

(2002) 03 DEL CK 0021
In the Delhi High Court
Case No : L.P.A. No. 46 of 1983

Delhi Electricity Supply Undertaking		APPELLANT
	Vs	
Bhimandas Ambwani and Others		RESPONDENT

Date of Decision : 22-03-2002

Acts Referred:

Constitution of India, 1950 — Article 226
Displaced Persons (Compensation and Rehabilitation) Act, 1954 — Section 12
Land Acquisition Act, 1894 — Section 10, 11, 13A, 16, 17(1)

Citation : (2002) 6 AD 934 : (2002) 63 DRJ 429

Hon'ble Judges : S.B. Sinha, C.J.;A.K. Sikri, J

Bench : Division Bench

Advocate : Avnish Ahlawat, Vaishalee Mehra, Yogesh Chaudhary and Mohit Madan, for the Appellant; Sandeep Sethi, Sanjay Jain, Maninder Singh, Pratibha Singh, Geeta Luthra and Jhum Jhum Sarkar, for the Respondent

Judgement

S.B. Sinha, C.J.—An important question of law as regards interpretation of different provisions of the Land Acquisition Act, 1894 (hereinafter referred to (SIC) Appeal, which arises out of a judgment and order dated 26.11.1982 passed by a learned Single Judge (Hon"ble S. Ranganathan, J., as he then was) of this Court.

2. A land measuring 3 bighas 3 bids was comprised in Khasra No. 307 in Village Kilokari was the subject matter of the writ petition. The writ petitioner, i.e., respondent No. 1 herein purchased the said land on 03.03.1962. The sale deed was registered on 06.06.1962. He got the said land mutated in his name on 17.08.1964. Prior thereto a notification dated 05.03.1963 was issued purported to be in terms of Section 4 of the said Act in relation to the land admeasuring 139 bighas and 2 bids was situated in the said village stating that the land was likely to be required to be taken by the Government on a public expense for a public purpose, namely, planned development of Delhi. The land included in the notification are filed Nos. 264, 266 (part), 290, 296, 297, 303/2, 306, 307, 1128/328/3, 246, 284, 293, 440, 441, 736, 738, 739, 743, 744, 745, 746, 747/3

and 747/4.

3. A declaration u/s 6 of the said Act was also made on 22.08.1963. The said declaration also covered the area of 139 bighas and 2 biswas. There exist some discrepancies as regards some field nos. and the area in the notification u/s 4 and declaration u/s 6 of the said Act.

4. Pursuant to and in furtherance thereof, an award was made on 29.11.1963 bearing No. 1651. Paragraph 2 of the said award reads thus:-

"The area under acquisition as given in the notification u/s 6 of the Act is 139 Bighas while on measurement by the Field (SIC) field Nos. 266 (3 bighas - 6 biswas) 296 (6-5), 307 (3-3), 441 (5-5), 736 (5-8) - total area 23 bighas 7 bids was - is still Central Government land already acquired u/s 12 of the Displaced Persons (Compensation & Rehabilitation) Act, 1954, as verified from the Regional Settlement Commissioner's office, Jaisalmer House, New Delhi, vide letter No. 2-(misc.)/Auc.50(R)229 dated 18.11.1963. This land can be obtained by book-transfer from the department. Thus the land under acquisition comes to 113 bighas 13 bids was only, for which the acquisition file has been prepared. The land under acquisition has 18 filed numbers as detailed in form of Land Acquisition as prepared under para 55 of the Financial Commissioner's standing order No. 28."

5. A bare perusal of the said Award would clearly show that the same in relation to 113 bighas and 13 bids was only and no award was made in respect of the rest 23 bighas and 7 bids was including writ petitioner's land measuring 3 bighas and 3 bids was situated in field No. 307. There were certain lands belonging to the Central Government, which were however in occupation of tenants and allottees. The award proceeded to say that the measurement and classification of the land had been accepted by the land owners. The award categorically states that possession of the land had not been taken over so far. The land in question was handed over to Delhi Electricity Supply Undertaking (in short, "DESU"), i.e., the appellant herein to enable it to construct staff quarters for its employees. The appellant allegedly deposited a sum of Rs. 10,16,400/- towards the price of land measuring 6.98 acres at the rate of Rs. 20/- per square yard on 24.05.1966 and a formal possession was delivered on 05.07.1966.

6. The writ petitioner at the relevant time was employed in Bombay. After his retirement in 1966, he returned to Delhi. acquisition proceedings. By a letter dated 15.08.1967 addressed to the Land and Housing Commissioner it was stated that he had purchased a plot of land and before planning constructions, etc. on the said land he would like to know as to whether the said land had been acquired at any time subsequent to the date of purchase for any purpose. He stated that in case the said land had been acquired for any lawful purpose, he may be allowed to inspect the file or files containing acquisition, the details of compensation paid or payable, the party to whom the compensation had been paid or made payable etc. By a letter dated 12.01.1968, the Administration

informed the writ petitioner that the land had been notified u/s 6 of the said Act on 22.08.1963 and for payment of compensation, he may approach the Land Acquisition Collector.

7. On 07.10.1968, the Delhi Administration issued a notification u/s 4 of the said Act bearing No. 7(34)/61-L&H. It states:-

"Whereas it appeared to the Lt. Governor of Delhi that land is likely to be required to be taken by the Government at the public expense for a public purpose, namely, for the planned development of Delhi."

8. Schedule appended to the said notification specifies 31 bighas 15 bids was of land in village Kilokari comprising field Nos. 266/2 (min), 296, 307, 441 and 506. The field Nos. thus specified included khasra No. 307 belonging to the writ petitioner. The notification also included thereagainst three more field Nos. 266/2 (min), 296 and 441, which were included in the earlier notification dated 05.03.1963 and which formed part of the land 23 bighas 7 in khasra No. 460, which did not find place in the earlier notification dated 05.03.1963 had also been included.

9. The writ petitioner contended that he was not aware of the said notification till June, 1971, but he came to know about the same only when he found that certain constructions were being raised on the said land. Upon enquiry, he came to learn about the issuance of the said notification. He applied to the Land Acquisition Collector for a copy of the award on 15.07.1971 whereupon an endorsement was made that the said field had been acquired "under award No. 1651" and that the acquisition had been made "by book-transfer by this award". Evidently Therefore no award was made in terms of the said notification dated 07.10.1968.

10. The validity of the said land acquisition proceedings was the subject matter of challenge in the writ petition. It, however, appears that the writ petitioner served a notice dated 19.08.1971 upon the respondents, which evoked no reply. A notice, however, was issued to the writ petitioner u/s 9 of the said Act calling upon him to appear before the Collector on 20.03.1972 and file his claim regarding compensation. The writ petitioner received the said notice on 15.03.1972 and he filed a reply on 20.03.1972. According to the writ petitioner, he was not given even 15 days' clear notice and thus it was not possible for him to formulate his objections. He further intimated about his intention to initiate proceedings in this Court. He applied for an adjournment, which was rejected. The proceedings culminated in an award dated 18.02.1974 bearing No. 1651-A passed on the same notifications under Sections 4 and 6 of the said Act (SIC)

11. The learned Single Judge observed:-

"This award explains the position regarding the 23 bighas 7 bids was left out of the earlier award. That area, it will be recalled, comprised of land in the following khasra numbers:

266 3-06 296 6-05 307 3-03 441 5-05 736 5-08 The present award points out: (a) The full extent of Khasra No. 266 was 22 bighas 12 biswas. It was learnt in 1969 that out of this 19 bighas 6 bids was had been transferred to the Delhi Administration as early as 10.10.1962. It had been clarified in November, 1972 that 2 bighas 2 bids was was evacuee property "which cannot be acquired by this supplementary award". This left a balance of 1 bigha 4 bids was in Khasra No. 266/1 which had been given to a non-evacuee in 1960.

(b) It had been subsequently learnt (in October, 1969 and September, 1971) that Khasra number 298 (sic) and 307 had been permanently allotted/sold to Santokh Singh and Bhiman Dass respectively.

(c) Khasra No. 441 was stated to be available by book transfer.

(d) Khasra No. 736 is stated to have been transferred to Delhi Administration by "book transfer" on 10.10.1962.

In this state of affairs, it is stated, the "supplementary award" was being made in respect of Khasra Nos. 266/1(-104), 296(6-05) and 307(3-03) or 10 bighas 12 bids was in all. The award proceeds to award compensation in respect of Khasra No. 307 at Rs. 12000 per bigha plus solarium at 15%. In the operative part of the award it is mentioned that the petitioners' applications for adjournment dated 20.3.1972 and 30.3.1972 had been granted and the proceedings adjourned to 30.3.1972 and 6.4.1972 but that the petitioner had not filed any claim for compensation or produced any evidence. There is another paragraph in the award regarding possession which also needs to be set out. It reads:

"In addition to the above structures," (on other land with which we are not concerned) "there are staff quarters which were found under construction by the Delhi Electric Supply Undertaking (M.C.D.) in a major portion of the land bearing No. 307 at the time of site inspection. The date of starting construction of the quarters could not be verified on making spot enquiries. But it has been confirmed from the perusal of the entries made in the Khasra girdawari pertaining to the year 1962-63 in which the notification u/s 4 was made, that construction of the quarters had been started after the date of notification u/s 4 made in this case. Moreover, according to letter No..... dated 22.12.1971 from the Asstt. Housing Commissioner (I)..... the land is to be allotted to the D.E.S.U. (M.C.D.) for construction of staff quarters. Keeping in view the above facts, question of assessment of compensation for the said quarters does not arise.

