

(2010) 09 GUJ CK 0101

In the Gujarat High Court

Case No : Special Civil Application No. 18146 of 2003 with C.A. No. 629 of 2007

Gangaben Since Decd. through Bhanuben Durlabhbbhai Patel
and Others

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 24-09-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 11, 15, 15A, 16, 17
Constitution (First Amendment) Act, 1951 — Article 13, 14, 21, 226, 31A
Land Acquisition (Amendment) Act, 1984 — Section 10, 11, 11A, 12, 14
Land Acquisition Act, 1894 — Section 11, 11(2), 12, 12(2), 13

Citation : (2011) 52 GLR 47

Hon'ble Judges : D.H. Waghela, J; Bankim N. Mehta, J

Bench : Division Bench

Advocate : Ketty A. Mehta and Saurabh G. Amin, for the Appellant; C.B. Upadhyaya, A.G.P. for Respondent nos. 1 and 2, S.N. Shelat and Mitul K. Shelat for Respondent No. 3, Mihir Joshi and Abhishek M. Mehta, for the Respondent

Final Decision : Allowed

Judgement

D.H. Waghela, J.—Four Petitioners, the first of whom has passed away and whose two daughters are brought on record, have invoked Articles 14, 19(1)(g), 21 and 300A of the Constitution for the prayers that the award dated 14-2-1991 of I/c Officer on Special Duty (Land Acquisition) be set aside on the ground that delay has vitiated the acquisition and it has lapsed, with the consequential relief of setting aside notices dated 20-12-2003 under Sections 11(2) and 12(2) of the Land Acquisition Act, 1894. Since, the impugned award dated 14-2-1991 is made in respect of various parcels of land acquired for the purpose of expansion of industrial estate of Respondent No. 3, Gujarat Industrial Development Corporation (G.I.D.C.), and the present dispute is raised in respect of lands of only three block numbers, the challenge is taken to be restricted to acquisition of those three parcels of land bearing Survey Nos. 265, 204 and 267/1 of Block Nos. 284, 268 and 273, comprising total 26,886 sq. mtrs. Situated at village

Sachin, district Surat, out of the total 11,23,238 sq. mtrs. of land acquired for G.I.D.C. Initially, while issuing notice herein on 29-12-2003, ad-interim relief was granted restraining Respondent Nos. 2 and 3 from taking possession of the land of the Petitioners pursuant to the said notice dated 20-12-2003. After appearance of and hearing the Respondents, petition was admitted and ad-interim relief was confirmed on 3-9-2004 in view of the fact that possession of the land was with the Petitioners till that date. Rule was, however, made returnable on 6-10-2004.

2. The undisputed facts of the case are that notification u/s 4 of the Land Acquisition Act, 1894 (for short, "the Act") was published in the Official Gazette on 11-2-1988 for acquiring nearly 11 hectares of land for expansion of G.I.D.C. Industrial Estate. Even prior to that, G.I.D.C. had agreed to allot 11,23,238 sq. mtrs. of land to Diamond & Gem Development Corporation (D. & G.D.C.), which has subsequently joined herein as Respondent No. 4. Out of the land agreed to be transferred to D. & G.D.C., 9,76,777 sq. mtrs. of land acquired earlier were already handed over by G.I.D.C. to D. & G.D.C. on "as is where is" basis at the rate of Rs. 20-40 ps. per sq. mtr; and for the remaining parcel of land, acquisition in question was initiated in the name of G.I.D.C. Notification u/s 6 was published on 1-2-1989. At that stage, the Petitioners had approached this Court by way of Special Civil Application No. 2666 of 1989 to challenge the acquisition and that petition was dismissed on 15-4-1991, rejecting the contentions that the lands already acquired were unused and some lands were released from acquisition after the notification u/s 4 of the Act.

2.1. The Land Acquisition Officer (O.S.D.) proceeded with the acquisition and issued notice u/s 9 of the Act on 15-2-1989. The other land-holders, excepting the Petitioners, handed over possession of the land to G.I.D.C. after accepting advance compensation on 26-6-1989, whereas the Petitioners were sought to be served notice under Sections 9(3) and 9(4) by R.P.A.D., according to the Respondents. On the other hand, the Petitioners made representations to the State Government not to acquire their lands. Deputy Secretary of Revenue Department, by his letter dated 30-1-1991 addressed to the O.S.D., practically rejected the representations and directed that the draft award in respect of the lands in question was approved and in case of dispute, the amount of compensation should be deposited in the Court under the provisions of Sections 30/31 of the Act. He further clearly and categorically directed that the awards may be declared but possession was not to be taken. It is specifically averred in the further affidavit dated 21-3-2007 of the O.S.D. that:

.... When the authorities have not taken possession because of the representation before the Hon'ble Minister, the Petitioners may not be permitted to contend that not taking over of possession for 12 years would vitiate the acquisition proceedings, when at their instance only the possession was not taken. A party may not be permitted to take benefits of its own wrong doing....

2.2. Thus, even as possession of the lands in question was never taken from the

Petitioners, the award dated 14-2-1991, u/s 11 of the Act, was made while the Petitioners were not present. Thereafter, vide letter dated 4-1-1996, the O.S.D. informed Manager of G.I.D.C. that the award was declared on 14-2-1991 and the instruction dated 7-2-1992 not to take possession of the acquired lands was withdrawn by Government letter dated 22-8-1995. Therefore, the addressee was instructed to take up the matter of paying compensation and taking possession. Pursuant to such instruction, the O.S.D. had arranged a camp at another village and the land-holders having refused to accept the compensation and hand over the possession, a panchnama in that regard was prepared at village Umber. At that time, Talati-cum-Secretary of Sachin had reported that the land-holders of village Sachin had also refused to accept the compensation and hand over possession of land. The O.S.D. also stated that the land allotted by G.I.D.C. to D. & G.D.C. was not fully utilized and such lands were likely to be handed over to private builders by D. & G.D.C. Thus, the factum of non-payment of compensation and not taking possession of the lands in question was recorded in the contemporaneous document dated 4-1-1996. The other documents relied upon by the O.S.D. include a disputed panchnama dated 15-5-1996 made by a peon of Sachin Gram Panchayat to state that possession of the land was sought to be taken and compensation was sought to be paid by informing the land-holders in advance but none of them had remained present and they could also not be called from their house as their houses were found to be closed.

