

(1997) 12 AP CK 0066

In the Andhra Pradesh High Court

Case No : Writ Petition No's. 10267 of 1993 and Batch

Gorle Mallesh and Others

APPELLANT

Vs

District Collector, R.R. Dist. and Others

RESPONDENT

Date of Decision : 18-12-1997

Acts Referred:

Constitution of India, 1950 — Article 226
Evidence Act, 1872 — Section 114
Land Acquisition Act, 1894 — Section 10, 16, 17(1), 18, 4

Citation : (1998) 2 ALD 51

Hon'ble Judges : D.H. Nasir, J

Bench : Single Bench

Advocate : M/s. P. Gangaiah Naidu and R. Venkat Ramudu, for the Appellant;
Mr. C. Poornaiah for A.P. Housing Board, for the Respondent

Judgement

1. Three writ petitions are being disposed of by this common judgment in view of the fact that the contentions raised by the petitioners in all the three writ petitions are of the same nature and character inasmuch as the action under contemplation of the respondents to dispossess the petitioners from their respective lands is sought to be declared as illegal and void.

2. At the outset, an observation need be made that the contentions raised by the petitioners in all the three writ petitions relate to the adjudication of disputed questions of facts which exercise cannot be gone into by the High Court when its jurisdiction under Article 226 of the Constitution of India is invoked. However, before arriving at a final conclusion on this proposition, it is necessary that the issues arising for Court's consideration may be examined for determining the prima facie case so that it could be found out whether the merits of the claims advanced by the petitioners are required to be looked into or not. The question in all the three writ petitions relates to the acquisition of lands by the Andhra Pradesh Housing Board for the purpose of putting up housing colony for weaker sections of the Society in Khaitalapur village, Ranga Reddy district.

3. According to the petitioners, they belong to a backward class community and they are running their livelihood from agriculture and have no other source of income. According to the petitioners, they are paying last for the land regularly. The land revenue was not required to be paid during the regime of Telugu Desham in the State of Andhra Pradesh, and therefore, during 1983 to 1990 no land revenue was paid by the petitioners. But after the change of Government it again became necessary for the petitioners to pay kist and, therefore, on 22-6-1993 they paid the kist for the period 1983 to 1993.

4. Further according to the petitioners, when they started ploughing their respective lands in the last week of June as usual, the Officers of the 3rd Respondent (A.P. Housing Board) objected to the same and stated that the lands had already been acquired in 1960 and the Housing Board had become the owner of the lands. The petitioners, therefore, immediately applied for "pahani patrikas" to ascertain the correct position and they could get the same on 8-7-1993. The petitioners found that in the column of the "owner" the names of the petitioners respective fathers were shown as the owners and in the column where the names of the persons actually cultivating the lands were required to be shown, the names of the petitioners were stated therein. Upto 1979-80, the names in the respective columns were shown as stated above. However, the patta holders' names were shown from 1980-81. But in the column under the caption "persons cultivating the lands", the name of Housing Board was shown. But the petitioners were unable to ascertain how Housing Board's name came to be inserted. Further, according to the petitioners, since the lands were private lands the same could not be taken away by the Government or any other authority except by way of acquisition under the provisions of the Land Acquisition Act. But, according to the petitioners, it did not come to the knowledge of the petitioners that any acquisition proceedings were taken in respect thereof. No compensation also for such acquisition, if any, was paid to the petitioners.

5. In W.P.No. 10267 of 1993, the relief claimed is in respect of land bearing Sy.Nos.990, 993 and 997 to the extent of Ac.7-21 gts. belonging to Petitioner No. 1; Sy.No.936 to the extent of Ac.2-10 gts belonging to Petitioners Nos.2 to 4; Sy.Nos.912, 934, 935, 945, 953, 954 and 951 to the extent of Ac.12.30 gts. belonging to Petitioners Nos.5 to 8; and Sy.No.941/1 to the extent of Ac.2-35 gts. belonging to Petitioners Nos.9 and 10, situated at Kaithalapur village, Balanagar Mandal, Ranga Reddy district.