As regards the possession of the land under these staff quarters, a decision will be taken in consultation with the Land and Building Department, Delhi Administration, Delhi after making the award and before taking over possession of the land under reference."

The writ petitioner thereafter filed the writ petition.

12. The learned Single Judge noted that the writ petition came up for hearing some time in 1975-76 and was adjourned at the request of the parties. On

24.1.1977 it was dismissed for default and then it was restored. In October, 1977 the petitioner amended the writ petition to incorporate certain further pleas. He made an allegation that the Collector had not made any report u/s 5A and that no such report had been considered by the appropriate Government before making the declaration u/s 6. This came up for hearing in March, 1978 when it was again dismissed for default. Again it was restored and then came up for hearing twice once in 1979 and again in 1980-81. After hearing the writ petition for some time it was felt that this was a fit case in which, if possible, the petition should try to arrive at a settlement with the respondents. Though the matter was adjourned twice for this purpose and the petitioner also made a very detailed representation in January, 1980 it has not been possible for the parties to arrive at any mutual agreement. In November, 1980 the petitioner again amended the writ petition to include a reference to Award No. 1651-A and to raise some further contentions regarding the validity of the notifications, the award and the further proceedings. It is in these circumstances that, after a good deal of delay and a lot of chequered history, this writ petition has now come up for final hearing.

13. The judgment of the learned Single Judge can be summarized thus:-

- 1) The subsequent acquisition proceedings would be valid, if the same is for a public purpose, despite the fact that earlier proceedings may be held to be bad in law.
- 2) The petitioner was aware of the acquisition proceedings and the requirement of Section 9(3) must be held to have complied with.
- 3) The Government is not precluded from passing a supplementary award if it realizes its mistake made at the time of the first award, but Therefore an opportunity to the persons concerned must be given. However, having regard to the facts and circumstances of this case, the acquisition in respect of the land in question must be deemed to have the acquisition proceedings, although delay according between issuance of notification under Sections 4 and 6 of the said Act may be vital, the owner of the land does not suffer for making a delayed award, particularly when no time-limit is laid down Therefore under the provisions of the said Act. However, the learned Single Judge did not express any opinion on the question that the land acquisition proceedings must be initiated and completed within a reasonable time and such a provision should be read in the statute.
- 4) The effect of the second notification dated 07.10.1968 would be that thereby the earlier notification 05.03.1963 had been cancelled.
- 5) Referring to various decisions, the learned Single Judge formulated the question as to whether the writ petitioner was justified in saying that there was no satisfactory Explanation for the issuance of second notification u/s 4 of the said Act on 07.10.1968, which found favor with the learned Single Judge holding:-

"It may be that if the notification dated 7.10.1968 is shown to be invalid for some reason, it can be ignored and proceedings continued under the 1963 notifications. But there is no ground to consider it as non est. Its expiry or death by efflux of time cannot negative the fact of its birth or existence for a period of three years within which it could have been vitalized by a further declaration u/s 6 and consequence further proceedings. The failure to issue the declaration within three years does not have the effect of wiping out the notification of 7.10.1968 ab initio; it only terminates the acquisition proceedings initiated by it. Once I reach the conclusion that it was a valid and operative notification it has to be given effect to and the only way in which it can be given effect is by treating it as having impliedly, if not expressly, superseded the earlier notification of 5.3.1963. The principle of construction applicable in such a situation is that where two notifications relate to the same subject matter and effect cannot be given to both of them at the same time, the later one should be treated as having repealed the former."

6) The notification dated 07.10.1968 was not issued due to any mistake.

7) The respondents had not placed before the Court the relevant records nor made any attempt to bring out the reasons why the notification dated 07.10.1968 was issued.

As regards submission of the learned counsel appearing on behalf of Delhi Administration that the said records were untraceable. The learned Single Judge observed:-

"Notifications u/s 4 of the Act are not, and cannot be, issued light and without reason. The matter must have been put up to the Lt. Governor or the Chief Commissioner and before such a notification was issued, there must have been ample notings by various officers setting out the reasons why the notifications was necessary, particularly when there has been already a notification in regard to the lands in question. It is very unfortunate that this material has not been placed before the court despite several opportunities, which the respondents have had for producing these records. The scope of these notifications has, Therefore, to be interpreted only on the basis of such material as is available on the face of the notifications and the proceedings."

8) Imaging what kind of mistake could have been made in issuance of the said notification dated 07.10.1968 and answered the same in the following terms:-

"A comparison of the schedule to the original notification u/s 4, the statements contained in the award of 1963 and the notification of 1968 shows that the second notification of 1968 covers (a) the fields which have been referred to in paragraph 2 of the award dated 29.11.1963 as the land already acquired u/s 12 of the Displaced Persons Act in respect of which an award is not necessary and which could be taken over by mere book transfer and (b) also a new piece of land (Khasra No. 560) which is not included in the original notification. One thing that clearly appears from this is that there was an intention to issue an effective

notification so far as item (b) is concerned; the position cannot be different in respect of item (a) covered by the same notification. That apart, let us analyze the process of thought could have been in regard to them at that time. It could have been any one of the following:

(1) The lands are covered by the notification of 5.3.63 but no compensation was determined for them in award of 22.11.63 because of an erroneous impression that they belonged to the Government. This can be done now for there is nothing to preclude more than one award in respect of the same notification.

(2) Though the lands were covered by the notification of 5.3.1963, they were left out of the award. This was because it was thought that the lands being Government lands, there cannot be acquisition proceedings in respect thereof and the notification of 5.3.1963 was thought invalid and inoperative in respect thereof. However, now, that they are found to be not Government lands but private ones, the notification u/s 4 will be operative in respect thereof and further proceedings can be taken. The partial award of November, 1963 cannot stand in the way of this procedure.

(3) The notification u/s 4 was issued in respect of the lands in question though they were shown in the records as belonging to the Government. The notification should be Therefore treated as invalid, ineffective and inoperative as there can be no acquisition in respect of lands, which already belong to the Government. (There is a fallacy in this line of argument for the notification of 5.3.1963 cannot become invalid, merely because the lands were thought to belong already to the Government, when they actually belonged to private individual and hence capable of acquisition).

(4) The lands were covered by the notification u/s 4. They were left out of the award because it was erroneously thought that as they belonged to the Government the notification was inoperative in respect of them. This is not correct as, since they are private lands, the notification was fully effective even in regard to them. But the award proceeded on the basis that acquisition proceedings in respect of them were unnecessary and withdrew these lands from the proceedings.

(5) The lands were covered by the notification of 5.3.1963. This was incorrectly considered to be inoperative in respect of the petitioner's lands and further proceedings were not taken on hand. The legal effect of this situation is not quite clear. The petitioner now says that his status vis-a-vis the land has not been considered at all. In the circumstances the best course without going into the effect of the past proceedings, is to notify the lands again and acquire them afresh.

It will be seen that the notification u/s 4 dated 7.10.1968 could have become necessary only in views (3) to (5) above."

9) As regards the contention of the Government that there was a mistake in

issuing the notification dated 07.10.1968, it was held since the lands were already covered by the earlier notification, the State did not render any satisfactory Explanation therefore.

14. As regards the question as to whether there can be any supersession of the earlier notification dated 05.03.1963 issued u/s 4 of the said Act and declaration dated 22.08.1968 issued u/s 6 of the said Act, by reason of the subsequent notification dated 07.10.1968, the same was answered in affirmative.

15. The learned Single Judge relied upon the various decisions rendered by different High Courts and came to the conclusion that the latter notification having been validly issued, the same cannot be ignored, but must be given its full legal effect. It was held:-

"For the reasons discussed above, I accept the contention urged on behalf of the petitioner that, even if the award of 29.11.1963 cannot be interpreted as resulting in the withdrawal of the acquisition proceedings initiated on 5.3.1963, the notification of 7.10.1968 should be treated as a fresh notification u/s 4 intended to, and having the effect of, repeal of or the termination of the effect of, the notification of 5.3.1963. This not having been followed up by a declaration u/s 6, within three years thereafter, the acquisition proceedings against the petitioner's lands are time barred and cannot be pursued after 6.10.1971."

16. The learned Single Judge rejected the contentions raised on behalf of the appellant that the writ petition should not be entertained either on the ground that the writ petitioner was guilty of supersession of material facts and/or on the ground of delay and laches.