2.3. 14 years after the above procedure, D. & G.D.C. requested G.I.D.C. on 8-10-2001 to hand over possession of the Petitioners' land as also the lands of other survey numbers of which possession was taken as early as on 26-6-1989. The Petitioners are stated to have come to know in the year 2003 about the entries in respect of the lands being mutated in revenue record in the year 2000 in favour of G.I.D.C. And, as there was a reference in the mutation entry about the award dated 14-2-1991, the Petitioners again made an application dated 23-4-2003 to withdraw the lands in question from acquisition. It was after that that the impugned notices dated 20-12-2003 u/s 12(2) of the Act were issued to call upon the Petitioners to remain present before the O.S.D. on 31-12-2003 to collect the compensation amount of Rs. 2,77,926/-, failing which the amount may be deposited u/s 31 of the Act and possession may be taken in presence of panchas. Spurred by the impugned notices, the present petition appears to have been filed on 26-12-2003.

3. With the above backdrop of facts, it was contended for the Petitioners by learned Senior Counsel Ms. Ketty Mehta, appearing with learned Counsel Mr. S. G. Amin, that the land acquisition proceeding in respect of the lands of the Petitioners was obviously in violation of several mandatory provisions of the Act and the main purpose of the Act to provide for payment of compensation on the basis of market value of the land was defeated. She submitted that inordinate and unexplained delay of 13 years in offering the compensation had vitiated the acquisition and such acquisition must be declared to have lapsed. It was further submitted that, even at the outset, the acquisition was in colourable exercise of

power insofar as it was initiated not for any public purpose, but to use the good offices of G.I.D.C. as an instrument to favour a company with private interests, without resorting to the provisions of Chapter VIII of the Act. It was further submitted that, even now, more than 50 hectares of land of D. & G.D.C. near the Petitioners' land was lying vacant and unused. Learned Counsel relied upon several legal provisions and precedents, which will be discussed hereunder.

4. Learned Senior Advocate Mr. S. N. Shelat appearing for G.I.D.C., learned A.G.P. appearing for the State and the O.S.D., and learned Senior Advocate Mr. Mihir Joshi appearing for D. & G.D.C., submitted, in substance, that the legal procedure required to be followed under the provisions of Sections 9, 11, 12 and 17 of the Act was duly complied with and it was not true that the Petitioners had no knowledge of the impugned award, or that the statutory notices were not served upon the Petitioners. It was submitted that the delay was caused by the Petitioners by not accepting the compensation which was offered and by delaying handing over of the possession. It was further submitted that, after dismissal of the petition (Spl. C.A. No. 2666 of 1989) challenging the same acquisition, the Petitioners had made representations to the Hon'ble Minister concerned in the State Government. While the Petitioners were offered compensation on 11-5-1989, even a cheque dated 27-6-1989 was drawn in favour of original Petitioner No. 1 for advance payment to her. Original cheques dated 20-12-1995 in the name of Petitioners for Rs. 1,55,534-35 ps. and Rs. 1,22,391-60 ps. were received back by G.I.D.C. on 20-6-1996. It was submitted that the report dated 15-5-1996 of Talati about approaching the Petitioners for making the payment ought to be believed and that could take away the substratum of the case of the Petitioners, which has delay only. It was fairly conceded that the Government failed to deposit the amount of compensation as required u/s 31 of the Act, presumably on account of the fact that the Hon'ble Minister concerned was being persuaded to withdraw the acquisition and instructions were issued not to take over possession from the Petitioners.

5. In view of the above facts and contentions, it may be appropriate to first advert to the relevant provisions of the Act, as amended for the State of Gujarat, and the Constitution, before discussing their impact in light of various decisions discussed at the Bar.

THE LAND ACQUISITION ACT, 1894:

Section 3: Definitions-

In this Act, unless there is something repugnant in the subject or context-

(f) the expression "public purpose" includes-

(i)

(ii)

(iii) the provision of land for planned development of land from public funds in

pursuance of any scheme or policy of Government and subsequent disposal thereof in whole or in part by lease, assignment or outright sale with the object of securing further development as planned;

(iv) the provision of land for a Corporation owned or controlled by the State";

(v) to (viii)

but does not include acquisition of lands for companies.

Section 4: Publication of preliminary notification and power of officers thereupon:

(1) Whenever it appears to the appropriate Government that land in any locality is needed or is likely to be needed for any public purpose or for a company, a notification to that effect shall be published in the Official Gazette and in two daily newspapers circulating in that locality of which at least one shall be in the regional language, and the Collector shall cause public notice of the substance of such notification to be given at convenient places in the said locality (the last of the dates of such publication and the giving of such public notice, being hereinafter referred to as the date of the publication of the notification).

