1981 filed by Shri N.N.Verma, the coloniser, it was admitted that possession in any case was taken by the respondent prior to filing of the said suit. The said suit as stated hereinabove was instituted seeking for permanent injunction against demolition of structures by the Delhi Development Authority which was subsequently withdrawn on 14.4.1981.

37. Section 16 of the Land Acquisition Act empowers the Collector to take possession of the land after the award is made and once possession of the acquired land is taken it absolutely vests with the Government. There is no hard and fast rule laying down the mode and procedure for taking possession of land. Presence of owner or occupant of the land is not necessary to effectuate taking of possession. Thus when it is an admitted position that the appellant has entered into the land in dispute prior to the filing of the suit, act of taking over possession of the disputed land as contemplated under the Land Acquisition Act was complete prior to filing of the writ petitions in this Court. Our aforesaid conclusion is also fortified by the contents of the letter of the Lt. Governor dated 23.2.1979. Lt. Governor in the said letter has specifically stated that 12 acres of land have been acquired and vest in Government u/s 16 of the Land Acquisition Act and have been transferred to the Delhi Development Authority. Thus it is clearly established that possession of the acquired land was taken over by the appellant prior to filing of the writ petition in this Court and Therefore, the appellant could not be divested of the property save and except in accordance with law.

Waiver and Acquiescence:

38. Counsel for the appellant also submitted that the writ petitions were not maintainable in view of the principles of waiver and acquiescence. It was submitted that compensation of the acquired land stands paid to the respondents under the provisions of the Land Acquisition Act. It was also submitted that reference application u/s 18 of the Land Acquisition Act was also filed by Shri N.N.Verma and others praying for higher compensation and Therefore, there is a clear waiver and acquiescence in respect of the acquisition proceedings. It is submitted that the respondents having accepted the compensation for the entire acquired land they cannot now turn back and state that the acquired land for which compensation had also been received by them should be returned back to mem.

39. The aforesaid issue also came up for consideration before the learned Single Judge. On perusal of his findings it is found that he has come to the aforesaid conclusion also on the basis of the fact that Shri N.N.Verma had filed the application u/s 18 seeking for enhancement of compensation for the acquired land without prejudice to his rights to challenge the validity and intra virus of the award and that no compensation was actually paid to Mr. Verma and that the land acquisition proceedings were ab initio void and non est. In order to appreciate the merit of the aforesaid conclusions it would be necessary to deal with certain facts with regard to the acquisition proceedings.

40. In the land acquisition proceedings for acquisition of land in Village Tatarpur and Chaukhandi, Narender Verma, one of the respondents filed an application u/s 18 of the Land Acquisition Act seeking for reference to the District Judge and praying for enhancement of compensation. In para 4 of his application said Verma had stated thus--"without prejudice to the rights that the applicants

possess to challenge validity and intra virus of the award the applicants beg leave to state the following amongst its grounds for reference before the District Judge". The Additional District Judge, after recording evidence decided the reference and passed his award fixing reasonable compensation in respect of the land acquired. While doing so the reference Court also apportioned the compensation amongst the owners of the land. However, although Shri N.N. Verma had non-occupancy tenancy rights shown in the relevant revenue records, Shri N.N.Verma claimed the entire compensation on the ground that he had developed the land and was looking after maintenance of the land for over 12 years. So out of the total amount of compensation granted in favor of Shri N.N.Verma certain amounts were directly paid to the Decree Holder of a decree which was passed against Shri N.N.Verma as the judgment debtor. Certain amount out of the aforesaid compensation was also claimed by the Income Tax Department which was remitted to the Income Tax Authorities and the entire balance amount of the compensation was deposited in the State Bank of India, Tis Hazari Branch in the account of the Court, to be paid to the persons who might establish themselves to be entitled to get the aforesaid amount or any part thereof. The said order was passed in respect of the balance amount as there were some other claims of persons that plots in the said Shyama Prasad Mukherjee Park Colony were sold to them and Shri N.N.Verma admitted the said fact. Inspire of the aforesaid fact the learned Single Judge came to the conclusion that it cannot be said that the amount of compensation was accepted by Shri N.N.Verma. We have given our anxious consideration to the submissions of the learned Counsel for the parties on the aforesaid issue as also to the findings recorded by the learned Single Judge. In our opinion, the conclusion arrived at by the learned Single Judge that it cannot be said that Shri N.N. Verma has accepted the compensation is fallacious to that extent. It is immaterial whether the amount of compensation is paid directly to the claimant or the same is adjusted towards dues payable by the claimant as Government's dues and such other dues which are recoverable from him. But we, however, agree with the learned Single Judge that the petition seeking for enhanced compensation was filed by Shri N.N.Verma without prejudice to the rights that the applicants may possess to challenge the validity and intra virus of the award and since Shri N.N.Verma reserved his rights to challenge the validity and intra virus of the award even at the time of filing the reference u/s 18 the respondents cannot be non-suited and be debarred from challenging the land acquisition proceedings through the writ petitions out of which the present appeals have arisen. We however, cannot agree with the findings of the learned Single Judge that the land acquisition proceedings in this case were void ab initio and non est as no valid reason has been cited by the learned Single Judge for coming to the aforesaid conclusion recorded under heading "Proceedings under Land Acquisition Act.