17. The learned Single Judge noticed that despite grant of several adjournments to the parties for arriving at a negotiated settlement, the same did not fructify. He, however, opined that purposeful negotiation in the matter would be held and the dispute would be settled.

18. The learned Single Judge disposed of the writ petition by issuing the following directions:-

"(1) As the proceedings started by the notifications of 5.3.1963 and 22.8.1963 stand superseded or came to an end by the notification u/s 4 dated 7.10.1968, which in turn has been allowed to lapse, all the proceedings taken by the respondents for the acquisition of the petitioner's land after 6.10.1971 including the proceedings u/s 9 and the award made u/s 12 of the Land Acquisition Act on 18.2.1974 in so far as they relate to the petitioner's land are illegal and without jurisdiction and are hereby quashed.

(2) The respondents are directed to hand over vacant possession of the lands in question to the petitioner but they are given time till 31.12.1983 to do so. A somewhat long time is given to the respondents in this regard in view of the fact that the staff of the DESU have been accommodated in the quarters which stand on the petitioner's land and the DESU will need time to decide what steps it

should take in respect of the quarters and, if need be, to arrange for alternative accommodation to these employees and inasmuch as the administration will also need some time to decide what steps it would like to take in the matter. If, for any sufficient reason, a further extension of this period is considered necessary, the respondents should apply to the Court for such extension, after notice to the petitioner, on or before 30th September, 1983.

(3) It will be open to the respondents, within the above period of a little more than a year, to take steps to acquire the land of the petitioner afresh and taken possession of them in appropriate steps to secure lawful possession of the lands from the petitioner by negotiation or otherwise as they may be advised and in case they succeed in doing so the relevant facts should be brought to the notice of the court and appropriate directions obtained, after due notice to the petitioner, for permission to continue in possession beyond 31.12.1983 or the extended date. Failing such directions, the direction in Para (2) above will become operative on 31.12.1983 or the extended date allowed there under, if any.

(4) It will be open to the petitioner to pursue such remedies as he may have in law for recovering damages for the use and occupation of the lands by the respondents till 31.12.1983 or the extended date, if any; and, in the event of the respondents handing over vacant possession of the lands to the petitioner it will be open to them and, in particular, the DESU to pursue such remedies as may be available to them in law in respect of the buildings that they have put up on the land.

(5) The respondents, and in particular the DESU, are restrained from putting up any further construction on the land in question or additions to the existing structures thereon and are directed to maintain the status quo in respect thereof until 31.12.1983 or any further date up to which the period mentioned in para (2) above may be extended by this court on an application made under the said para."

19. Before advertng to the contentions raised in this Letters Patent Appeal, we may notice that even during pendency of this appeal, the parties sought to negotiate the matter as regards amount of compensation.

20. Delhi Administration, however, issued fresh notifications under Sections 4 and 6 of the said Act. Notices had also been issued under Sections 9 and 10 of the said Act. Despite the same, adjournment had been sought for on behalf of the applicant.

21. On 23.04.1984, an order of status quo was issued as subject to further orders of the Court and also to the result of any negotiation that were reportedly going on.

22. On 09.11.1987, the Division Bench of this Court noticed that the Administration was satisfied with the impugned judgment, as it did not come up

in appeal. It further noticed that the Government had issued notifications under Sections 4 and 6 of the said Act dated 26.03.1983 and 30.05.1983 and in the aforementioned situation, it was held:-

"... This Court on application by the appellant, namely - D.E.S.U. directed stay of further proceedings before the Land Acquisition Collector by order dated 25th July, 1983 and when the matter came up after notice (C.M. No. 326/83) the order passed by the Division Bench was modified and it was directed "status quo as to giving of possession by the appellant to the respondent No. 1 subject to further orders of this Court and also subject to the result of any negotiations that are reportedly going on." It was on these terms that the interim order dated 25th July, 1983 stood modified. It is, Therefore, made clear that proceedings before the Land Acquisition Collector in pursuance of the Notifications dated 26th March, 1983 and 30th May, 1983 under Sections 4 and 6 of the Act respectively are not stayed any more. They can go on. However, the possession of the appellant from the quarters already built up will not be disturbed till the disposal of LPA No. 46 of 1983. The application stands disposed of.

Liberty to apply after the award is announced."

23. Despite the said direction, award was announced and it now transpired that no further proceedings were taken up.

24. The matter did not appear in the Board for long 8 years.

25. An application for early hearing was allowed only on 22.03.1995, but hearing could not take place. On 07.12.2000, the adjournment to obtain instructions in the matter. However, on the next date fixed, namely, 11.01.2001, the learned counsel did not appear and the appeal was dismissed for non-prosecution. On an application for restoration, however, this appeal was restored on 11.12.2001 whereafter, the appeal was heard on 22.02.2002 and 25.02.2002.

26. The core question, which arises for consideration, in this appeal is as to whether by reason of a subsequent notification, the earlier notification stands repealed by necessary implication.

27. The said Act is complete Code by itself. The State in exercise of its power of eminent domain is entitled to acquire lands for public purpose subject to payment of just compensation. Acquisition of land being expropriatory in nature, the safeguards provided for therein must be followed.

28. In the instant case, admittedly a notification as also a declaration envisaged u/s 4 and 6 of the said Act were issued on 05.03.1963 and 22.08.1963.

29. The question is as to whether by reason of the award dated 29.11.1963 the acquisition became complete. The answer to the said question in the peculiar facts of this case must be rendered in negative.

30. Section 9 of the said Act provides for notice to interested persons. How and in what manner notices were issued, in terms of Sub-section (1) of Section 9 had

not been disclosed by the State. A finding of fact has been arrived at on the basis of records of the case proceeded on the basis that the lands were Government lands and merely book transfer would serve the purpose. The land in question together with some other land was, thus, kept out of the acquisition proceedings and the same did not form part of the award.

31. If on the said belief, no notice as contemplated under Sub-section (1) of Section 9 of the said Act vis issued, the same would vitiate the proceedings.

32. In any event, the lands in question were not the subject matter of the award. If lands in question were not the subject matter of the award, the acquisition proceedings did not become final.

33. In the aforementioned situation, the subsequent notification dated 07.10.1968 u/s 4 of the said Act was issued by the respondent.

34. The learned Single Judge, in our opinion, has rightly held having regard to the contents of the notification that as thereby several lands had been excluded and new land had been included, the earlier notifications must be held to have been rescinded by necessary implication.

35. In *The State of Madhya Pradesh and Ors., v. Vishnu Prasad Sharma and Ors.* (SIC), it was held:-

"... It seems to us clear that once a declaration u/s 6 is made, the notification u/s 4(1) must be exhausted, for it has served its purpose. There is nothing in Sections 4, 5A and 6 to suggest that Section 4(1) is a kind of reservoir from which the government may from time to time draw out land and make declarations with respect to it successively. If that was the intention behind Sections 4, 5A and 6 we would have found some indication of it in the language used therein. But as we read these three sections together we can only find that the scheme is that Section 4 specifies the locality, then there may be survey and drawing of maps of the land and the consideration whether the land is adapted for the purpose for which it has to be acquired, followed by objections and making up of its mind by the government what particular land out of the locality it needs. This is followed by a declaration u/s 6 specifying the particular land needed and that in our opinion completes the process and the notification u/s 4(1) cannot be further used thereafter. At the stage of Section 4 the land is not particularized but only the locality is mentioned; at the stage of Section 6 the land in the locality is particularized and thereafter it seems to us that the notification u/s 4(1) having served its purpose exhausts itself. The sequence of events from a notification of the intention to acquire [Section 4(1)] to the declaration u/s 6 unmistakably leads one of the reasonable conclusion that when one a declaration u/s 6 particularizing the area out of the area in the locality specified in the notification u/s 4(1) is issued, the remaining non-particularized area stands automatically released. In effect the scheme of these three sections is that there should be first a notification u/s 4(1) followed by one notification u/s 6 after the government has made up its mind which land out of the locality it

requires."

36. Yet again in *Bhuthnath Chatterjee v. State of West Bengal and Ors.*, (1969) 3 SCC 675, the law has been stated in the following terms:-

"... But the question in each case is whether there was an intention to supersede the previous notification; and if the Government does not choose to explain the reasons which persuaded it to issue a second notification, the Court may be justified in inferring that it was intended to supersede the earlier notification by the later notification."

37. The same learned Judge subsequently in *Raghunath and Ors. v. State of Maharashtra and Ors.*(SIC), followed the decision of Vishnu Prasad Sharma's case (*Supra*) and held:-

"... In principle, there is no distinction between a case where a declaration u/s 6 is declared invalid by the Court and a case in which the Government itself withdraws the declaration u/s 6 when some obvious illegality is pointed out. The point in issue in this appeal is thus directly governed by the three earlier decisions of this Court and the High Court was fully justified in dismissing the writ petition on this ground."