(2)

Section 5

Section 5A

Section 6: Declaration that land is required for a public purpose:

(1) Subject to the provision of Part VII of this Act, when the appropriate Government is satisfied, after considering the report, if any, made u/s 5A, Sub-section (2), that any particular land is needed for a public purpose, or for a Company, a declaration shall be made to that effect under the signature of a Secretary to such Government or of some officer duly authorized to certify its orders and different declarations may be made from time to time in respect of different parcels of any land covered by the same notification u/s 4, Sub-section (1) irrespective of whether one report or different reports has or have been made wherever required u/s 5A, Sub-section (2):

Provided that no declaration in respect of any particular land covered by a notification u/s 4, Sub-section (1)-

(i) published after the commencement of the Land Acquisition (Amendment and Validation) Ordinance, 1967 (1 of 1967), but before the commencement of the Land Acquisition (Amendment) Act, 1984 (68 of 1984), shall be made after the expiry of three years from the date of the publication of the notification; or

(ii) published after the commencement of the Land Acquisition (Amendment) Act, 1984 (68 of 1984), shall be made after the expiry of one year from the date of the publication of the notification:

Provided further that no such declaration shall be made unless the compensation to be awarded for such property is to be paid by a Company, or wholly or partly out of public revenues or some fund controlled or managed by a local authority.

Explanation 1. -

Explanation 2. -

(2)

(3) The said declaration shall be conclusive evidence that the land is needed for a public purpose or for a company, as the case may be; and, after making such declaration, the appropriate Government may acquire the land in a manner hereinafter appearing.

Section 7

Section 8

Section 9: Notice to persons interested:

(1) The Collector shall then cause public notice to be given at convenient places on or near the land to be taken, stating that the Government intends to take possession of the land, and that claims to compensations for all interests in such land may be made to him.

(2) Such notice shall state the particulars of the land so needed, and shall require all persons interested in the land to appear personally or by agent before the Collector at a time and place therein mentioned (such time not being earlier than fifteen days after the date of publication of the notice), and to state the nature of their respective interests in the land and the amount and particulars of their claims to compensation for such interests, and their objections (if any) to the measurements made u/s 3C or made under Sections 3A, 4 or 8. The Collector may in any case require such statement to be made in writing and signed by the party or his agent.

(3) The Collector shall also serve notice to the same effect on the occupier (if any) of such land and on all such persons known or believed to be interested therein, or entitled to act for persons so interested, as reside or have agents authorized to receive service on their behalf, within the revenue district in which the land is situate.

(4) In case any person so interested resides elsewhere, and has no such agent, the notice shall be sent to him by post in letter addressed to him at his last known residence, address or place or business and registered under Sections 28 and 29 of the Post Office Act, 1898 (6 of 1898).

Section 10

" Section 11: Enquiry and award by Collector:

(1) On the day so fixed, or on any other day to which the enquiry has been adjourned, the Collector shall proceed to enquire into the objection, if any, which any person interested has stated pursuant to a notice given u/s 9 to the measurements made u/s 8, and into the value of the land at the date of the publication of the notification u/s 4, Sub-section (1), and into the respective interests of the persons claiming the compensation and shall make an award under his hand of-

(i) the true area of the land;

(ii) the compensation which in his opinion should be allowed for the land; and

(iii) the apportionment of the said compensation among all the persons known or believed to be interested in the land, or whom, or of whose claims, he has information, whether or not they have respectively appeared before him:

Provided that no award shall be made by the Collector under this Sub-section without the previous approval of the appropriate Government or of such officer as the appropriate Government may authorize in this behalf:

Provided further that it shall be competent for the appropriate Government to direct that the Collector may make such award without such approval in such class of cases as the appropriate Government may specify in this behalf.

(2)

(3)

(4)

" Section 11A: Period within which an award shall be made:

(1) The Collector shall make an award u/s 11 within a period of two years from the date of the publication of the declaration and if no award is made within that period, the entire proceeding for the acquisition of the land shall lapse:

Provided that in a case where the said declaration has been published before the commencement of the Land Acquisition (Amendment) Act, 1984 (68 of 1984), the award shall be made within a period of two years from such commencement.

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

Section 12: Award of Collector when to be final:

(1) Such award shall be filed in the Collector's office and shall, except as hereinafter provided, be final and conclusive evidence, as between the Collector and the persons interested, whether they have respectively appeared before the Collector or not, of the true area and value of the land, and the apportionment of the compensation among the persons interested.

(2) The Collector shall give immediate notice of his award to such of the persons interested as are not present personally or by their representatives when the award is made.

Section 12A

Section 13

Section 14: Power to summon and enforce attendance of witnesses and production of documents:

For the purpose of enquiries under this Act, the Collector shall have powers to summon and enforce the attendance of witnesses, including the parties interested or any of them, and to compel the production of documents by the same means, and (so far as may be) in the same manner as is provided in the case of a Civil Court under the Code of CPC 1908 (5 of 1908).

Section 15

Section 15A

Section 16: Power to take possession:

When the Collector has made an award u/s 11, he may take possession of the land, which shall thereupon vest absolutely in the Government, free from all encumbrances.

Section 17

Section 17A

Section 18

Section 23: Matters to be considered in determining compensation:

(1) In determining the amount of compensation to be awarded for land acquired under this Act, the Court shall take into consideration -

first, the market-value of the land at the date of the publication of the notification u/s 4, Sub-section (1); secondly, the damage sustained by the person interested, by reason of the taking of any standing crops, trees which may be on the land at the time of the Collector's taking possession there of; thirdly, the damage (if any) sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of serving such land from his other land; fourthly, the damage (if any) sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of the acquisition injuriously affecting his other property, movable or immovable, in any other manner, or his earnings; and where the person interested is a tenant of the land, only the damage sustained by him by reason of the acquisition injuriously affecting his right as a tenant, fifthly, in consequence of the acquisition of the land by the Collector, the person

interested is compelled to change his residence or place of business, the reasonable expenses (if any) incidental to such change, sixthly, the damage (if any) bona fide resulting from diminution of the profits of the land between the time of the publication of the declaration u/s 6 and the time of the Collector's taking possession of the land, and seventhly, in the case of any land which according to the terms of the tenure on which it is held is not transferable or partible by metes and bounds without the sanction of the State Government or any competent officer, the market value of similar land held without such restriction. (1A) In addition to the market value of the land, as above provided, the Court shall in every case award an amount calculated at the rate of twelve per centum per annum on such market value for the period commencing on and from the date of the publication of the notification u/s 4, Sub-section (1), in respect of such land to the date of the award of the Collector or the date of taking possession of the land, whichever is earlier.