Writ Petitions Whether Involve Disputed Questions of fact with Regard to Actual Area of Land :

41. Counsel for the appellants also vehemently argued that the present writ

petitions were liable to be dismissed in view of the fact that the same deal with and give rise to disputed questions of fact. Counsel submitted that there is a serious dispute between the parties as to what is the total area of land for which layout plan was sanctioned. According to the respondents, the original sanctioned plan of the colony covered 32.58 acres whereas according to the appellants sanctioned layout plan dated 9.3.1956 was for 20 acres only. According to the appellants these 20 acres comprise of 235 residential plots and 23 shop plots whereas according to the respondents mention of 20 acres in the resolution was a mistake as the sanctioned plan covered an area of 32.58 acres. In support of their contentions the respondents seek to rely on the report of the Deputy Commissioner of Municipal Corporation of Delhi dated 30.3.1962 wherein the actual area is stated to be 32.58 acres. According to the appellants the said views of Mr. Rao as stated in the letter dated 30.3.1962 were purely personal views of Mr. Rao as would be apparent from the letter itself. Reference was also made to the report of Shri Bose Mullick wherein he had stated -

"In the approved layout plan of the colony, I have had marked through the revenue staff, the boundary of Villages Chaukhandi and Tatarpur. The boundaries of these villages so far as this colony is concerned are co-terminus. This demarcated boundary area, when worked out by plan meter on table shows that for the position of the colony in Chaukhandi Village the area is approximately 23.3 acres and that of Tatarpur approximately 5.9 acres, totalling 29.2 acres. This figure more or less tallies with the 28.4 acres for which ownership documents were verified..... .."

Thus a study of the available papers gives one the impression that the area of the colony as approved by the DDP A was definitely not 32 acres, as contended by the coloniser. It would at the most be 138 bighas and 3 bids was (28.4 acres) the ownership documents of which are verified."

42. It is on this document that the learned Single Judge relied upon for coming to his conclusion that the total area of land of Shyama Prasad Mukherjee Park is 28.4 acres and not 32.58 acres or 20 acres. On the other hand, again there is a resolution of DDPA dated 9.3.1957 sanctioning the plan for Shyama Prasad Mukherjee Park colony mentioning the area as 20 acres. The Lt. Governor of Delhi also considered the dispute raised by the parties Herein with regard to the actual area of land for which plan was sanctioned and in his opinion he stated thus -

"I find that statement (of the Minister) read in its entirety relates to release of land for residential purposes and such land of Shyama Prasad Mukherjee Park measured 20 acres has already been released. To my mind that commitment in Parliament has been fulfilled with respect to this colony. There was certain discrepancy in the figures of area in this case but this would not lead to a claim for release of land meant for commercial purposes. As already mentioned above the statement of the 10th March, 1950 covers land meant for residential use only".

43. We have carefully considered the findings arrived at by the learned Single Judge in respect of the dispute of the total area for which layout plan was sanctioned holding that the area of the colony is atleast 28.4 acres. The aforesaid findings, in our opinion, cannot be said to be based on sound reasoning. The original file regarding the sanction of the layout plan and its original layout plan is not traceable. The resolution of the Committee specifically stated that layout plan for Shyama Prasad Mukherjee Park Colony was for 20 acres. Our attention was also drawn to the resolution of the Standing Committee of the Municipal Corporation dated 12.11.1964 resolving that the layout plan as sanctioned by the DDPA should be accepted. The sanctioning letter also mentioned the area of land as 20 acres. It is true that the resolution dated 12.11.1964 further states that the land notified u/s 4 of the Delhi Administration covered as many as 16 colonies duly approved by the Municipal Corporation of Delhi or DDPA which were subsequently de-notified in view of the same having been approved by the Competent Authority and the case of Shyama Prasad Mukherjee Park however, remained ambiguous for the reason that resolution vide which the layout plan was approved mentioned 20 acres of land as covered by the layout whereas for layout plan drawn on the paper it covered about 32.58 acres. Thus the available records reveal that the appellants claim that layout plan for Shyama Prasad Mukherjee Park Colony was sanctioned for 20 acres whereas according to the respondents it is 32.58 acres. The learned Single Judge however, was of the opinion that the same is 28 acres. Thus dispute with regard to the area of the land is writ large. Dispute also exists as to whether the disputed land was meant for residential use or commercial use. Enquiries made by different authorities also show that they could not come to any definite unanimous decision about the exact area of the land for which the plan was sanctioned. It is thus crystal clear and apparent that the writ petitions definitely gave rise to disputed questions of fact, which in absence of the original sanction plan and the original file containing the records leading to the aforesaid layout plan could not be effectively and properly adjudicated upon particularly in a writ petition. Thus we hold that the writ petitions involved serious disputed questions of fact and Therefore, the same were liable to be dismissed.