38. Yet again in *Hindustan Oil Mills Ltd. and Anr. v. Special Deputy Collector (Land Acquisition)*(SIC), where three notifications had been issued, distinguishing his earlier decision in *Raghunath's* case (*Supra*), it was observed:-

"... Even the third notification does not say that it is the entirety of survey No. 1351 that is proposed to be acquired but it makes a distinction between the land belonging to Sampatlal and the land belonging to the company. It transpires only from the award that the full extent of the survey No. 135 1 was taken as 15-35-18 acres. It is only in this notification for the first time that the lands proposed to be acquired are defined with sufficient precision or clearness and, in our opinion, it is this notification alone that can be taken as the effective notification for purposes of computing the market value. We would like to make it clear that we are resting our conclusion entirely on the language of the notifications in the present case. We do not wish to go to the length of suggesting, as Shri Sachhar did, that, wherever there are notifications by way of amendments, it is only the last of them that can be taken as the effective notification u/s 4. Shri Sachhar in this context referred to a decision of this Court in *Raghunath and Others Vs. State of Maharashtra and Others*, to support his contention that where a subsequent notification is issued it should be deemed to have superseded the earlier one. In that case a notification u/s 4 had been issued in respect of certain lands and this was followed by another notification u/s 4 in respect of certain lands, some of which had been included in the earlier notification as well. A bench of this Court, of which one of us was a member, held that latter notification must be considered to have superseded the earlier one. That decision rested on its facts and cannot be treated as an authority for the general proposition that, even in cases like the present one, where subsequent

notifications are in the nature of amendments to the earlier one, the subsequent amendment should be treated as the only effective one. In our opinion where there is a notification, which purports to be by way of an amendment, the question whether it is really one rectifying certain errors in the earlier one or whether its nature is such as to totally change the entire complexion of the matter would have to be considered on the terms of the relevant notifications. In the present case, as we have already said, it appears to us, on a proper construction of the notifications, that the real and effective notification in survey No. 135 1, was only the notification dated 28-2-1963. The first contention is disposed of accordingly."

39. Thus the law, which emerges is that when an amendment to the notification is issued, the amendment would relate back to the date of earlier notification and the principle of repeal by necessary implication may not apply.

40. However, in a case of this nature where the State itself, having regard to the peculiar facts and circumstances of this case, thought it fit to substitute one notification by another in terms whereof not only amendment in the boundaries, etc. had been made, but some plots have been withdrawn and new plots had been inserted, there is no escape for the conclusion that the State itself intended to withdraw the earlier notification.

41. The submission of Ms. Ahlawat to the effect that as possession had been taken, the notification could not be withdrawn cannot be accepted, having regard to the finding of fact arrived at by the learned Single Judge. So far as the submission of the learned counsel that only a tentative decision has been taken to withdraw the notification and not a final one, it may be noticed that although there cannot be (SIC) language used in Section 48 of the said Act, the State Government could not have withdrawn from the acquisition once the possession had been taken over, but taking over of possession for the purpose of Section 48 would clearly mean a possession taken in terms of Section 16 of the said Act. Possession can be taken only when an award is made. No award has been made so far as the land in question was concerned, and Therefore, the possession obtained, if any, was an illegal one. The same neither in law nor in principle would justify retention of the lands by the appellants inter alias on the ground that the same had been validly acquired.

42. Another aspect of the matter cannot be lost sight of. So far as the State is concerned, it had accepted the judgment under appeal. It issued a fresh notification in the year 1983 as also a declaration u/s 6 of the said Act, although it may be correct that the appeal had been pending, but the Court can certainly take notice of the subsequent event so as to consider the conduct of the parties.

43. The contention of Ms. Luthra, the learned counsel appearing for the Delhi Administration, to the effect that the subsequent amended award would amount to correction of award in terms of Section 13A of the said Act must be rejected having regard to the fact that the same had been inserted by Section 10 of the

Amending Act, 1984 which has a prospective effect. In any event, it cannot be said that a typographical or clerical error crept in. Even such errors in view of the said provision could not have been corrected after a period of 6 months.

44. In law, the power of the State to withdraw from the acquisition cannot be used in the event possession had been taken over in terms of the provisions of the said Act, but it will bear repetition to state that possession when not taken in terms of the provisions of the said Act, but de hor's it, the entire proceedings must be held to be vitiated in law.

45. In that view of the matter, the decision of the Apex Court in Lt. Governor of Himachal Pradesh and Another Vs. Avinash Sharma, , State of Maharashtra and Another Vs. Umashankar Rajabhau and Others, , Murari and Others Vs. Union of India (UOI) and Others, ; and H.M. Kelogirao and Others Vs. Govt. of A.P. and Others, relied upon by Ms. Ahlawat cannot be said to have any application in the instant case.

46. However, there cannot further be any doubt that the appellant being a beneficiary is a "person aggrieved" and could prefer appeal as has been held by the Apex Court in Agra Development Authority Vs. Special Land Acquisition Officer and Others, ; Darshan Singh and others Vs. Gurdev Singh, ; and Larsen & Turbo Ltd.v. State of Gujarat and Ors. (SIC).

47. Strong reliance has been placed on a decision of the Apex Court in Satendra Prasad Jain and Ors. v. State of U.P. and Ors. (SIC) for the proposition that non-payment of the compensation before taking over a possession does not vitiate the proceedings, but therein a notification had been issued u/s 17(1) of the said Act. Sub-section (3) of Section 17 of the said Act mandates that the Collector shall at the time of taking possession offer to the persons interested, compensation for the standing crops and trees on such land and for any other damage sustained by them caused by such sudden dispossession and not expected in Section 24; and only in a case such offer is not accepted, the value of such crops and trees and the amount of land and other damages shall be allowed under the said provisions. Sub-section (3A) of Section 17 of the said Act, which was again inserted in the year 1984, is as follows:-

"(3A) Before taking possession of any land under Sub-section (1) or Sub-section (2), the Collector shall, without prejudice to the provisions of Sub-section (3),--

(a) tender payment of eighty per centum of the compensation for such land as estimated by him to the persons interested entitled thereto, and

(b) pay it to them, unless prevented by some one or more of the contingencies mentioned in Section 31, Sub-section (2) and where the Collector is so prevented, the provisions of Section 31, Sub-section (2), (except the second proviso thereto), shall apply as they apply to the payment of compensation under that section."

48. Sub-section (3A) of Section 17 of the said Act cannot be said to have any

application in the instant case having regard to the fact that acquisition was not made on an emergency basis. Moreover, in the instant case, no award was prepared, as has been found by the learned Single Judge, inter alias on the ground that the land belonged to the Government of India. Even the mandatory procedures u/s 9 of the said Act had not been complied with and in fact no award had been prepared in terms of Section 11 of the said Act in

49. For the reasons aforementioned, we affirm the judgment. and order dated 26.11.1982 passed by the learned Single Judge.

50. The question, however, arises as to in a peculiar situation of this nature, what relief should be granted to the appellant herein.

51. In a case of this nature, where the acquisition is said to be invalid, would it be equitable to direct restoration of the land? The answer to the said question must be rendered in negative.

52. The jurisdiction of this Court under Article 226 of the Constitution of India is a discretionary one. The Court in a given situation can mould the relief. As the State had accepted the judgment of the learned Single Judge and issued a notification u/s 4 of the said Act, we are of the opinion that the appellant should be awarded compensation as if the notification had been issued on 26.03.1983. The writ petitioner shall, however, be entitled to compensation for taking over illegal possession of his land from 5.7.1966 till the date of notification u/s 4 of the said Act. The writ petitioner and first respondent herein shall also be entitled to interest and solarium in terms of the provisions of the Said Act.

53. This order is being passed keeping in view the fact that the appellant here has already constructed quarters for its officers and thus in equity it may not be justifiable in directing restoration of lands by reason of the judgment of the Apex Court in Haji Saeed Khan and Ors. v. State of U.P. and Ors.¹³, wherein it has been held:-

11. After considering the various contentions that were raised before us, we felt it reasonable that, having regard to the peculiar facts of these cases, interests of justice would be met if the date of issue of Section 4(1) notification is shifted from 30-3-1995 to 15-6-1998, for purposes of fixing the market value of the land owned or possessed by the appellants before us. When the suggestion came from the Bench, learned Senior Counsel for the Appellants as well as the learned Additional Solicitor-General appearing for the State of U.P. as well as the other counsel for the Town Development Authority also felt that this suggestion was reasonable.

12. The reason why the Court made the above suggestion is that possession has already been taken from the appellants on 15-6-1998. Any fresh direction at this stage might prejudice the interests of both sides. We wanted to avoid fresh litigation. Already there has been litigation for nearly ten years when earlier notifications were questioned or lapsed. Therefore, instead of deciding the matter

on merits, we suggested to the counsel on both sides that it would be reasonable if they agreed that the market value of the property could be fixed treating 15-6-1998 as the date of notification u/s 4(1). In fact, out of a large extent of land that was sought to be acquired, the appellants are interested only in small pieces of land and in the event the Proceedings being quashed, so far as these small pieces of land are concerned, that would upset the entire purpose of the land acquisition. These were the reasons why we tried to put an end to further litigation and suggested the parties to accepted 15-6-1998 as the date of fixing the market value.