Explanation: In computing the period referred to in this Sub-section, any period or periods during which the proceedings for the acquisition of the land were held up on account of any stay or injunction by the order of any Court shall be excluded.

(2) In addition to the market value of the land as above provided, the Court shall in every case award a sum of thirty per centum on such market value, in consideration of the compulsory nature of the acquisition.

Section 24

Section 25

Section 26

Section 27

PART V

PAYMENT

Section 31: Payment of compensation or deposit of same in Court:

(1) On making an award u/s 11, the Collector shall tender payment of the compensation awarded by him to the persons interested entitled thereto according to the award and shall pay it to them unless prevented by some one or more of the contingencies mentioned in the next Sub-section.

(2) If they shall not consent to receive it, or if there be no person competent to alienate the land, or if there be any dispute as to the title to receive the compensation or as to the apportionment of it, the Collector shall deposit the amount of the compensation in the Court to which a reference u/s 18 would be submitted:

Provided that any person admitted to be interested may receive such payment under protest as to the sufficiency of the amount:

Provided also that no person who has received the amount otherwise than under protest shall be entitled to make any application u/s 18:

Provided also that nothing herein contained shall affect the liability of any person, who may receive the whole or any part of any compensation awarded under this Act, to pay the same to the person lawfully entitled thereto.

(3) Notwithstanding anything in this Section, the Collector may, with the sanction of the appropriate Government instead of awarding a money compensation in respect of any land, make any arrangement with a person having a limited interest in such land, either by the grant of other lands in exchange, the remission of land-revenue on other lands held under the same title, or in such other way as may be equitable having regard to the interests of the parties concerned.

(4) Nothing in the last foregoing Sub-section shall be construed to interfere with or limit the power of the Collector to enter into any arrangement with any person interested in the land and competent to contract in respect thereof.

"Section 32: Investment of money deposited in respect of lands belonging to person incompetent to alienate:

(1) If any money shall be deposited in Court under Sub-section (2) of the last preceding Section and it appears that the land in respect whereof the same was awarded belonged to any person who had no power to alienate the same, the Court shall-

(a) order the money to be invested in the purchase of other lands to be held under the like title and conditions of ownership as the land in respect of which such money shall have been deposited was held, or

(b) if such purchase cannot be effected forthwith, then in such Government or other approved securities as the Court shall think fit; and shall direct the payment of the interest or other proceeds arising from such investment to the person or persons who would for the time-being have been entitled to the possession of the said land, and such moneys shall remain so deposited and invested until the same be applied-

(i) in the purchase of such other lands as aforesaid; or

(ii) in payment to any person or persons becoming absolutely entitled thereto.

(2)

Section 33: Investment of money deposited in other cases:

When any money shall have been deposited in Court under this Act for any cause other than mentioned in the last preceding Section, the Court may, on the application of any party interested or claiming an interest in such money, order the same to be invested in such Government or other approved securities as it may think proper, and may direct the interest or other proceeds of any such

investment to be accumulated and paid in such manner as it may consider will give the parties interested therein the same benefit therefrom as they might have had from the land in respect whereof such money shall have been deposited or as near thereto as may be.

Section 34: Payment of interest:

When the amount of such compensation is not paid or deposited on or before taking possession of the land, the Collector shall pay the amount awarded with interest thereon at the rate of nine per centum per annum from the time of so taking possession until it shall have been so paid or deposited:

Provided that if such compensation or any part thereof is not paid or deposited within a period of one year from the date on which possession is taken, interest at the rate of fifteen per centum per annum shall be payable from the date or expiry of the said period of one year on the amount of compensation or part thereof which has not been paid or deposited before the date of such expiry."

CONSTITUTION OF INDIA

31A: Saving of laws providing for acquisition of estates, etc.

(1) Notwithstanding anything contained in Article 13, no law providing for-

(a) The acquisition by the State of any estate or of any rights therein or the extinguishment or modification of any such rights, or

(b)

exercise of power. As has been repeatedly emphasized by the final Court, the issue of delay has to be visualised in the context of the larger scheme of acquisition under the Act. To satisfy the test of bona fides herein, it is elementary that there must exist a present need for acquisition for the execution of an existing public purpose. Any purported acquisition for a vague public purpose which may or may not arise in the future on the pegged down market value is thus assailable as a colourable exercise of power and an abuse by the State to compulsorily take the property of the citizen at a pittance for illusory futuristic needs. This is more so when judicial notice can be, and indeed has been, taken by the final Court, of a continued and inexorable uptrend in the prices of real estate. Consequently, if there exists no explanation at all for long delays to finalize the proceedings and concretise the alleged public purpose, the inference inevitably arises that no immediate public purpose existed or was in sight which could be put in practical shape. Ultimately, it was held that unexplained inordinate delay in the finalization of the acquisition proceedings under the Act may well taint it with the vice of a colourable exercise of power and thus vitiate the same.

