

(1995) 08 AHC CK 0054
In the Allahabad High Court
Case No : C.M.W.P. No. 12751 of 1983

Hardener Swamp Henagar

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 23-08-1995

Acts Referred:

Evidence Act, 1872 — Section 114

Land Acquisition Act, 1894 — Section 4, 48, 6

Citation : (1995) 08 AHC CK 0054

Hon'ble Judges : Rave S. Dhavan, J;A.B. Srivastava, J

Bench : Division Bench

Advocate : Ajit Kumar, for the Appellant;

Final Decision : Dismissed

Judgement

Rave S. Dhavan and A.B. Srivastava, JJ.—The events in this writ petition were occasioned thirty years ago. There were land acquisition proceedings and there is no issue on record that the land of the Petitioner had not been acquired. In this regard, on record are notifications u/s 4 and Section 6 of the Land Acquisition Act, 1894. The Petitioner made no issue of the circumstances that his land be not acquired. The Petitioner accepted the acquisition of his land. The Petitioner was waiting for the compensation which was to be paid in pursuance of the land acquisition proceedings. As 18 years passed and the Petitioner had not been delivered the compensation to which he was entitled under the law, he filed the present Writ Petition No. 12751 of 1983 ; Hardener Swan Henagar v. State of Uttar Pradesh and Anr. This writ petition saw a decision by a Division Bench of this Court. The decision is:

Petitioner's land situate in village Charkha, pagan Jalap, district Hardware, was acquired by the State Government under the provisions of the Land Acquisition Act. Possession was taken, but, no compensation was paid to the Petitioner. Aggrieved, the Petitioner tiled this petition challenging the validity of the acquisition and also for issue of a writ of mandamus directing the Respondents to

make award and pay compensation to the" Petitioner.

A counter-affidavit has been filed on behalf of the Respondents saying that the Notifications under which the Petitioner's land was acquired have been withdrawn by a notification dated 2nd of July, 1980, and now his land is not being acquired and as such the Petitioner is not entitled to any compensation.

On behalf of the Petitioner it is asserted that possession of the Petitioner's land was taken long ago and the Respondents have further made constructions over the same without paying any compensation to him. If that be so, the Respondents are liable to pay compensation to the Petitioner for taking and retaining the Petitioner's land and they are duty bound to deliver back possession to the Petitioner and also to remove constructions, if any, from the Petitioner's land.

We, accordingly, direct the Respondents to remove the constructions, if any, and deliver the possession of the land to the Petitioner forthwith within three months. As regards damages for the period during which the Respondents occupied the Petitioner's land in an unauthorised manner, the Petitioner is entitled to compensation for the period he was deprived of the possession of his land. We hope the Collector will take immediate steps for payment of compensation to the Petitioner. If the Petitioner is not satisfied with the compensation paid to him or if no compensation is paid to him, he may file suit for recovery of the same.

With these observations we dispose of the petition.

Sd/- Hon. K.N. Singh, J.

Sd/- Hon. R K. Shukla, J.

8.4.1985

2. The State of Uttar Pradesh accepted the decision as it did not at any stage, nor even today, Impugn the decision of the High Court by a SLP before the Supreme Court. The decision of the High Court was a routine examination of the state of the record on a writ of certiorari, and of delivering Justice for payment of compensation for acquiring the Petitioner's land. As a consequence of the land acquisition proceedings, the Petitioner saw himself out of possession of land. In the decision of the High Court there was no matter of public importance, but a certiorari judgment correcting an error in public action. The judgment of 8 April, 1985, was rendered one year after a rule of interim mandamus, dated 17 May, 1984, when the direction to determine compensation was not complied with by the State Respondents.

3. As reasonable time passed the Petitioner reminded the State of Uttar Pradesh that in pursuance and as a consequence of the judgment of the High Court he is entitled to be paid the compensation as consideration for the land which had been acquired by the State of Uttar Pradesh. The Petitioner received no response from the State Respondents and as the judgment of the High Court rested so did

the Petitioner request, and the compensation and possession, both eluded him.