54. For the reason aforementioned, this appeal is disposed of with the aforementioned directions. However, in the facts and circumstances of this case, the appellant must bear the costs of the first respondent in both the writ petition as also in this appeal, which we assess at Rs. 50,000/-.

S.B. Sinha, C.J.—An important question of law as regards interpretation of different provisions of the Land Acquisition Act, 1894 (hereinafter referred to (SIC) Appeal, which arises out of a judgment and order dated 26.11.1982 passed by a learned Single Judge (Hon"ble S. Ranganathan, J., as he then was) of this Court.

2. A land measuring 3 bighas 3 bids was comprised in Khasra No. 307 in Village Kilokari was the subject matter of the writ petition. The writ petitioner, i.e., respondent No. 1 herein purchased the said land on 03.03.1962. The sale deed was registered on 06.06.1962. He got the said land mutated in his name on 17.08.1964. Prior thereto a notification dated 05.03.1963 was issued purported to be in terms of Section 4 of the said Act in relation to the land admeasuring 139 bighas and 2 bids was situated in the said village stating that the land was likely to be required to be taken by the Government on a public expense for a public purpose, namely, planned development of Delhi. The land included in the notification are filed Nos. 264, 266 (part), 290, 296, 297, 303/2, 306, 307, 1128/328/3, 246, 284, 293, 440, 441, 736, 738, 739, 743, 744, 745, 746, 747/3 and 747/4.

3. A declaration u/s 6 of the said Act was also made on 22.08.1963. The said declaration also covered the area of 139 bighas and 2 biswas. There exist some discrepancies as regards some field nos. and the area in the notification u/s 4 and declaration u/s 6 of the said Act.

4. Pursuant to and in furtherance thereof, an award was made on 29.11.1963 bearing No. 1651. Paragraph 2 of the said award reads thus:-

"The area under acquisition as given in the notification u/s 6 of the Act is 139 Bighas while on measurement by the Field (SIC) field Nos. 266 (3 bighas - 6 biswas) 296 (6-5), 307 (3-3), 441 (5-5), 736 (5-8) - total area 23 bighas 7 bids was - is still Central Government land already acquired u/s 12 of the Displaced Persons (Compensation & Rehabilitation) Act, 1954, as verified from the Regional Settlement Commissioner's office, Jaisalmer House, New Delhi, vide letter No. 2-

(misc.)/Auc.50(R)229 dated 18.11.1963. This land can be obtained by book-transfer from the department. Thus the land under acquisition comes to 113 bighas 13 bids was only, for which the acquisition file has been prepared. The land under acquisition has 18 filed numbers as detailed in form of Land Acquisition as prepared under para 55 of the Financial Commissioner's standing order No. 28."

5. A bare perusal of the said Award would clearly show that the same in relation to 113 bighas and 13 bids was only and no award was made in respect of the rest 23 bighas and 7 bids was including writ petitioner's land measuring 3 bighas and 3 bids was situated in field No. 307. There were certain lands belonging to the Central Government, which were however in occupation of tenants and allottees. The award proceeded to say that the measurement and classification of the land had been accepted by the land owners. The award categorically states that possession of the land had not been taken over so far. The land in question was handed over to Delhi Electricity Supply Undertaking (in short, "DESU"), i.e., the appellant herein to enable it to construct staff quarters for its employees. The appellant allegedly deposited a sum of Rs. 10,16,400/- towards the price of land measuring 6.98 acres at the rate of Rs. 20/- per square yard on 24.05.1966 and a formal possession was delivered on 05.07.1966.

6. The writ petitioner at the relevant time was employed in Bombay. After his retirement in 1966, he returned to Delhi. acquisition proceedings. By a letter dated 15.08.1967 addressed to the Land and Housing Commissioner it was stated that he had purchased a plot of land and before planning constructions, etc. on the said land he would like to know as to whether the said land had been acquired at any time subsequent to the date of purchase for any purpose. He stated that in case the said land had been acquired for any lawful purpose, he may be allowed to inspect the file or files containing acquisition, the details of compensation paid or payable, the party to whom the compensation had been paid or made payable etc. By a letter dated 12.01.1968, the Administration informed the writ petitioner that the land had been notified u/s 6 of the said Act on 22.08.1963 and for payment of compensation, he may approach the Land Acquisition Collector.

7. On 07.10.1968, the Delhi Administration issued a notification u/s 4 of the said Act bearing No. 7(34)/61-L&H. It states:-

"Whereas it appeared to the Lt. Governor of Delhi that land is likely to be required to be taken by the Government at the public expense for a public purpose, namely, for the planned development of Delhi."

8. Schedule appended to the said notification specifies 31 bighas 15 bids was of land in village Kilokari comprising field Nos. 266/2 (min), 296, 307, 441 and 506. The field Nos. thus specified included khasra No. 307 belonging to the writ petitioner. The notification also included there against three more field Nos. 266/2 (min), 296 and 441, which were included in the earlier notification dated

05.03.1963 and which formed part of the land 23 bighas 7 in khasra No. 460, which did not find place in the earlier notification dated 05.03.1963 had also been included.

9. The writ petitioner contended that he was not aware of the said notification till June, 1971, but he came to know about the same only when he found that certain constructions were being raised on the said land. Upon enquiry, he came to learn about the issuance of the said notification. He applied to the Land Acquisition Collector for a copy of the award on 15.07.1971 whereupon an endorsement was made that the said field had been acquired "under award No. 1651" and that the acquisition had been made "by book-transfer by this award". Evidently Therefore no award was made in terms of the said notification dated 07.10.1968.

10. The validity of the said land acquisition proceedings was the subject matter of challenge in the writ petition. It, however, appears that the writ petitioner served a notice dated 19.08.1971 upon the respondents, which evoked no reply. A notice, however, was issued to the writ petitioner u/s 9 of the said Act calling upon him to appear before the Collector on 20.03.1972 and file his claim regarding compensation. The writ petitioner received the said notice on 15.03.1972 and he filed a reply on 20.03.1972. According to the writ petitioner, he was not given even 15 days' clear notice and thus it was not possible for him to formulate his objections. He further intimated about his intention to initiate proceedings in this Court. He applied for an adjournment, which was rejected. The proceedings culminated in an award dated 18.02.1974 bearing No. 1651-A passed on the same notifications under Sections 4 and 6 of the said Act (SIC)

11. The learned Single Judge observed:-

"This award explains the position regarding the 23 bighas 7 bids was left out of the earlier award. That area, it will be recalled, comprised of land in the following khasra numbers:

266 3-06 296 6-05 307 3-03 441 5-05 736 5-08 The present award points out: (a) The full extent of Khasra No. 266 was 22 bighas 12 biswas. It was learnt in 1969 that out of this 19 bighas 6 bids was had been transferred to the Delhi Administration as early as 10.10.1962. It had been clarified in November, 1972 that 2 bighas 2 bids was was evacuee property "which cannot be acquired by this supplementary award". This left a balance of 1 bigha 4 bids was in Khasra No. 266/1 which had been given to a non-evacuee in 1960.

(b) It had been subsequently learnt (in October, 1969 and September, 1971) that Khasra number 298 (sic) and 307 had been permanently allotted/sold to Santokh Singh and Bhiman Dass respectively.

(c) Khasra No. 441 was stated to be available by book transfer.

(d) Khasra No. 736 is stated to have been transferred to Delhi Administration by "book transfer" on 10.10.1962.

In this state of affairs, it is stated, the "supplementary award" was being made in respect of Khasra Nos. 266/1(-104), 296(6-05) and 307(3-03) or 10 bighas 12 bids was in all. The award proceeds to award compensation in respect of Khasra No. 307 at Rs. 12000 per bigha plus solarium at 15%. In the operative part of the award it is mentioned that the petitioners' applications for adjournment dated 20.3.1972 and 30.3.1972 had been granted and the proceedings adjourned to 30.3.1972 and 6.4.1972 but that the petitioner had not filed any claim for compensation or produced any evidence. There is another paragraph in the award regarding possession which also needs to be set out. It reads:

"In addition to the above structures," (on other land with which we are not concerned) "there are staff quarters which were found under construction by the Delhi Electric Supply Undertaking (M.C.D.) in a major portion of the land bearing No. 307 at the time of site inspection. The date of starting construction of the quarters could not be verified on making spot enquiries. But it has been confirmed from the perusal of the entries made in the Khasra girdawari pertaining to the year 1962-63 in which the notification u/s 4 was made, that construction of the quarters had been started after the date of notification u/s 4 made in this case. Moreover, according to letter No..... dated 22.12.1971 from the Asstt. Housing Commissioner (I)..... the land is to be allotted to the D.E.S.U. (M.C.D.) for construction of staff quarters. Keeping in view the above facts, question of assessment of compensation for the said quarters does not arise.