(b) In *Ram Chand and Others Vs. Union of India (UOI) and Others*, the Apex Court held that the Act is consistent with the second proviso to Article 31A, because it provides for payment of compensation at the market value of the land

acquired. Different Sections of the Act indicate that framers of the Act enjoined that after publication of notification under Sub-section (1) of Section 4 of the Act, further proceedings should be taken as early as possible. A special feature of the Act is that it requires award to be made and compensation to be paid before the land, which is the subject-matter of acquisition, vests in the Government. The Act conceives that there may be delay in taking possession due to some unavoidable reasons, and as such, making of the award or payment of the compensation should not be dependent on taking of the possession of such land and vesting thereof in the Government. It is settled that in a statute where for exercise of power no time-limit is fixed, it has to be exercised within a time which can be held to be reasonable. This aspect of the matter can be examined in the light of second proviso to Article 31A of the Constitution, which in clear and unambiguous terms prohibits making of any law which does not contain a provision for payment of compensation at a rate, which shall not be less than the market value thereof. If a person is paid compensation in the year 1980/1981 at the market rate, prevailing twenty years before, will that be compliance of the constitutional and statutory mandate? Ignoring the escalation of the market value of the lands, especially near the urban agglomeration or metropolitan cities, will amount to ignoring an earthquake and Courts can certainly take judicial notice of the said fact. Any amount determined as market value of the lands acquired, with reference to the dates of issuance of notifications

(c)

(d)

(e)

shall be deemed to be void on the ground that it is inconsistent with or takes away or abridges any of the rights conferred by Article 14 or Article 19:

Provided that where such law is a law made by the Legislature of a State, the provisions of this Article shall not apply thereto unless such law, having been reserved for the consideration of the President, has received his assent:

Provided further that where any law makes any provision for the acquisition by the State of any estate and where any land comprised therein is held by a person under his personal cultivation, it shall not be lawful for the State to acquire any portion of such land as is within the ceiling limit applicable to him under any law for the time-being in force or any building or structure standing thereon or appurtenant thereto, unless the law relating to the acquisition of such land, building or structure, provides for payment of compensation at a rate which shall not be less than the market value thereof.

(Underlines added)

6. In the Statement of Objects and Reasons of the Land Acquisition (Amendment) , 1984, it is stated:

With the enormous expansion of the State's role in promoting public welfare and economic development since Independence, acquisition of land for public purposes, industrialization, building of institutions, etc. has become far more numerous than ever before. While this is inevitable, promotion of public purpose has to be balanced with the rights of the individual whose land is acquired, thereby often depriving him of his means of livelihood. Again, acquisition of land for private enterprises ought not to be placed on the same footing as acquisition for the State or for an enterprise under it. The individual and institutions who are unavoidably to be deprived of their property rights in land need to be adequately compensated for the loss keeping in view the sacrifice they have to make for the larger interests of the community. The pendency of acquisition proceedings for long periods often causes hardship to the affected parties and renders unrealistic the scale of compensation offered to them." (Underlines added)

(a) A Full Bench of Punjab & Haryana High Court in *Radhey Sham Gupta and Others Vs. State of Haryana and Others*, has held that the scheme of the Act visualises an expeditious finalization of the acquisition proceedings once they are commenced. Unexplained and inordinate delays which tend to hold the claimants at ransom, whose properties are sought to be acquired and are further denied compensation within a reasonable time would be sharp and pointed pieces of evidence to establish the lack of bona fides for the u/s 4 of the Act, i.e. at the rate prevalent 15-21 years prior to the dates of the making of the award, cannot be held to be the compliance of the mandate regarding payment of market value of the land so acquired under the Constitution and the Act. Exercise of power, in the facts and circumstances of the case, by the Respondents has to be held to be against the spirit of the provisions of the Act, tending towards arbitrariness. In such a situation, this Court in exercise of power under Article 32 and the High Court under Article 226, could have quashed the proceedings.

(c) In the celebrated judgment in *Raja Harish Chandra Raj Singh Vs. The Deputy Land Acquisition Officer and Another*, the Apex Court has, in the context of Section 18 of the Act, held that:

Where the rights of a person are affected by any order and limitation is prescribed for the enforcement of the remedy by the person aggrieved against the said order by reference to the making of the said order, the making of the order must mean either actual or constructive communication of the said order to the party concerned. The award made by the Collector u/s 12 is, in a sense, a decision of the Collector reached by him after holding an enquiry as prescribed under the Act.... It is a decision, inter alia, in respect of the amount of compensation which should be paid to the person interested in the property acquired; but legally the award cannot be treated as a decision; it is in law an offer or tender of the compensation determined by the Collector to the owner of the property under acquisition. If the owner accepts the offer no further proceedings is required to be taken; the amount is paid and compensation proceedings are concluded. If, however, the owner does not accept the offer

Section 18 gives him the statutory right of having the question determined by Court, and it is the amount of compensation which the Court may determine that would bind both the owner and the Collector. In that case, it is on the amount thus determined judicially that the acquisition proceedings would be concluded.

(d) The Constitution Bench decision of the Supreme Court in *Dattatraya Govind Mahajan and Others Vs. State of Maharashtra and Another*, dealt with constitutional validity of the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961, as amended by subsequent Amending Acts. The only contention urged before the Court was that that Act was void insofar as it created artificial family unit and fixed a ceiling on holding of land by such family unit; since it violated the second proviso to Clause (1) of Article 31A. In that context, inter alia, the Supreme Court observed:

6.... Article 31A together with the first proviso was added in the Constitution by the Constitution (First Amendment) Act, 1951, while the second proviso was introduced by the Constitution (Seventeenth Amendment) Act, 1964. Article 31B was also introduced in the Constitution at the same time as Article 31A.