6. In W.P.No.18104/93, the relief claimed is in respect of lands admeasuring Ac.0-33 gts. in Sy.No.926; Ac.0-31 gts. in Sy.No.927; Ac.1-12 gts. in Sy.No.928; Ac.1-07 gts. in Sy.No.929; Ac.0-20 gts. in Sy.No.930; and Ac. 11-30 gts. in Sy.No.911, situated at Kukatpally village, Balanagar Mandal, Rangareddy District.

7. In W.P.No.9127/95, the relief claimed by the petitioner is in respect of lands in Sy.Nos.946, 948, 949, 950, 951, 958 and 959 in all admeasuring Ac.9-01 gts. situated at Khantapur village, Kukatpally Municipality, Ranga Reddy district.

8. The Housing Board in its counter affidavit dated 18-1-1994 emphatically denies that the petitioners were in possession of the acquired lands. The Housing Board also denies that the petitioners were not aware of the acquisition proceedings and that the acquisition was resorted to behind their back and without their knowledge. In fact, according to the Housing Board, the petitioners not only participated in the acquisition proceedings before the acquisition authority but also made reference to the Civil Court u/s 18 of the Land Acquisition Act for enhancement of compensation and have taken the advantage of the enhancement granted by the Civil Court. According to the Housing Board, the notification for the purpose of acquisition was published in the State Gazette on 26-4-1963 after the Government granted the approval and thereafter necessary enquiry was conducted and award was passed on 10-6-1968. Further, according to the Housing Board, the compensation in respect of lands covered by Sy.Nos.990, 993 and 971 of Kaithalapur village was paid to G. Mallesh, Gunti Lingaiah, Pilli Yerranna (S.No.990 and S.No.993) which included an extent of Ac.5-37gts. and for the balance Ac. 1-24 gts. covered by S.No.971 compensation was paid to G. Mallesh and G. Balaiah. G. Mallesh is Petitioner No.1 in W.P.10267/93. Gunti Lingaiah however does not appear to be a party to the writ petition. Pilli Yerranna also does not appear as petitioner in the said Writ Petition.

9. It is further contended by the respondent-Housing Board that it was evident that the petitioners have received the compensation and were not entitled to question the same at this point of time. Similarly the claim of the Petitioners Nos.2 to 4 in respect of lands covered by Survey No.936 to the extent of Ac.2-10 gts. was also unsustainable as the occupants of the said lands, viz., Pilli Balaiah and Pilli Yadaiah received the compensation under the award and further, according to the respondents, Petitioners 2 to 4 claiming to be the landlords of Pilli Veeranna received the compensation amount under the award. Therefore, they were not entitled to any relief as claimed in the writ petition. Similarly, according to the 3rd Respondent, the claim of the Petitioner Nos.5 to 8 in respect of lands bearing Sy.Nos.912, 934, 935, 945, 953, 954, 957 was equally unsustainable as Pilli Balaiah had received the compensation in respect of the said lands. Further, the claim advanced by the Petitioners 9 and 10 in respect of lands bearing Sy.Nos.941/1 admeasuring Ac.2-35 gts. was also not sustainable as the compensation was paid to Gunti Kumariah and Gunti Ramuhi. According to the respondents, the records did not disclose that Gunti Mallesh ever had any title to this property.

10. Further, according to the 3rd respondent, the compensation under the award was paid after thorough verification and identification and the Petitioners were not justified and entitled to seek reopening of the cases. It is further contended by the 3rd Respondent that according to the petitioners themselves the lands were sold away by their ancestors to the Housing Board as long back as in 1981 due to lack of foresight without considering the interest of the future of the progeny and, therefore, the word did not lie in the mouth of the petitioners to say that they were not aware of the acquisition proceedings after receiving the

compensation and issuing no objection certificate and to continue in possession of the lands in question. The petitioners, according to the Housing Board, were encroachers and trespassers and were not entitled to any equities. The Housing Board had paid more than Rs.41-00 lakhs in respect of these acquisition proceedings. According to the 3rd Respondent, the relief claimed by the petitioners was of speculative nature and deserved to be rejected summarily.