As regards the possession of the land under these staff quarters, a decision will be taken in consultation with the Land and Building Department, Delhi Administration, Delhi after making the award and before taking over possession of the land under reference."

The writ petitioner thereafter filed the writ petition.

12. The learned Single Judge noted that the writ petition came up for hearing some time in 1975-76 and was adjourned at the request of the parties. On 24.1.1977 it was dismissed for default and then it was restored. In October, 1977 the petitioner amended the writ petition to incorporate certain further pleas. He made an allegation that the Collector had not made any report u/s 5A and that no such report had been considered by the appropriate Government before making the declaration u/s 6. This came up for hearing in March, 1978 when it was again dismissed for default. Again it was restored and then came up for hearing twice once in 1979 and again in 1980-81. After hearing the writ petition for some time it was felt that this was a fit case in which, if possible, the petition should try to arrive at a settlement with the respondents. Though the matter was adjourned twice for this purpose and the petitioner also made a very detailed representation in January, 1980 it has not been possible for the parties to arrive at any mutual agreement. In November, 1980 the petitioner again amended the writ petition to include a reference to Award No. 1651-A and to raise some further contentions regarding the validity of the notifications, the award and the further proceedings. It is in these circumstances that, after a good deal of delay

and a lot of chequered history, this writ petition has now come up for final hearing.

13. The judgment of the learned Single Judge can be summarized thus:-

1) The subsequent acquisition proceedings would be valid, if the same is for a public purpose, despite the fact that earlier proceedings may be held to be bad in law.

2) The petitioner was aware of the acquisition proceedings and the requirement of Section 9(3) must be held to have complied with.

3) The Government is not precluded from passing a supplementary award if it realizes its mistake made at the time of the first award, but Therefore an opportunity to the persons concerned must be given. However, having regard to the facts and circumstances of this case, the acquisition in respect of the land in question must be deemed to have the acquisition proceedings, although delay according between issuance of notification under Sections 4 and 6 of the said Act may be vital, the owner of the land does not suffer for making a delayed award, particularly when no time-limit is laid down Therefore under the provisions of the said Act. However, the learned Single Judge did not express any opinion on the question that the land acquisition proceedings must be initiated and completed within a reasonable time and such a provision should be read in the statute.

4) The effect of the second notification dated 07.10.1968 would be that thereby the earlier notification 05.03.1963 had been cancelled.

5) Referring to various decisions, the learned Single Judge formulated the question as to whether the writ petitioner was justified in saying that there was no satisfactory Explanation for the issuance of second notification u/s 4 of the said Act on 07.10.1968, which found favor with the learned Single Judge holding:-

"It may be that if the notification dated 7.10.1968 is shown to be invalid for some reason, it can be ignored and proceedings continued under the 1963 notifications. But there is no ground to consider it as non est. Its expiry or death by efflux of time cannot negative the fact of its birth or existence for a period of three years within which it could have been vitalized by a further declaration u/s 6 and consequence further proceedings. The failure to issue the declaration within three years does not have the effect of wiping out the notification of 7.10.1968 ab initio; it only terminates the acquisition proceedings initiated by it. Once I reach the conclusion that it was a valid and operative notification it has to be given effect to and the only way in which it can be given effect is by treating it as having impliedly, if not expressly, superseded the earlier notification of 5.3.1963. The principle of construction applicable in such a situation is that where two notifications relate to the same subject matter and effect cannot be given to both of them at the same time, the later one should be treated as having repealed the former."

6) The notification dated 07.10.1968 was not issued due to any mistake.

7) The respondents had not placed before the Court the relevant records nor made any attempt to bring out the reasons why the notification dated 07.10.1968 was issued.

As regards submission of the learned counsel appearing on behalf of Delhi Administration that the said records were untraceable. The learned Single Judge observed:-

"Notifications u/s 4 of the Act are not, and cannot be, issued light and without reason. The matter must have been put up to the Lt. Governor or the Chief Commissioner and before such a notification was issued, there must have been ample nothings by various officers setting out the reasons why the notifications was necessary, particularly when there has been already a notification in regard to the lands in question. It is very unfortunate that this material has not been placed before the court despite several opportunities, which the respondents have had for producing these records. The scope of these notifications has, Therefore, to be interpreted only on the basis of such material as is available on the face of the notifications and the proceedings."

8) Imaging what kind of mistake could have been made in issuance of the said notification dated 07.10.1968 and answered the same in the following terms:-

"A comparison of the schedule to the original notification u/s 4, the statements contained in the award of 1963 and the notification of 1968 shows that the second notification of 1968 covers (a) the fields which have been referred to in paragraph 2 of the award dated 29.11.1963 as the land already acquired u/s 12 of the Displaced Persons Act in respect of which an award is not necessary and which could be taken over by mere book transfer and (b) also a new piece of land (Khasra No. 560) which is not included in the original notification. One thing that clearly appears from this is that there was an intention to issue an effective notification so far as item (b) is concerned; the position cannot be different in respect of item (a) covered by the same notification. That apart, let us analyze the process of thought could have been in regard to them at that time. It could have been any one of the following:

(1) The lands are covered by the notification of 5.3.63 but no compensation was determined for them in award of 22.11.63 because of an erroneous impression that they belonged to the Government. This can be done now for there is nothing to preclude more than one award in respect of the same notification.

(2) Though the lands were covered by the notification of 5.3.1963, they were left out of the award. This was because it was thought that the lands being Government lands, there cannot be acquisition proceedings in respect thereof and the notification of 5.3.1963 was thought invalid and inoperative in respect thereof. However, now, that they are found to be not Government lands but private ones, the notification u/s 4 will be operative in respect thereof and

further proceedings can be taken. The partial award of November, 1963 cannot stand in the way of this procedure.

(3) The notification u/s 4 was issued in respect of the lands in question though they were shown in the records as belonging to the Government. The notification should be Therefore treated as invalid, ineffective and inoperative as there can be no acquisition in respect of lands, which already belong to the Government. (There is a fallacy in this line of argument for the notification of 5.3.1963 cannot become invalid, merely because the lands were thought to belong already to the Government, when they actually belonged to private individual and hence capable of acquisition).

(4) The lands were covered by the notification u/s 4. They were left out of the award because it was erroneously thought that as they belonged to the Government the notification was inoperative in respect of them. This is not correct as, since they are private lands, the notification was fully effective even in regard to them. But the award proceeded on the basis that acquisition proceedings in respect of them were unnecessary and withdrew these lands from the proceedings.

(5) The lands were covered by the notification of 5.3.1963. This was incorrectly considered to be inoperative in respect of the petitioner's lands and further proceedings were not taken on hand. The legal effect of this situation is not quite clear. The petitioner now says that his status vis-a-vis the land has not been considered at all. In the circumstances the best course without going into the effect of the past proceedings, is to notify the lands again and acquire them afresh.

It will be seen that the notification u/s 4 dated 7.10.1968 could have become necessary only in views (3) to (5) above."

9) As regards the contention of the Government that there was a mistake in issuing the notification dated 07.10.1968, it was held since the lands were already covered by the earlier notification, the State did not render any satisfactory Explanation therefore.

14. As regards the question as to whether there can be any supersession of the earlier notification dated 05.03.1963 issued u/s 4 of the said Act and declaration dated 22.08.1968 issued u/s 6 of the said Act, by reason of the subsequent notification dated 07.10.1968, the same was answered in affirmative.

15. The learned Single Judge relied upon the various decisions rendered by different High Courts and came to the conclusion that the latter notification having been validly issued, the same cannot be ignored, but must be given its full legal effect. It was held:-

"For the reasons discussed above, I accept the contention urged on behalf of the petitioner that, even if the award of 29.11.1963 cannot be interpreted as resulting in the withdrawal of the acquisition proceedings initiated on 5.3.1963,

the notification of 7.10.1968 should be treated as a fresh notification u/s 4 intended to, and having the effect of, repeal of or the termination of the effect of, the notification of 5.3.1963. This not having been followed up by a declaration u/s 6, within three years thereafter, the acquisition proceedings against the petitioner's lands are time barred and cannot be pursued after 6.10.1971."

16. The learned Single Judge rejected the contentions raised on behalf of the appellant that the writ petition should not be entertained either on the ground that the writ petitioner was guilty of supersession of material facts and/or on the ground of delay and laches.

17. The learned Single Judge noticed that despite grant of several adjournments to the parties for arriving at a negotiated settlement, the same did not fructify. He, however, opined that purposeful negotiation in the matter would be held and the dispute would be settled.

18. The learned Single Judge disposed of the writ petition by issuing the following directions:-

"(1) As the proceedings started by the notifications of 5.3.1963 and 22.8.1963 stand superseded or came to an end by the notification u/s 4 dated 7.10.1968, which in turn has been allowed to lapse, all the proceedings taken by the respondents for the acquisition of the petitioner's land after 6.10.1971 including the proceedings u/s 9 and the award made u/s 12 of the Land Acquisition Act on 18.2.1974 in so far as they relate to the petitioner's land are illegal and without jurisdiction and are hereby quashed.