4. By an application dated 4 September, 1987 the Petitioner reported to the Court that despite the decision of the High Court at the hands of the State there has, in effect, been inaction creating complications in the case and it may not be feasible to implement the decision. The Petitioner prayed that the order and direction of the Court may only stand, for the payment of damages and compensation. On this application of the Petitioner a Division Bench granted one month's time to the State of Uttar Pradesh to file a counter-affidavit. As the State of Uttar Pradesh would not file a counter-affidavit on 17 November, 1989, two years after this application had been moved, a Division Bench issued notice to the Collector/District Magistrate, Saharanpur to show cause why proceedings for contempt ought not to be drawn for not complying with the order of the High Court as from the date of the judgment i.e. 8 April, 1985. As if this was not sufficient, instead of complying with the judgment of the High Court, what was done by the State Respondents, was to move an application, in effect, praying that the judgment dated 8 April, 1985 itself and the subsequent and consequential orders be recalled. The other orders of which recall was being sought are, the order dated 17 May, 1984, by which an interim mandamus had been issued to Collector, Saharanpur to pay compensation and the order of 28 April, 1989 by which the High Court had directed that the matter be compromised with the Petitioner. The order of the Bench issuing a Show Cause Notice to the District Magistrate/Collector, Saharanpur for non-compliance of the order of the High Court is relevant, alive and stands without cause being shown to the satisfaction of the High Court. This Is clear from the subsequent orders of the High Court.

5. In effect the State Government, now, was seeking review of the High Courts judgment of 8 April, 1985 when by an Application No. 8950 of 1990 tiled on 10 April, 1990, it sought review of the judgment after five years instead of implementing it. In so far as the prayer is concerned, the application does not say so that it is a review application but, effectively there was a prayer that the judgment be recalled. The application was never presented, nor processed for reporting before the Stamp Reporter as a review, as required under the Rules of Court. Nor was any stamp paid on it s a review application. Supporting the application was a counter-affidavit. This counter-affidavit to the writ petition was being filed five years after the judgment. It is not that the State Respondents did not have an opportunity to file a return to the writ petition as the record reveals that, for whatever it is worth, a "short counter-affidavit" had been filed to answer the writ petition. The underlying circumstances, own reveal that this lacunae had been tailored. Filing a counter-affidavit five years subsequent to the judgment and eight years after notice of motion was not so much an aspect as becoming wiser by the events by attempting to lock the stables after the Horse has bolted.

6. Indeed if the Respondents were aggrieved by the judgment and had no

intention to comply with it, they were free to impugn the judgment before the Supreme Court. This they did not do. The cause which was to be satisfied or else face contempt when the High Court sought an explanation by its Order of 17 November, 1989, still escapes the record. The High Court had not given an opportunity to file a counter-affidavit five years after judgment, but an extended opportunity to comply. The Respondents as were arrayed to the writ petition were (1) The State of Uttar Pradesh (2) The Collector/District Magistrate, Saharanpur, and (3) Collector/District Magistrate, Hardware. Relegating the decision back in reference to time when the "short counter-affidavit" was filed while the writ petition was pending, the record reveals that this affidavit had been filed not by any of the arrayed Respondents but by one K.S. Rah, an Ashamed In the office of the special Land Acquisition Officer, Meerut. A clerk answered the writ petition on behalf of the Respondents; this was the measure of responsibility in offering a defence to the writ petition. When the review of the judgment was sought, each of the Respondents so arrayed again evaded answering the show cause order dated 17 November, 1989 of the Division Bench. A show cause is by obligation of law to be answered by the person to whom it is issued. It was a warning of an Initiation of contempt proceedings by the High Court, a superior Court of record. The Collector/District Magistrate, Saharanpur to whom the show cause notice had been issued, instead of showing cause himself, again showed disrespect to the High Court and now sent an Amen at the land Acquisition Office, to show cause on his behalf. The Amen, a clerk, acting as the agent and representative of the District Magistrate and Collector, was only sent to tell the High Court to recall it's judgment on the writ petition.

7. The counter-affidavit, which accompanied the application filed on 10th April, 1990 seeking recall of the judgment dated 8 April, 1985 was affirmed by the Amen, attached to the Special Land Acquisition Officer, District Saharanpur. Thus, evading answering the writ petition the State Respondents evaded responsibility, and again repeated the irresponsibility in the same matter, in the same case even while asking for review of judgment.