7.... The object and purpose of introducing Articles 31A and 31B was to protect agrarian reform legislation from invalidation.... It is an elementary rule of construction that a statutory provision must always be interpreted in a manner which would suppress the mischief and advance the remedy and carry out the object and purpose of the legislation.... Our Constitution has a social purpose and an economic mission and every Article of the Constitution, must therefore, be construed so as to advance the social purpose and fulfil the economic mission it seeks to accomplish. It must follow a fortiori that even if the second proviso to Clause (1) of Article 31A is construed as not conferring any fundamental right, but merely imposing a restriction on legislative competence, the Act, insofar as it contravenes or is inconsistent with the second proviso to Clause (1) of Article 31A would still be saved from invalidation by Article 31B.

8. But we are clearly of the view that the second proviso to Clause (1) of Article 31A does confer a fundamental right.... This limitation on the legislative power of the State is the measure of the fundamental right conferred on the owner of the land. It is by imposing limitation on the exercise of legislative power that protection is given to the owner in respect of the land held by him under his personal cultivation within the ceiling limit. Restriction on legislative competence and conferment of right on the holder of land within the ceiling limit are complementary to each other. They are merely two different facets of the same provision.... Parliament was anxious to protect the interest of the small holder, the common man who holds land within the ceiling limit, and therefore, enacted the second proviso requiring that a law which permits acquisition of land within the ceiling limit must provide for compensation at a rate not less than the market value. The second proviso in fact restores the right of property with added vigor in case of small holding of land. It goes much further than Article 31, Clause (2) and provides a larger protection, in that, Clause (2) of Article 31 merely requires

that a law authorising acquisition should fix an amount to be paid for the acquisition or specify the principles in accordance with which the amount may be determined and the manner in which it may be given - and this may be very much less than the market value - while the second proviso insists that at the least, full market value must be paid for the acquisition....

9.... It must be remembered that the Legislature has different ways of expressing itself and in the last analysis the words used by the Legislature alone are the true repository of the intent of the Legislature and they must be construed having regard to the context and setting in which they occur.

In the concurring judgment of His Lordship Justice Krishna Iyer, it is observed in Para 40:

40. ...So understood, the scheme is plain. A large right to property protected by law against deprivation, compulsory acquisition only on constitutional conditions, saving of agrarian and some other laws from these constitutional constraints, followed by creation, through a proviso, of an oasis where acquisition can be made only by payment of compensation at or above market value - such is the pattern woven by the complex of clauses. A great right is created in favour of owners to get compensation at not less than the market value if lands within the ceiling limit and in personal cultivation are acquired by the State. This is a fundamental right and is a creature of the 2nd proviso to Article 31A(1). An independent provision may occasionally incarnate as a humble proviso.

7. (a) In *Murari and Others Vs. Union of India (UOI) and Others*, it is held, as under, by the Apex Court:

12. ...By Constitution (Forty-Fourth Amendment) Act, 1978, Clause (f) of Article 19 and Article 31 have been deleted, and as such, to hold property is no more a fundamental right. But still the mandate under second proviso to Article 31A continues regarding payment of market value in respect of the land, the subject-matter of acquisition, and that the Act provides for payment of compensation in respect of the acquisition made, at the market value of the land, as such it is consistent with the second proviso to Article 31A. But in view of Sub-section (1) of Section 11 and Sub-section (1) of Section 23, the market value of such land is to be fixed with reference to the date of the publication of notification u/s 4, Sub-section (1), irrespective of the dates on which declaration u/s 6 or award u/s 11 are made or possessions is taken u/s 16 of the Act. In this view of the matter, the contention raised with regard to Article 31A could not be accepted and are accordingly rejected. The acquisition proceedings, therefore, could not be quashed on that account also."

(b) In *E. Ramasubbareddy Vs. State of A.P. and others*, it is held by the High Court of Andhra Pradesh:

5. A plain reading of the Section 11A makes it clear that an obligation is imposed on the Collector to make an award u/s 11 within two years from the date of the

publication of the declaration and in a case where the declaration has been published before the commencement of the Land Acquisition (Amendment) Act, 1984 within a period of two years from such commencement, that is, September 24, 1984. Admittedly, in this case, the award was passed within two years from the date of declaration u/s 6 of the Act. Making of the award is complete the moment it is drawn up and signed by the Collector. Payment of compensation is pursuant to the award and does not form part of the award. This is also evidence from Section 31 which provides that on making an award u/s 11, the Collector shall tender payment of compensation awarded by him to the persons interested or entitled thereto according to the award. It follows that not tendering payment of compensation awarded under the award would not make it incomplete. Therefore, making of the award within the specified period satisfies the requirements of Section 11A. Payment of compensation under the award need not be within two years from the date of the publication of the declaration to save the land acquisition proceedings from getting lapsed under that Section. It is desirable to tender the payment of compensation awarded by the Collector as immediately after the award as is practicable and delay in payment of compensation should be avoided, but it must be noticed here that the interest of the awardee is amply safeguarded by amended provisions of Section 34 of the Act against any possible delay in payment/deposit of compensation.

(c) The Apex Court, in *Forward Construction Co. and Others Vs. Prabhat Mandal (Regd.)*, Andheri and Others, has held:

20. ...In view of Section 11, Explanation IV, it could not be said that the earlier judgment would not operate as *res judicata* as one of the grounds taken in the subsequent petition was conspicuous by its absence in the earlier petition. An adjudication is conclusive and final not only as to the actual matter determined but as to every other matter which the parties might and ought to have litigated and have had it decided as incidental to or essentially connected with the subject-matter of the litigation and every matter coming within the legitimate purview of the original action both in respect of the matters of claim or defence....