11. It is further contended by the 3rd respondent in its additional affidavit filed on 19-9-1995 that the petitioners made a representation dated 27-11-1981 to the 3rd respondent stating as follows :

"We enclose herewith a list of survey numbers of lands enjoyed by us before they were sold away by our elders to the A.P. Housing Board. In this connection we beg to submit that due to lack of foresight and without considering our future, our elders sold away the land which was the main source of livelihood. Now we would request your goodself to arrange to return the land, for which we could pay any reasonable amount as decided by the Board. Submitted for favour of consideration and early action in the matter,"

12. According to the 3rd Respondent, it was evident from the above statement made in the representation dated 27-11-1981 that the petitioners were fully conscious and aware of the acquisition which took place in 1968. They also accepted the compensation awarded and made endorsement regarding delivery of possession. The petitioners have, therefore, no right to ask for returning the land 13 years after the representation dated 27-11-1981 was made. The mere fact that the representation was made by them on 27-11-1981 made it abundantly clear that the Housing Board was in possession of the land because the petitioners categorically asked in their representation to return the lands to them.

13. In reply affidavit filed by the 8th petitioner-Pilli Pentaiah on 6-9-1994, a contention is raised that the notification u/s 4(1) of the Land Acquisition Act and the Awards dated 26-4-1963 and 10-6-1968 were fabricated with a mala fide intention of depriving the petitioners of their lands. No land acquisition proceedings were initiated according to their knowledge. The very fact that the petitioners continued to be in possession and enjoyment established that the alleged acquisition proceedings were sham and bogus. No compensation was received by any one of them. No evidence had been produced to show that the compensation was paid. Further, according to the deponent, the 3rd Respondent failed to produce Section 4(1) notification, Section 6 declaration. Section 5A enquiry proceedings, notices under Sections 9 and 10 and other documents which exposed that the complete deal was false and concocted.

14. Further, according to the petitioners, the alleged award reveal that the notification was issued on 26-4-1963 by the Deputy Collector, A.P. Housing Board, but the issuance of Section 4(1) notification by the 3rd Respondent was without jurisdiction as it was only the Government which could issue a

notification prior to amendment in 1975. The receipt of compensation by G. Mallesh, G. Lingaiah and Pilli Veeranna in respect of Sy.Nos.990 and 993 is denied by the petitioners. Similarly, the receipt of compensation by G. Mallesh and G. Balaiah for the land covered in Sy.No.971 is also denied and it is stated that the other petitioners also did not receive any compensation at any point of time. It is further contended in Paragraph 5 of the reply affidavit dated 28-8-94 that the allegations with regard to payment of compensation was required to be scrutinised meticulously by examining the records by the High Court in the interest of justice. The representation alleged to have been made in 1981 was also a fabricated document. It is farther stated in the said paragraph that in the main petition no signatures were obtained and a sheet containing signatures of number of villagers had been filed along with the said petition. It is further alleged by the petitioners that their names were shown in the relevant columns viz., 11 and 16 till the year 1980 and thereafter the 3rd Respondent managed to get its name altered in column Nos. 11 and 16.