8. The issue in the writ petition was very simple. Land had been acquired under the Act, aforesaid, and notifications under Sections 4 and 6 had been published. The acquisition proceedings were acted upon further to record the title of the State of Uttar Pradesh notwithstanding the aspect that upon acquisition the land stood vested with the State of Uttar Pradesh free from all encumbrances. The revenue records were also altered as a consequence of land acquisition, and the name of the State of Uttar Pradesh was mutated into the record of rights within the proximity of the date of acquisition. The Petitioner's name was deleted. But, the State Respondents concealed the record, the consequential changes on State records, and the revenue records entering the name of the State of Uttar Pradesh of holding the land in question. Records are not changed unsolicited, whether rightly or wrongly, as there is always an Initiative. Here and In the present case, the mutation of revenue records was a logical consequence of land acquisition proceedings.

9. The filing of a "short counter-affidavit", the overall circumstances on record gives an Impression to the Court, that all this was deliberate exercise with two purposes (a) to avoid replying to the averments made in the writ petition without giving any details as an answer, and (b) to have this "short counter-affidavit" affirmed by those who carried no responsibility with the sole object of leaving loopholes so that the defence may be added and padded subsequently. There was much which the Petitioner had averred in his writ petition. It refers to the records of the State on matters in issue. A prerogative writ as a certiorari had been issued. A certiorari seeks the record. As in reality a true disclosure of the record by an official on an affidavit satisfies the writ, by law, the record itself must answer the certiorari. Thus, there must not be any variation on the disclosure of the record on an affidavit and the record Itself, for here lies the faith given to the Court.

10. All that the Petitioner had been pointing out in his writ petition was that while the State Government will take a stretched time to make up its mind to act on the notifications for the acquisition of the land, in so far as he was concerned compensation should follow the act of the State. The Petitioner need not. Have pointed out that while the land stood acquired, its physical character was being changed by creeping encroachments. While he was drawing the attention of the State Respondents that the land which they had acquired was gradually and slowly being occupied by unauthorised persons, he pressed for his compensation. It is for this reason that the State Respondents declined to answer the averments in the petition and filed a shabby evasive "short counter-affidavit". When the matter was taken up, for whatever the defence of the State of Uttar Pradesh was, the Court on the basis of the record rendered its decision. The State of Uttar Pradesh or the Respondents as arrayed, cannot complain that they were without an opportunity to oppose or deny whatever the Petitioner had submitted In the writ petition. The opportunity was there, but the Respondents evaded their responsibility in answering it.

11. Under law, if an averment will be permitted to be neither affirmed nor denied, it will be presumed that the state of affairs Is as has been averred. Five years after the writ petition had been decided the Respondents had taken a series of actions which shows, scant respect for the proceedings before the High Court. These Respondents committed themselves into an act which was contemptuous so much so that by an order of 1989 the High Court had to certify that not honoring the judgment is contempt and a show cause notice was issued to the District Magistrate/Collector, Saharanpur giving him an opportunity why an action for contempt be not Initiated and proceeded against him. The order of the Court:

Let notice be issued to the Collector/District Magistrate, Saharanpur for showing cause"as to why the contempt proceedings be not taken against him for having not complied with the order passed by this Court from time to time beginning from 8.4.85 In Writ No. 12751 of 1983.

Sd/-Hon. K.CA.J.

Sd/- Hon. R.K.G., J.

17.11.1989

If this was not enough warning by the High Court, another contemptuous act was occasioned. Evading an opportunity granted by the High Court to explain their conduct and ignoring the show cause notice the Respondents by whom cause was to be shown avoided, now, to answer the cause notice.

12. The aforesaid order was very clear in its terms that for a contemptuous situation which had been rendered on record whatever assessment which the Court had arrived at when the aforesaid order was passed, cause was to be shown by no other person than the Collector/District Magistrate, Saharanpur for not having complied the orders of the Court passed from time to time effective 8 April, 1985, when a Division Bench of this Court had given judgment on the writ petition.