(2) The respondents are directed to hand over vacant possession of the lands in question to the petitioner but they are given time till 31.12.1983 to do so. A somewhat long time is given to the respondents in this regard in view of the fact that the staff of the DESU have been accommodated in the quarters which stand on the petitioner's land and the DESU will need time to decide what steps it should take in respect of the quarters and, if need be, to arrange for alternative accommodation to these employees and inasmuch as the administration will also need some time to decide what steps it would like to take in the matter. If, for any sufficient reason, a further extension of this period is considered necessary, the respondents should apply to the Court for such extension, after notice to the petitioner, on or before 30th September, 1983.

(3) It will be open to the respondents, within the above period of a little more than a year, to take steps to acquire the land of the petitioner afresh and taken possession of them in appropriate steps to secure lawful possession of the lands from the petitioner by negotiation or otherwise as they may be advised and in case they succeed in doing so the relevant facts should be brought to the notice of the court and appropriate directions obtained, after due notice to the petitioner, for permission to continue in possession beyond 31.12.1983 or the extended date. Failing such directions, the direction in Para (2) above will become operative on 31.12.1983 or the extended date allowed there under, if

any.

(4) It will be open to the petitioner to pursue such remedies as he may have in law for recovering damages for the use and occupation of the lands by the respondents till 31.12.1983 or the extended date, if any; and, in the event of the respondents handing over vacant possession of the lands to the petitioner it will be open to them and, in particular, the DESU to pursue such remedies as may be available to them in law in respect of the buildings that they have put up on the land.

(5) The respondents, and in particular the DESU, are restrained from putting up any further construction on the land in question or additions to the existing structures thereon and are directed to maintain the status quo in respect thereof until 31.12.1983 or any further date up to which the period mentioned in para (2) above may be extended by this court on an application made under the said para."

19. Before advertng to the contentions raised in this Letters Patent Appeal, we may notice that even during pendency of this appeal, the parties sought to negotiate the matter as regards amount of compensation.

20. Delhi Administration, however, issued fresh notifications under Sections 4 and 6 of the said Act. Notices had also been issued under Sections 9 and 10 of the said Act. Despite the same, adjournment had been sought for on behalf of the applicant.

21. On 23.04.1984, an order of status quo was issued as subject to further orders of the Court and also to the result of any negotiation that were reportedly going on.

22. On 09.11.1987, the Division Bench of this Court noticed that the Administration was satisfied with the impugned judgment, as it did not come up in appeal. It further noticed that the Government had issued notifications under Sections 4 and 6 of the said Act dated 26.03.1983 and 30.05.1983 and in the aforementioned situation, it was held:-

"... This Court on application by the appellant, namely - D.E.S.U. directed stay of further proceedings before the Land Acquisition Collector by order dated 25th July, 1983 and when the matter came up after notice (C.M. No. 326/83) the order passed by the Division Bench was modified and it was directed "status quo as to giving of possession by the appellant to the respondent No. 1 subject to further orders of this Court and also subject to the result of any negotiations that are reportedly going on." It was on these terms that the interim order dated 25th July, 1983 stood modified. It is, Therefore, made clear that proceedings before the Land Acquisition Collector in pursuance of the Notifications dated 26th March, 1983 and 30th May, 1983 under Sections 4 and 6 of the Act respectively are not stayed any more. They can go on. However, the possession of the appellant from the quarters already built up will not be disturbed till the disposal of LPA No. 46

of 1983. The application stands disposed of.

Liberty to apply after the award is announced."

23. Despite the said direction, award was announced and it now transpired that no further proceedings were taken up.

24. The matter did not appear in the Board for long 8 years.

25. An application for early hearing was allowed only on 22.03.1995, but hearing could not take place. On 07.12.2000, the adjournment to obtain instructions in the matter. However, on the next date fixed, namely, 11.01.2001, the learned counsel did not appear and the appeal was dismissed for non-prosecution. On an application for restoration, however, this appeal was restored on 11.12.2001 whereafter, the appeal was heard on 22.02.2002 and 25.02.2002.

26. The core question, which arises for consideration, in this appeal is as to whether by reason of a subsequent notification, the earlier notification stands repealed by necessary implication.

27. The said Act is complete Code by itself. The State in exercise of its power of eminent domain is entitled to acquire lands for public purpose subject to payment of just compensation. Acquisition of land being expropriatory in nature, the safeguards provided for therein must be followed.

28. In the instant case, admittedly a notification as also a declaration envisaged u/s 4 and 6 of the said Act were issued on 05.03.1963 and 22.08.1963.

29. The question is as to whether by reason of the award dated 29.11.1963 the acquisition became complete. The answer to the said question in the peculiar facts of this case must be rendered in negative.

30. Section 9 of the said Act provides for notice to interested persons. How and in what manner notices were issued, in terms of Sub-section (1) of Section 9 had not been disclosed by the State. A finding of fact has been arrived at on the basis of records of the case proceeded on the basis that the lands were Government lands and merely book transfer would serve the purpose. The land in question together with some other land was, thus, kept out of the acquisition proceedings and the same did not form part of the award.

31. If on the said belief, no notice as contemplated under Sub-section (1) of Section 9 of the said Act was issued, the same would vitiate the proceedings.

32. In any event, the lands in question were not the subject matter of the award. If lands in question were not the subject matter of the award, the acquisition proceedings did not become final.

33. In the aforementioned situation, the subsequent notification dated 07.10.1968 u/s 4 of the said Act was issued by the respondent.

34. The learned Single Judge, in our opinion, has rightly held having regard to

the contents of the notification that as thereby several lands had been excluded and new land had been included, the earlier notifications must be held to have been rescinded by necessary implication.

35. In *The State of Madhya Pradesh and Ors., v. Vishnu Prasad Sharma and Ors.* (SIC), it was held:-

"... It seems to us clear that once a declaration u/s 6 is made, the notification u/s 4(1) must be exhausted, for it has served its purpose. There is nothing in Sections 4, 5A and 6 to suggest that Section 4(1) is a kind of reservoir from which the government may from time to time draw out land and make declarations with respect to it successively. If that was the intention behind Sections 4, 5A and 6 we would have found some indication of it in the language used therein. But as we read these three sections together we can only find that the scheme is that Section 4 specifies the locality, then there may be survey and drawing of maps of the land and the consideration whether the land is adapted for the purpose for which it has to be acquired, followed by objections and making up of its mind by the government what particular land out of the locality it needs. This is followed by a declaration u/s 6 specifying the particular land needed and that in our opinion completes the process and the notification u/s 4(1) cannot be further used thereafter. At the stage of Section 4 the land is not particularized but only the locality is mentioned; at the stage of Section 6 the land in the locality is particularized and thereafter it seems to us that the notification u/s 4(1) having served its purpose exhausts itself. The sequence of events from a notification of the intention to acquire [Section 4(1)] to the declaration u/s 6 unmistakably leads one of the reasonable conclusion that when one a declaration u/s 6 particularizing the area out of the area in the locality specified in the notification u/s 4(1) is issued, the remaining non-particularized area stands automatically released. In effect the scheme of these three sections is that there should be first a notification u/s 4(1) followed by one notification u/s 6 after the government has made up its mind which land out of the locality it requires."

36. Yet again in *Bhutnath Chatterjee v. State of West Bengal and Ors.*, (1969) 3 SCC 675 , the law has been stated in the following terms:-

"... But the question in each case is whether there was an intention to supersede the previous notification; and if the Government does not choose to explain the reasons which persuaded it to issue a second notification, the Court may be justified in inferring that it was intended to supersede the earlier notification by the later notification."

37. The same learned Judge subsequently in *Raghunath and Ors., v. State of Maharashtra and Ors.*(SIC), followed the decision of *Vishnu Prasad Sharma's* case (Supra) and held:-

"... In principle, there is no distinction between a case where a declaration u/s 6 is declared invalid by the Court and a case in which the Government itself

withdraws the declaration u/s 6 when some obvious illegality is pointed out. The point in issue in this appeal is thus directly governed by the three earlier decisions of this Court and the High Court was fully justified in dismissing the writ petition on this ground."