15. Shn C. Poornaiah, learned Standing Counsel for the A.P. Housing Board-Respondent No.3 invited my attention to the proceedings of the Special Deputy Collector, dated 10-6-1968 in which it is stated in Para 2 that vide G.O.No.163 Housing, dated 5-11-1963 Published in Gazette No.47 dated 21-11-1963, the Government of Andhra Pradesh authorised the Special Deputy Collector, Land Acquisition, A.P. Housing Board, to exercise the powers conferred by Section 4(2) of the Land Acquisition Act, 1894 to perform the functions of the Collector u/s 5(a) of the Land Acquisition Act. In Paragraph 3 it is stated that notices were issued to all the persons interested on 20-11-63 and 5-12-63 and were served on them on various dates from 6-12-63 to 29-1-64. It is further stated that the lands under acquisition were got surveyed by the Measuring Circle Inspector of the Housing Board and were checked by the G.D. Inspector of Hyderabad district and the areas of lands under acquisition were approved by the Land Record Assistant. In Paragraph 5 of the proceedings, it is stated that in respect of lands under acquisition none filed any objection petition. On the other hand, several persons gave applications that they had no objection to the proposed acquisition. The particulars of such applicants are mentioned on Page Nos.2 and 3 of the award proceedings dated 10-6-1968. The learned Standing Counsel also drew my attention to the observations made by the Special Deputy Collector on Page 26 of his award regarding Sy.Nos.990 and 993 which formed the subject matter of W.P.No.10267/93, according to which, Gorla Matlaih, Gunti Lingaiah and Pilli Eranna submitted a petition claiming compensation for Ac. 15-38 gts. It is further observed that the true area of these two survey numbers under acquisition was Ac.5-37 gts. and as per pahani for the year 1968, Gunti Mallaiah, Gunti Lingaiah and Pilli Eranna had been shown as occupants. Gunti Mallaiah and Pilli Eranna were the occupants and also the claimants. Gunti Komaraiah was claiming compensation stating to be the legal representative of Gunti Lingaiah but he did not show the relationship with the deceased occupant Gunti Lingaiah nor did he file any Succession Certificate from the Tahsildar and, therefore, the

authority directed that the amount due to Gunti Lingaiah (deceased) be deposited in the Court and a reference u/s 30 of the Act be submitted. He further held that Gorla Mallaiah and Pilli Eranna claimed to be the rightful owners to receive the 2/3rd compensation equally which may be paid after taking over possession.

16. The learned Standing Counsel for the Housing Board also invited my attention to the observations made in respect of Survey No.971 covered by W.P.No. 10267/93 on Page 40 of the award wherein the Deputy Collector observed that Gorla Mallaiah and Gorla Balaiah submitted a claim petition in respect of Sy.No.971. As per pahani for the year 1968 they have been shown as occupants of the lands and there was no other claimant and, therefore, the Deputy Collector held that they were the rightful owners to receive the compensation with equal shares. Similarly, the learned Standing Counsel for the Housing Board invited my attention to the other survey numbers of the lands in questions dealt with by the Special Deputy Collector in the Award dated 10-6-1968.

17. The petitioners have filed these writ petitions mainly on the following grounds :

1. That the notifications were not issued in the manner specified in Section 4(1) of the Land Acquisition Act;

2. That the petitioners were not at all aware of the fact that their lands were included in the acquisition proceedings; and

3. That there was no substance in the submissions made on behalf of the Housing Board that the possession of the lands in question was already taken because the petitioners claim that they are still in possession thereof.

18. However, as stated earlier, the petitioners' claim that they were still in possession of the lands in question is denied by the Housing Board. It is also asserted by the Housing Board that the petitioners actively participated in the acquisition proceedings and also made reference to the Civil Court u/s 18 of the Act for enhancement of compensation and, therefore, they cannot claim that they are not aware of the acquisition proceedings. The learned Counsel for the petitioners also urged that the so-called particulars of possession having been handed-over by the claimants and taken over by the Housing Board furnished by the respondents were fabricated and could not be taken into consideration for arriving at a conclusion that actual possession was taken by the Housing Board.

19. The claim advanced by the petitioners that they are still in possession has not been brought home to the Court by any reliable evidence. Except the oral word of mouth, there is no evidence worth the name which could convince the Court that the petitioners were still in possession. Mere payment of revenue and the entries in the revenue records could not be treated as conclusive proof of the petitioners' claim that they were in possession.