13. Circumstances virtually lie glaring on the record that instead of showing cause, the District Magistrate/Collector, Saharanpur sent his clerk to depute for him and instead reply to the writ petition after Judgment, and seek recall of it. This step was aggravating the contempt. As of date and till today the District Magistrate/Collector has not shown cause on the order of the Division Bench dated 17 November. 1989. It is, thus, that the Court ordered personal appearance of the District Magistrate and Collector by its order of 5.10.1993.

14. Two orders of the Court need to be taken note of. These are:

This is a matter on which this Court made a direction finally disposing of the petition in 1985 to deliver possession within three months. Thereafter this petition was filed In 1987 and since nothing was done a show cause notice was Issued to the Collector/D.M., Saharanpur on 22nd December, 1989 to show cause. Now four years have expired but no fruitful result has come. This Is a distressing state of affairs. The contention oil the learned Standing Counsel seems that because of division of District Saharanpur and the present land may have fallen with the D. M., Hardware and by no communication of the matter this delay may have been caused. However, this is an internal matter for the Respondents to examine this.

Learned Standing Counsel may obtain the instructions in the matter.

Put up the case day after tomorrow. If necessary the Bench then may dispose of finally on that date. The case shall not be treated as part-heard with us.

Sd/- Hon. AP. Misra, J.

Sd/- Hon. M. Katju.J.

29.9.1993

This case in which an order was passed by this Court on 29.9.1993 was to be put up today and the learned Standing Counsel was directed to obtain instructions from the District Magistrate, Hardware. When the case was taken up today learned Standing Counsel has once again stated that inspite of communication he has not received any instruction. We have already made observations in our order dated 29.9.1993 which we are reiterating that a direction was issued while finally deciding the writ petition No. 12751 of 1983 by this Court to deliver the possession of the land in question to the Petitioner forthwith within three months and pay damages on account of Respondents occupation of the land of the Petitioner in an unauthorised manner. This order was passed as far back as on 8th April, 1985. When nothing was done inspite of the said order after about two years the Petitioner filed the present writ petition seeking implementation of the order elated 8.4.1985 passed by this Court. Inspite of time being given to the learned Standing Counsel no counter-affidavit has been filed till this date which is almost six years since the application has been filed. In fact, earlier this Court on 17.11.1989 issued a show cause notice to the Collector/District Magistrate, Saharanpur why contempt proceedings be not started against him for having not complied with the order passed by this Court from time to time beginning from 8.4.1985 in Writ Petition No. 12751 of 1983, but Inspite of the said order no cause has been shown nor the possession of the land has been given to the Petitioner. We had observed in our earlier order that this Is a distressing state of affairs so far as the Respondent authorities are concerned. Disregarding the order of this Court is a serious matter. Inspite of having been given repeated times to the learned Standing Counsel no counter-affidavit has been filed nor any cause has been shown by the Respondent authorities. It is in this context that the case was taken up on 29.9.1993 and the learned Standing Counsel desired two days time to obtain instructions in the matter on the ground that the delay might have been on account of division of the district Saharanpur into two districts one of them district Hardware where the present land falls. Inspite of all this time being given as observed above, he has once again stated that no instruction has been received though this has been communicated to the District Magistrate, Hardware. We are once again today exercising our great restraint for passing any order to give as a last resort an opportunity to the Respondent District Magistrate Hardware In the aforesaid light either to deliver possession of the land to the Petitioner in terms of the order passed by this Court as aforesaid on 8th April, 1985 and pay damages or show cause by personal appearance in the Court and by filing counter-affidavit on 6th December, 1993. List the case for orders on 6.12.1993 before the appropriate Court and it may not be treated as tied up to this Bench.

Learned Counsel for the Petitioner will serve a copy of this order on the District Magistrate, Hardware within ten days from today.

Sd/-Hon. Misra, J.

Sd/~ Hon. M. Katju, J.

5.10.1993

15. As late as 5 October, 1993 another Division Bench was certifying the record, to the effect, that on the order of the Court dated 17 November, 1989 no cause had been shown nor possession of the land given to the Petitioner. The Court cautioned the Respondents that disregarding the order of the court is a serious matter. As a last resort, the Court reiterated the warning to the District Magistrate concerned. The court directed that either certain directions contemplated in the order of 8 April, 1985 be carried out or cause be shown by personal appearance.