(d) In *Mathura Prasad Bajoo Jaiswal and Others Vs. Dossibai N.B. Jeejeebhoy*, it is held:

10. It is true that in determining the application of the rule of *res judicata* the Court is not concerned with the correctness or otherwise of the earlier judgment. The matter in issue, if it is one purely of fact, decided in the earlier proceeding by a competent Court must in a subsequent litigation between the same parties be regarded as finally decided and cannot be reopened. A mixed question of law and fact determined in the earlier proceeding between the same parties may not, for the same reason, be questioned in a subsequent proceeding between the same parties. But, where the decision is on a question of law, i.e. the interpretation of a statute, it will be *res judicata* in a subsequent proceeding between the same parties where the cause of action is the same, for the expression "the matter in issue" in Section 11, Code of Civil Procedure, means

the right litigated between the parties, i.e. the facts on which the right is claimed or denied and the law applicable to the determination of that issue. Where, however, the question is one purely of law and it relates to the jurisdiction of the Court or a decision of the Court sanctioning something which is illegal, by resort to the rule of res judicata a party affected by the decision will not be precluded from challenging the validity of the order under the rule of res judicata, for a rule of procedure cannot supersede the law of the land.

(e) In *Chameli Singh and others etc. Vs. State of U.P. and another*, the Apex Court has observed as under:

17. In every acquisition by its very compulsory nature for public purpose, the owner may be deprived of the land, the means of his livelihood. The State exercises its power of eminent domain for public purpose, the individual's right of an owner must yield place to the larger public purpose.

For compulsory nature of acquisition, Sub-section (2) of Section 23 provides payment of solatium to the owner who declines to voluntarily part with the possession of land. Acquisition in accordance with the procedure is a valid exercise of the power. It would not, therefore, amount to deprivation of right to livelihood. Section 23(1) provides compensation for the acquired land at the prices prevailing as on the date of publishing Section 4(1) notification, to be quantified at later stages of proceedings. For dispensation or dislocation interest is payable u/s 23(1-A) as additional amount and interest under Sections 31 and 28 of the Act to recompensate the loss of right to enjoyment of the property from the date of notification u/s 23(1-A) and from the date of possession till compensation is deposited. It would thus be clear that the plea of deprivation of right to livelihood under Article 21 is unsustainable.

(f) In *Sharadchandra Ganesh Muley Vs. State of Maharashtra and others*, the Apex Court has held, as under:

5. It is seen that bar u/s 11A was available to the Appellant when the first writ petition was filed, since the Amendment Act 68 of 1984 had come into force on 24-9-1984, during the pendency of the writ petition. He did not raise the point. Therefore, the doctrine of "might and ought" engrafted in Explanation IV to Section 11 of the Code of CPC would come into play and the Appellant is precluded to raise the controversy once over. Therefore, the doctrine of constructive res judicata puts an embargo on his right to raise the plea of bar of limitation u/s 11A.

(g) In *Ram Jiyawan Vs. State of U.P. and others*, a Division Bench of Allahabad High Court has held:

39. From the above scheme of the Act, it is apparent that the main aim or object or purpose of the Act is to provide a law which will enable the State to acquire land of others. Therefore, the provisions of the Act relating to acquisition of land are substantive and those relating to taking over of possession and assessment

and payment of compensation are subsidiary. Breach of a mandatory substantive provision may result in nullification or invalidation of the act done to achieve the purpose of the Act, but breach of a subsidiary provision will not, in our opinion, in the absence of a specific provision in that behalf, result in nullification or invalidation of such act. Accordingly, when a mandatory provision relating to acquisition is breached, the acquisition itself falls but when there is breach of a provision relating to taking over of possession, the taking over of possession is illegal and not the acquisition itself. Similarly, if assessment of compensation is not made in accordance with the provisions of the Act, particularly Sections 23 and 24, it is the compensation assessed which is vitiated and not the acquisition.

8. On perusing the provisions of the Act in the context of the facts of the present case, it would appear that the phrase "public purpose" in the context of Section 4 is defined to include the provision of land for planned development of land and subsequent disposal thereof by lease with the object of securing further development as planned, as also the provision of land for a Corporation owned or controlled by the State. G.I.D.C. being a Corporation owned or controlled by the State, the lands in question acquired for the purpose of providing land for further development in pursuance of any scheme or policy of the Government would be an acquisition for "public purpose". Even otherwise, the challenge to notification under Sections 4 and 6 of the Act is barred by res judicata insofar as by order dated 15-4-1991 of Division Bench of this Court, the petition in that regard was dismissed.

9. However, a fresh cause of action has arisen to the Petitioners by virtue of alleged violation of the mandatory provisions of Sections 9, 12 and 31 of the Act. Even if the statutory requirement of public notice under Sub-section (1) of Section 9 is presumed to have been complied, in absence of sufficient evidence in that regard, there is no specific, direct and clinching evidence of service of notice upon the Petitioners as required under Sub-section (3) of Section 9. In fact, it is admitted by I/c O.S.D. in his further affidavit dated 21-3-2007 in Para 9 that:

9. ...It is submitted that because of the fact that the original record of the Land Acquisition Officer is not traceable, the authorities are not able to place on record the actual details....

The Collector is nowhere stated to have exercised his power u/s 14 of the Act to enforce the making of any statement by the Petitioners. Although, the impugned award is apparently made within a period of two years, it is not shown to have been served upon the Petitioners. Under the mandatory provisions of Sub-section (2) of Section 12, the notices are admittedly issued as late as on 20-12-2003, after more than 12 years of the award; while the provision requires that Collector shall give immediate notice of his award to such of the persons interested as are not present personally or by the representatives when the award is made. Therefore, even if it is assumed in favour of the Respondents that the Petitioners have to be in the knowledge of the acquisition proceedings and making of the

award, it could not be controverted that the authorities had violated the aforesaid mandatory provisions. It clearly appears from the record that the Respondents concerned had consciously refrained from offering the compensation and taking over the possession u/s 16 for final and absolute vesting of the lands in question in the Government, under specific instructions dated 30-1-1991 of the Revenue Department. It is possible but not pardonable that the authorities remained blissfully unaware about the vacation of ad-interim relief with dismissal of Spl. C.A. No. 2666 of 1989 on 15-4-1991 by this Court.