20. My attention was also invited by the learned Standing Counsel for the Housing Board to the letter dated 17-4-1969 addressed to the Administrative Officer, A.P. Housing Board by which the vouchers were sent in original in Form CC in respect of the cheques received from the Housing Board for payment of compensation for the lands acquired at Kukatpally vide Award No.2 dated 10-6-1968 for the amounts, the particulars of which were shown in the said letter dated 17-4-1969 in different colours. The said letter is filed in W.P.No.9127/95 at Page 65 of Material papers filed by the respondents. This letter gives us a good reason to believe that the compensation in respect of the acquisition of lands covered by the present writ petitions had already been made to the claimants.

21. It also appears from the statements produced by the Housing Board giving the particulars of the survey numbers and the possession thereof having been handed over and taken over by the Housing Board in Kukatpally. It is also evident from the said statement that the possession of the lands appearing in the statement at serial numbers 25 to 57 was taken on 27-6-1968 and the possession of the land described at serial numbers 58 to 68 was taken on 28-6-1968 and the possession of the lands described at serial numbers 69 to 71 was taken on 24-6-1968. In this statement the survey numbers shown in pink, light green and blue colours are covered by the present three writ petitions.

22. As against the above evidence produced by the Housing Board, the petitioners have merely produced the xerox copies of the treasury challans showing that the land revenue was paid by the petitioners from 1982-83 to 1992-93 in respect of lands held by them. However, in my opinion, this is not a conclusive proof of the fact that the petitioners were in occupation of the said lands. This was merely a proof of the money paid in the treasury and the account head under which the same is paid, but it cannot be treated as evidence either of possession or of ownership of any person. The petitioners have also produced xerox copies of pahani patrikas along with the writ petitions which also do not give us any conclusive evidence to show that the petitioners were still in possession.

23. A distinction was attempted to be made by the learned Counsel for the petitioners between symbolic delivery and actual delivery and it was submitted on that basis that it was actual delivery of possession only which could be taken by the Court for arriving at a conclusion whether the Housing Board was in possession or the petitioners have continued to be in possession. In support of this submission, the learned Counsel pressed into service the decision of the Supreme Court in Balwant Narayan Bhagde Vs. M.D. Bhagwat and Others, in which it is held that if the property was land over which no building or structure stood, the delivery of possession over the judgment debtor's property became complete and effective against him the moment the delivery was effected by going upon the land, or in case of resistance, by removing the person resisting unauthorisedly. It is further observed that by taking of possession within the

meaning of Section 16 or 17(1) of the Land Acquisition Act means taking of possession on the spot. It was neither a possession on paper nor a "symbolic" possession as generally understood in civil law. This argument advanced on behalf of the petitioners, however, does not help the petitioners because the Housing Board has come up with specific dates on which actual possession was taken and the names of the persons from whom possession was taken as well as the names of the persons who took the possession and, therefore, this proposition of "symbolic" and "actual" possession advanced by the learned Counsel for the petitioners does not go to the rescue of the petitioners.

24. The same view is expressed by the Bombay High Court in *Sitaram Shivchandrai Garoda v. State of Maharashtra* 1995 LACC 428. However, on the same ground that the Housing Board had furnished the particulars of the dates on which the possession was taken as well as the particulars of the persons from whom and the persons by whom the possession was taken, the question of possession cannot be treated as "symbolic" possession in the present case.