Plea of Discrimination and Violation of Article 14 of the Constitution :

44. Counsel for the respondents supported the findings of the learned Single Judge that the decision of the Union of India and Delhi Administration not to release commercial area of the petitioners is arbitrary and discriminatory particularly when similar lands in respect of other 20 colonies similarly acquired were released. Counsel for the appellant, however, assailed the aforesaid findings on the ground that the cases of the Shyama Prasad Mukherjee Park and other 20 colonies stood on different footings from each other and the necessity, requirement and position of the land of Shyama Prasad Mukherjee Park stood completely on a different platform. In support of his contention Counsel relied upon the ratio of the decisions of the Supreme Court in Chandigarh Administration and another Vs. Jagjit Singh and another, and in Secretary, Jaipur

Development Authority, Jaipur Vs. Daulat Mal Jain and Others, laying down the proposition that there is no equality in a case of inequality. We find sufficient force in the arguments of the Counsel for the appellant. From the facts discussed above it is crystal clear that the disputed land of Shyama Prasad Mukherjee Park stood on a different footing altogether than that of the land of other 20 colonies. It is also for the appropriate Government to decide what area is required to be acquired in public interest and how much of an area there from could be released from acquisition. Since the disputed land of Shyama Prasad Mukherjee was considered to be of commercial nature and possession of the same was taken over by the appellant and the appropriate Government decided not to release the land it had a different character altogether and Therefore, the cases are unequal. The findings of the learned Single Judge in respect of this issue are erroneous and illegal and Therefore, stand set aside.

45. Ms. Issar appearing for some of the respondents submitted that the land acquisition proceedings itself were non est and were so found and held by the learned Single Judge. According to her in view of the aforesaid findings no order and/or notification as required u/s 48 of the Land Acquisition Act was necessary. She further submitted that the notifications under Sections 4 & 6 of the Land Acquisition Act are liable to be quashed in view of the fact of absence of any nexus between the purpose of acquisition and the declared purpose which was for development of Delhi. She stated that there is an admission in the speech of the Minister made on the Floor of the House that there was no public interest involved in the aforesaid acquisition proceedings and Therefore, on that account the said notifications were liable to be quashed. The aforesaid submission, in our considered opinion, are misplaced. We have already held above that the findings of the learned Single Judge that the land acquisition proceedings was void ab initio and non est are abrupt and not based on any valid reason and Therefore, liable to be set aside. Besides, notifications under Sections 4 & 6 in respect of the disputed land were not specifically challenged in the writ petitions. Such an issue does not appear to have been argued at all before the learned Single Judge nor any finding was given by him on such an issue. Learned Single Judge, although made an observation that land acquisition proceeding was void ab initio and non est, that observation came in respect of another issue and not on the ground of validity of notifications under Sections 4 & 6 of the Land Acquisition Act. Besides In the statement made by the Minister in the House he had stated that there is a proposal to release the land of 21 colonies only in view of the fact that layout plan for the said colonies stood approved and sanctioned. Only because about 20 acres of land of Shyama Prasad Mukherjee Park were released by the Government on the aforesaid reason and ground it cannot be said that no public purpose was involved in the aforesaid acquisition. We have not agreed in the present case with the findings of the learned Single Judge that the land acquisition proceedings is non est or without jurisdiction, and in fact we have held that the land acquisition proceedings were valid and that the claimants therein who are respondents in the present appeals have also received

compensation for the aforesaid acquisition of their land. Therefore, the submission of the learned Counsel that no order or notification in the instant case was necessary to be taken or issued u/s 48 of the Land Acquisition Act, is found to be misconceived and misplaced and accordingly, rejected.

46. No other ground was pressed for or arise for our consideration in the present appeals. In our aforesaid course of discussions we have found and held that the statement of the Minister made on the Floor of the House was only a policy decision of the Government and also having not been authenticated and communicated cannot be said to be an executive order which could be enforced in writ proceedings. We have also held that possession of the land was taken prior to the filing of the writ petition and Therefore, land in dispute cannot be released in favor of the respondent. We have also found the land acquisition proceeding in the present case to be valid and legal and also that present writ petitions involve serious disputed questions of fact. Plea of discrimination raised by the respondents has also been rejected. We have also come to the conclusion that the findings and conclusion arrived at by the learned Single Judge in respect of the aforesaid issues are illegal and unfounded and are liable to be set aside, which we hereby do.

47. Accordingly, the appeals stand allowed and the judgments and orders dated 2nd November, 1987 passed by the learned Single Judge in C.W.P. 2174 of 1981 and C W.P. 776 of 1981 are set aside. Consequently, the writ petitions stand dismissed. Cross-objection and all miscellaneous applications including CM. 718 and 719 /1993 also stand dismissed. The parties shall however, bear their own costs.