16. On 6 December, 1993 from the proceedings recorded on that day it appears that the District Magistrate concerned who was to appear in person did not appear before the court. The case was to be listed as a consequence of the orders dated 5 October, 1993 and 6 December, 1993. On that date the contention of learned Standing Counsel was that an application for recall of the judgment had been filed on 26 November. 1993.

17. By tile order of December, 1993 a Division Bench directed that the application purporting to have been filed by the Standing Counsel on 26th November, 1993 be traced and placed on record. The Standing Counsel was directed to make available to the Court, file No. 83 of 1968-69 containing the Order of 1 July, 1920 passed by the Land Acquisition Officer, other relevant files of the Public Works Department and the State Government, in context.

18. The follow up on the directions of the Court are relevant. The application, in reference to which, It was contended on behalf of the State Respondents that It had been filed on 26 November, 1993, the Registry reported that it had not been received. In so far as producing the record which the Hon''ble Division Benches had sought, the situation is reflected in subsequent orders or yet another Division Bench in its order of 28th January, 1994.

Two rejoinder affidavits have been tiled today.

Learned Standing Counsel states that a counter-affidavit was filed on 04.11.1990 along with an application for recall of the order. If it is so, the office shall take to the same and place it on record.

List the petition on 24.02.1994. On that date the Additional Chief Standing Counsel had undertaken to make available the record of the case and shall obtain clear Instructions as to when the possession of the land was taken, when its possession was delivered back to the Petitioner or whether the possession of the land from the Petitioner was never taken.

Sd/~Hon. V.N. Khare. J.

Sd/- Hon. M. Katju, J.

28.1.1994

19. The matter came up again before another Division Bench on 8 March, 1994. Compliance of the orders of the Court for the production of the record was yet being evaded and the record was not produced before the Division Bench. The situation stands recorded as.

Let the case be passed over today to enable the Standing Counsel to comply with the order dated 6.12.1993. List on 21.3.1994.

Sd/- Hon. V.N. Khare, J.

Sd/-Hon. B. Dished, J.

8.3.1994.

20. By now almost nine years had passed by and the case was listed before yet another Division Bench. Further lime was yet being sought by the Standing Counsel to comply with the order for producing the record. The situation stands recorded in an order of 19 August, 1994.

Learned Standing Counsel Is granted further one month's time to comply the order dated 6.12.1993.

Sd/- Hon. V.N. Khare. J.

Sd/-Hon. I.P. Vanish, J.

19.8.1994"

21. The matter was listed before another Division Bench on 24 October. 1994. The State Counsel sought an adjournment.

"As prayed for by the learned Standing Counsel, put up tomorrow.

Sd/- i Ion. R.A. Sharma, J.

Sd/-Hon. N. Katju, J.

24.10.1994

22. On the day to which the matter had been adjourned to the Division Bench recorded the following order-

A Division Bench of this Court on 8.4.1985 gave a judgment in Writ Petition No. 12751 of 1983 directing the Respondents therein namely the District Magistrate, Hardware and State of U.P. to remove the constructions, if any, from the plot belonging to the Petitioner and deliver their possession to him forthwith within three months and to pay him damages on account of unauthorized occupation of the land. Although the abovementioned judgment was given on 9.4.1985 but it has not been complied with so far. The Petitioner moved application earlier before this Court for compliance of the aforesaid Judgment. This Court issued notice on that application and summoned the records of the case. In fact on 5.10.93 a Division Bench of this Court passed an order giving last opportunity to District

Magistrate, Hardware either deliver the possession of the land to the Petitioner in term of the order passed by this Court on 8.4.1985 and pay damages or show cause by personal appearance In Court and by filing counter-affidavit on 6th December, 1993. This Court also directed the learned Standing Counsel to produce before this Court the File No. 583/68-69 containing the order of 1st July, 1970 passed by the Land Acquisition Officer and other documents from Public Works Department. The case was listed on 6.12.1993 but the above order was not complied with. We have been informed that neither possession was delivered nor the District Magistrate has appeared in person on that date. However, an application was moved by the Respondents for recalling the aforesaid judgment of this Court on 5.11.1993. The learned Standing Counsel has placed some record before us today but It does not contain File No. 583/68-69 and the papers of the Public Works Department.