25. On the question of Notification u/s 4(1) of the Land Acquisition Act, the learned Counsel for the petitioners placed reliance on the decision of the Supreme Court in the case of *State of Mysore Vs. Abdul Razak Sahib*, . In Paragraph 4 of the said decision, the Supreme Court observed that under certain circumstances publication in the Official Gazettes are presumed to be notice to all concerned. But in the case of a notification u/s 4 of the Land Acquisition Act the law had prescribed that in addition to the publication of the notification in the Official Gazette the Collector must also give publicity of the substance of the notification in the concerned locality. Unless both these conditions were satisfied. Section 4 of the Land Acquisition Act could not be said to have been complied with. The publication of the notice in the locality was a mandatory requirement. It had an important purpose behind it. In the absence of such publication, the interested persons may not be able to file their objections about the acquisition proceedings and they would be deprived of the right of representation provided u/s 5A, which was a very valuable right.

26. It is true that no material has come forward to satisfy the Court that all the requirements of the publication of notice as laid down u/s 4(1) of the Land Acquisition Act were complied with inasmuch as no material has been brought to the notice of the Court that the publication was made in the concerned locality and in two news papers having wide circulation in the concerned area. However, it is stated in Paragraph 3 of the Award dated 10-6-1968 that notices were issued to all the persons interested on 20-11-1963 and 5-12-1963 and were served on them on various dates from 6-12-1963 to 29-1-1964. The truth of this statement made in the award perhaps may not be doubted on the basis of the presumption which could be taken u/s 114 of the Evidence Act that the official acts have been done in the manner in which they are required to be done. More-over the petitioners have not approached the Court within a reasonable time after issuance of the notification. The petitioners have approached the Court after the

lapse of more than 20 years. The petitioners' claim, therefore, seriously suffers from the principles of laches. On the other hand, even if it is believed that the notices were served on the persons interested, the requirements of the Act that the notices apart from being published in the Official Gazette, should also be published in the two daily news papers of the locality and should also be published in the prominent places in the locality, cannot be held as complied with by virtue of personal service. This situation, therefore, leans in favour of the petitioners, but for the fact that the evidence produced by the Housing Board gives us a very strong reason to believe that the persons who were entitled to receive compensation have already received the same and, therefore, the question was not open for reconsideration by the High Court at the instance of the petitioners apart from the fact that the infirmity sought to be attributed to the publication of notices seriously suffers from the principles of laches.

27. Similar principles emerge from the decisions of the Supreme Court in *Land Acquisition Officer, Hyderabad Urban Development Authority, Hyderabad, A.P. Vs. Mohd. Amri Khan and Others*, and in the case of *C.K. Narayana Chary and Others Vs. Pothepalli Ashanna and Others*, . But on the same ground that these objections were raised by the petitioner after the lapse of more than 20 years, it would not be in order to reopen the acquisition proceedings at this stage on the ground of non-compliance strictly with the statutory requirements relating to publication of notice.

28. Apart from the above submissions, in Paragraph 6 of the affidavit filed on behalf of the petitioners in W.P.No.10267/93, it is stated that as usual every year the petitioners started ploughing their respective lands in the last week of June. But to their surprise the officials of the 3rd Respondent-Housing Board objected and stated that the lands were acquired in the year 1960 and that the Housing Board had become the owners of the lands. The petitioners, therefore, immediately applied for pahanı patrikas to ascertain the position. The same were obtained on 8-7-1993, In the said revenue record, according to the petitioners, the names of the petitioners' respective fathers were rightly stated under the column provided for writing the name of the owner and in the column where the name of the actual person cultivating it is to be shown, the names of the petitioners were shown. It is further stated in the said paragraph that upto 1979-80, in both the columns referred to above the names of the petitioners' fathers and some of the petitioners were accordingly shown. But curiously from the year 1980-81 in the column of owners, patta holders' names were shown, but in the column provided for stating the name of person cultivating the lands, the name shown was that of Housing Board. If these entries made in the revenue records are believed to be true, there could be no constraint on saying that the Housing Board was in actual possession. However, if it is the contention of the petitioners that the name of the Housing Board was unlawfully inserted, it assumes the character of a disputed proposition of law and fact which cannot be considered and adjudicated in a writ petition. The petitioners are required to file a civil suit for determination of such controversies.