38. Yet again in *Hindustan Oil Mills Ltd. and Anr. v. Special Deputy Collector (Land Acquisition)(SIC)*, where three notifications had been issued, distinguishing his earlier decision in *Raghunath's case (Supra)*, it was observed:-

"... Even the third notification does not say that it is the entirety of survey No. 1351 that is proposed to be acquired but it makes a distinction between the land belonging to Sampatlal and the land belonging to the company. It transpires only from the award that the full extent of the survey No. 135 1 was taken as 15-35-18 acres. It is only in this notification for the first time that the lands proposed to be acquired are defined with sufficient precision or clearness and, in our opinion, it is this notification alone that can be taken as the effective notification for purposes of computing the market value. We would like to make it clear that we are resting our conclusion entirely on the language of the notifications in the present case. We do not wish to go to the length of suggesting, as Shri Sachhar did, that, wherever there are notifications by way of amendments, it is only the last of them that can be taken as the effective notification u/s 4. Shri Sachhar in this context referred to a decision of this Court in *Raghunath and Others Vs. State of Maharashtra and Others*, to supports his contention that where a subsequent notification is issued it should be deemed to have superseded the earlier one. In that case a notification u/s 4 had been issued in respect of certain lands and this was followed by another notification u/s 4 in respect of certain lands, some of which had been included in the earlier notification as well. A bench of this Court, of which one of us was a member, held that latter notification must be considered to have superseded the earlier one. That decision rested on its facts and cannot be treated as an authority for the general proposition that, even in cases like the present one, where subsequent notifications are in the nature of amendments to the earlier one, the subsequent amendment should be treated as the only effective one. In our opinion where there is a notification, which purports to be by way of an amendment, the question whether it is really one rectifying certain errors in the earlier one or whether its nature is such as to totally change the entire complexion of the matter would have to be considered on the terms of the relevant notifications. In the present case, as we have already said, it appears to us, on a proper construction of the notifications, that the real and effective notification in survey No. 135 1, was only the notification dated 28-2-1963. The first contention is disposed of accordingly."

39. Thus the law, which emerges is that when an amendment to the notification is issued, the amendment would relate back to the date of earlier notification and the principle of repeal by necessary implication may not apply.

40. However, in a case of this nature where the State itself, having regard to the

peculiar facts and circumstances of this case, thought it fit to substitute one notification by another in terms whereof not only amendment in the boundaries, etc. had been made, but some plots have been withdrawn and new plots had been inserted, there is no escape for the conclusion that the State itself intended to withdraw the earlier notification.

41. The submission of Ms. Ahlawat to the effect that as possession had been taken, the notification could not be withdrawn cannot be accepted, having regard to the finding of fact arrived at by the learned Single Judge. So far as the submission of the learned counsel that only a tentative decision has been taken to withdraw the notification and not a final one, it may be noticed that although there cannot be (SIC) language used in Section 48 of the said Act, the State Government could not have withdrawn from the acquisition once the possession had been taken over, but taking over of possession for the purpose of Section 48 would clearly mean a possession taken in terms of Section 16 of the said Act. Possession can be taken only when an award is made. No award has been made so far as the land in question was concerned, and Therefore, the possession obtained, if any, was an illegal one. The same neither in law nor in principle would justify retention of the lands by the appellants inter alias on the ground that the same had been validly acquired.

42. Another aspect of the matter cannot be lost sight of. So far as the State is concerned, it had accepted the judgment under appeal. It issued a fresh notification in the year 1983 as also a declaration u/s 6 of the said Act, although it may be correct that the appeal had been pending, but the Court can certainly take notice of the subsequent event so as to consider the conduct of the parties.

43. The contention of Ms. Luthra, the learned counsel appearing for the Delhi Administration, to the effect that the subsequent amended award would amount to correction of award in terms of Section 13A of the said Act must be rejected having regard to the fact that the same had been inserted by Section 10 of the Amending Act, 1984 which has a prospective effect. In any event, it cannot be said that a typographical or clerical error crept in. Even such errors in view of the said provision could not have been corrected after a period of 6 months.

44. In law, the power of the State to withdraw from the acquisition cannot be used in the event possession had been taken over in terms of the provisions of the said Act, but it will bear repetition to state that possession when not taken in terms of the provisions of the said Act, but de hor's it, the entire proceedings must be held to be vitiated in law.

45. In that view of the matter, the decision of the Apex Court in Lt. Governor of Himachal Pradesh and Another Vs. Avinash Sharma, , State of Maharashtra and Another Vs. Umashankar Rajabhau and Others, , Murari and Others Vs. Union of India (UOI) and Others, ; and H.M. Kelogirao and Others Vs. Govt. of A.P. and Others, relied upon by Ms. Ahlawat cannot be said to have any application in the instant case.

46. However, there cannot further be any doubt that the appellant being a beneficiary is a "person aggrieved" and could prefer appeal as has been held by the Apex Court in *Agra Development Authority Vs. Special Land Acquisition Officer and Others*, ; *Darshan Singh and others Vs. Gurdev Singh*, ; and *Larsen & Turbo Ltd.v. State of Gujarat and Ors.* (SIC).

47. Strong reliance has been placed on a decision of the Apex Court in *Satendra Prasad Jain and Ors. v. State of U.P. and Ors.* (SIC) for the proposition that non-payment of the compensation before taking over a possession does not vitiate the proceedings, but therein a notification had been issued u/s 17(1) of the said Act. Sub-section (3) of Section 17 of the said Act mandates that the Collector shall at the time of taking possession offer to the persons interested, compensation for the standing crops and trees on such land and for any other damage sustained by them caused by such sudden dispossession and not expected in Section 24; and only in a case such offer is not accepted, the value of such crops and trees and the amount of land and other damages shall be allowed under the said provisions. Sub-section (3A) of Section 17 of the said Act, which was again inserted in the year 1984, is as follows:-

"(3A) Before taking possession of any land under Sub-section (1) or Sub-section (2), the Collector shall, without prejudice to the provisions of Sub-section (3),--

(a) tender payment of eighty per centum of the compensation for such land as estimated by him to the persons interested entitled thereto, and

(b) pay it to them, unless prevented by some one or more of the contingencies mentioned in Section 31, Sub-section (2) and where the Collector is so prevented, the provisions of Section 31, Sub-section (2), (except the second proviso thereto), shall apply as they apply to the payment of compensation under that section."

48. Sub-section (3A) of Section 17 of the said Act cannot be said to have any application in the instant case having regard to the fact that acquisition was not made on an emergency basis. Moreover, in the instant case, no award was prepared, as has been found by the learned Single Judge, inter alias on the ground that the land belonged to the Government of India. Even the mandatory procedures u/s 9 of the said Act had not been complied with and in fact no award had been prepared in terms of Section 11 of the said Act in

49. For the reasons aforementioned, we affirm the judgment. and order dated 26.11.1982 passed by the learned Single Judge.

50. The question, however, arises as to in a peculiar situation of this nature, what relief should be granted to the appellant herein.

51. In a case of this nature, where the acquisition is said to be invalid, would it be equitable to direct restoration of the land? The answer to the said question must be rendered in negative.

52. The jurisdiction of this Court under Article 226 of the Constitution of India is a discretionary one. The Court in a given situation can mould the relief. As the State had accepted the judgment of the learned Single Judge and issued a notification u/s 4 of the said Act, we are of the opinion that the appellant should be awarded compensation as if the notification had been issued on 26.03.1983. The writ petitioner shall, however, be entitled to compensation for taking over illegal possession of his land from 5.7.1966 till the date of notification u/s 4 of the said Act. The writ petitioner and first respondent herein shall also be entitled to interest and solarium in terms of the provisions of the Said Act.

53. This order is being passed keeping in view the fact that the appellant here has already constructed quarters for its officers and thus in equity it may not be justifiable in directing restoration of lands by reason of the judgment of the Apex Court in Haji Saeed Khan and Ors. v. State of U.P. and Ors.¹³, wherein it has been held:-

11. After considering the various contentions that were raised before us, we felt it reasonable that, having regard to the peculiar facts of these cases, interests of justice would be met if the date of issue of Section 4(1) notification is shifted from 30-3-1995 to 15-6-1998, for purposes of fixing the market value of the land owned or possessed by the appellants before us. When the suggestion came from the Bench, learned Senior Counsel for the Appellants as well as the learned Additional Solicitor-General appearing for the State of U.P. as well as the other counsel for the Town Development Authority also felt that this suggestion was reasonable.

12. The reason why the Court made the above suggestion is that possession has already been taken from the appellants on 15-6-1998. Any fresh direction at this stage might prejudice the interests of both sides. We wanted to avoid fresh litigation. Already there has been litigation for nearly ten years when earlier notifications were questioned or lapsed. Therefore, instead of deciding the matter on merits, we suggested to the counsel on both sides that it would be reasonable if they agreed that the market value of the property could be fixed treating 15-6-1998 as the date of notification u/s 4(1). In fact, out of a large extent of land that was sought to be acquired, the appellants are interested only in small pieces of land and in the event the Proceedings being quashed, so far as these small pieces of land are concerned, that would upset the entire purpose of the land acquisition. These were the reasons why we tried to put an end to further litigation and suggested the parties to accepted 15-6-1998 as the date of fixing the market value.

54. For the reason aforementioned, this appeal is disposed of with the aforementioned directions. However, in the facts and circumstances of this case, the appellant must bear the costs of the first respondent in both the writ petition as also in this appeal, which we assess at Rs. 50,000/-.