10. It is not the case of the Respondents that any interim order of any Court was operating or even any litigation was pending in respect of the acquisition of land in question after 15-4-1991. Therefore, it has to be inferred and concluded that the authorities had consciously or unwittingly violated the mandatory provisions of Section 12 as well as Section 31 insofar as the compensation determined in the impugned award was neither paid to the Petitioners nor deposited in the Court, and even an offer to do so was made in the impugned notices only after unexplained and unjustified delay of more than 12 years. Under such circumstances, the Petitioners have made a legitimate grievance that, since the possession was never taken till the end of the year 2003, the Petitioners would be entitled only to compensation at the market value of 1988, with interest, till the date of award in 1991, resulting into the compensation being rendered illusory and far removed from the market value to which the Petitioners would be entitled as a matter of their fundamental right. It was pointed out from various averments in the petition, representations and applications of the Petitioners and it is not seriously controverted that the Petitioners were agriculturists and personally cultivating the land which was also within the ceiling limit. Under such circumstances, it was contended for the Respondents that the Petitioners were, all throughout, reluctant to part with their land and not co-operating with the authorities in the acquisition proceedings while making representations to the higher authorities for release of their lands from acquisition. Therefore, the delay in final vesting of the land in the Government was partly attributable to the Petitioners and they cannot be allowed to take benefit of their own wrong. Such arguments cannot be accepted for the simple reason that not co-operating with the acquisition proceedings and making efforts to prevent the acquisition were not per se wrong or illegal; whereas no such alleged non-co-operation or making of representations absolved the authorities from their legal obligation to comply with the mandatory provisions of the Act. The net result for the Petitioners, which cannot be ignored, was that the Petitioners were offered compensation by notices u/s 12 after inordinate, unexplained and unjustified delay of more than 12 years and that too at the rate determined on the basis of the notification u/s 4 issued before 15 years of the offer. The scheme of the Act is clearly calculated to prevent such predicament insofar as mandatory provisions are made in Sections 12 and 31 without leaving any room for unreasonable delay. Further, provisions in Sections 32 and 34 are made to ensure prompt payment or deposit and even investment of such money in cases where the land in respect of which

such money was awarded belonged to any person who had no power to alienate it. In such composite scheme of compulsory acquisition of land and payment of compensation at market value, the lapses on the part of the authorities have actually resulted in denial of compensation as envisaged in the Act and vitiated the acquisition proceedings by defeating the purpose of the Act as far as the Petitioners are concerned.

11. Under such circumstances, the pleas of the Respondents that the lands in question were bona fide acquired for public purpose, that the Respondents have substantially developed the acquired lands around the lands in question and that the land being situated in the middle of an industrial area, it is causing hurdles and hampering development of the entire area, become irrelevant. Such arguments cannot be considered to condone the glaring violation of mandatory legal provisions committed after making of the award as they have apparently resulted into defeating the objects of ensuring timely payment of compensation at market value as expressly stated in Objects and Reasons of the Land Acquisition (Amendment) Act, 1984. We respectfully disagree with the view adopted by the Allahabad High Court in *Ram Jiyawan Vs. State of U.P. and others*, that the provisions of the Act relating to acquisition of land are substantive and those relating to taking over of possession and assessment and payment of compensation are subsidiary, the breach of which would not result into nullification or invalidation of the acquisition. The Government, in exercise of its power of eminent domain cannot be permitted to deny to a citizen a fundamental right enshrined in the Constitution by way of the last surviving protection of right to property in Article 31A. It cannot be gainsaid that market value has a definite relationship with the time of acquisition and the very validity of the Act is predicated upon award and payment of compensation at market value within a timeframe. It would clearly amount to indirectly abrogating the fundamental right enshrined in Article 31A of the Constitution and a travesty of justice, if the acquisition of land is permitted to stand in spite of offer of compensation at the market value pegged at the price prevailing before 15 years, even as possession of the land could have been, but never taken by the acquiring authority.

12. Therefore, relying upon the observations of the Constitution Bench of the Apex Court in *Dattatraya Govind Mahajan (supra)* and in view of the gross and glaring violation of the mandatory safeguards provided in the Act for ensuring timely payment of compensation at market value and in view of the unreasonable and unexplained delay of more than 12 years in actually offering the payment and demanding the possession, the acquisition of the land in question is held to be vitiated. Accordingly, the impugned award dated 14-2-1991 of the in-charge Officer on Special Duty (Land Acquisition) No. 3, Ahmedabad and the notices u/s 12 based thereon are quashed as far as the Petitioners are concerned. Rule is made absolute accordingly with no order as to costs. Civil Application for vacating the interim relief is dismissed.

Upon the judgment being pronounced today, it was submitted by learned Counsel Mr. Mitul Shelat, appearing for Respondent No. 3, that the Respondents may have to carry the judgment to higher forum and if the Petitioners are permitted to alienate or deal with the lands in question, it may create unnecessary complications. Learned Counsel Mr. S.G. Amin, appearing for the Petitioners, made a statement in that context that the Petitioners will not in any manner deal with the lands in question or transfer possession of the lands in question till 31-10-2010. Upon that statement being made and recorded, no stay as prayed on behalf of the Respondents is required to be granted. However, the Petitioners are directed to abide by the statement made by learned Counsel.