29. A submission was also made by the learned Counsel for the petitioners that after completing the work of serving notices on the claimants on 29-1-1964, the enquiry report u/s 5A was submitted on 31-1-1964 which was improbable. It could not be believed, according to the petitioners Counsel, that the report u/s 5A of the Act could be prepared in a short time of one day. If these particulars mentioned in the award give rise to any doubt, the same also acquires the status of disputed fact which also cannot be resolved in a writ petition.

30. For all these reasons, therefore, I am not satisfied that the petitioners have succeeded in bringing home to the Court any question which could enable the Court to record a finding that these petitioners have uninterruptedly continued in actual possession of the lands in question or that they have been continuously carrying on agricultural operations thereon so as to issue a prohibitory order restraining the Housing Board from depriving the petitioners of their so-called possession.

31. The Supreme Court decided in Government of Andhra Pradesh Vs. Thummala Krishna Rao and Another, that the question whether the title to the property came to be vested in the Government as a result of acquisition and the question whether the petitioner encroached upon that property thereafter and perfected his title by adverse possession had to be decided in a properly constituted suit and until the Government succeed in establishing its title to the property, the respondents could not be evicted summarily.

32. The situation in the instant case is of a reverse order. The fact that the Housing Board is in possession prima facie appears to be reflecting a correct situation. If the petitioners, however, claim possession and seek protection of their alleged possession in a Writ proceeding, the same obviously cannot be decided in a summary manner without examining in detail the adverse claim of possession advanced by the petitioners in a properly constituted suit.

33. On the question of petitioners' knowledge about the acquisition proceedings, the learned Standing Counsel for the Housing Board Mr. Poornaiah invited the Courts' attention to the particulars mentioned in Paragraph 2, 3 and 4 of the affidavit filed in support of the Writ Petition No.10267/93. The name of the land owner, place where the land is situated, survey number of the land and its extent have been mentioned in Para 3 and in Para 4, the respective petitioner's relationship with the names of the owners shown in the table under Para 3 have been given which clearly go to show that there was no ambiguity about the particulars of land owners recorded in the award. The learned Standing Counsel further pointed out that in Paragraph 4, it is stated that the 1st Petitioner was the son of Gorle Matlaiah who had died but the date of his death was left blank in the said para. In sub-para 2 of Para 4 also the date of the death of Pilli Veeranna has been left blank. In any case, according to the learned Standing Counsel for Respondent No.3, since there was no disparity with regard to the names of the ancestors of the petitioners from whom the possession was taken by the respondents, the proposition that the petitioners were not aware of the land

acquisition proceedings produces no adverse effect on the acquisition proceedings.

34. The learned Standing Counsel also urged as already stated earlier that the claim advanced by the petitioners that they were in the possession of the lands in question was of the disputed character and, therefore, the present three writ petitions were not maintainable and in support of his submission, he placed reliance on the decision of the Supreme Court in D.L.F. Housing Construction (P) Ltd. Vs. Delhi Municipal Corpn. and Others, in which the Supreme Court held that in a case where the basic facts were disputed and complicated questions of law and fact depending on evidence were involved, the Writ Court was not the proper forum for seeking relief. The right course for the High Court in proceedings under Article 226 was to dismiss the petition on this preliminary ground without entering upon the merits of the case. The Supreme Court further observed that in the absence of firm and adequate factual foundation, it was hazardous to embark upon determination of the points involved.

35. The same view is taken by the Supreme Court in a subsequent decision in Shamalbhai Lalubhai Patel Vs. The Additional Special Land Acquisition Officer, .

36. With the above situation in view, I am firmly of the opinion that no cause arises in the present writ petitions firstly to record a finding that the petitioners are still in possession of the lands in question and secondly that the possession is required to be protected by restraining the Housing Board from disbursing their so-called possession.

37. In the result, therefore, all the three writ petitions deserve to be dismissed and are hereby dismissed. However, with no order as to costs.