From the various orders passed by this Court from time to time it is apparent that the orders of this Court are not being complied with deliberately. The District Magistrate who was required to remove the constructions and handover the vacant possession of the land in dispute to the Petitioner or to show cause by appearing In person alongwith the counter-affidavit, has not complied with that order. Prima facie the Respondents are guilty of contempt of court. We accordingly issue contempt notice to the District Magistrate. Hardware and Land Acquisition Officer, Hardware to show cause why they should not be punished for contempt of court.

List this writ petition on 24th November, 1994 on which date the District Magistrate, Hardware and Land Acquisition Officer, Hardware will be present personally and will also produce the relevant records of File No. 583/68-69 containing the order dated 1st July, 1970 passed by the Land Acquisition Officer as well as all other relevant files of the Public Works Department and the State Government.

The registry is directed to serve this order on the District Magistrate, Hardware and Land Acquisition Officer, Hardware forthwith. Learned Standing Counsel is also directed to inform the District Magistrate, Hardware and Land Acquisition Officer, Hardware about this order, The Petitioner is also permitted to serve this order on the aforesaid two officers within a week.

Sd/- Hon. R.A. Sharma, J.

Sd/- Hon. M. Katju, J.

25.10.1994

23. The evasive record was still being located and a Division Bench records this situation in the order of 24 November, 1994.

List this matter on 7th December, 1994, by which time, Shri Kushwaha, Learned Counsel will look into the whole record and will also let the Court to know as to how and when the File No. 583/68-69 was lost, and that action has been taken

by the State in that connection. A detailed affidavit of the Land Acquisition Officers or the District Magistrate containing the reason as to why the Court judgment of 9.4.1985 was not complied with, will also be filed. The District Magistrate, Saharanpur and the Land Acquisition Officer, Saharanpur will make all the relevant records pertaining to the controversy available to the District Magistrate, Hardware and that record be also produced before the Court on 7.12.1994. On that date the District Magistrate and the Land Acquisition Officer, Saharanpur will also be present.

Today the District Magistrate, Hardware has appeared in the Court in pursuance of the Court's direction along with the Land Acquisition Officer, Saharanpur.

Sd/- Hon. RA. Sharma, J.

Sd/- Hon. H.L. Ganguly, J.

24.11.1994.

24. Thus, the state of the proceedings stood on a void that nine years after judgment the record on which the defence of the State was to rest, was either not available to the Respondents or was deliberately being kept away from the Court. A writ of certiorari had been frustrated. In simple terms a certiorari means nothing but to bring forth the record. The procedure permits the State to place a copy or the facsimile of the record on an affidavit. A very fundamental question which arises is on the accountability and responsibility of filing a counter-affidavit, as a return to the writ petition as it is said, but without the original record. Without the record, truly, a certiorari cannot be answered. The record has not surfaced even today and the Additional Chief Standing Counsel In court, submits that he is still waiting for the record which was meant to be produced before the High Court in pursuance of the order dated 6 December, 1993. A Deputy Collector, Saharanpur one year after the High Court passed an order to produce the record, made a statement on oath that the record which was to be produced before the High Court, "the file was lost" and that it is "proposed" to take "action against the persons Involved In the matter". The state of the record now rests with circumstances that the record which was to be produced before the High Court cannot be produced for the simple reason that it is not available or not traceable or lost. The situation is best answered by reproducing the paragraph from the affidavit of Ved Prakash Agawam, Deputy Collector, Saharanpur in the affidavit filed on 7 December, 1994.

6. That, in compliance of order dated 28.11.1994 passed by the present District Magistrate, Saharanpur the Additional District Magistrate (Finance) Saharanpur concluded the enquiry after going through the records available relating to the present case. After concluding the enquiry, the Additional District Magistrate (Finance) Saharanpur submitted a detailed report on 1.12.1994. A perusal of report clearly indicates that by order dated 29.6.1984 the then District Magistrate, Saharanpur directed the S.L.A.O. Joint Organisation, Meerut to take appropriate action in the matter within no time. The Additional District Magistrate

(Finance), Saharanpur concluded the enquiry with the finding that due to negligence of two officers namely Shri G.K. Yadav, then the Land Acquisition Officer, Meerut and Shri Javier Singh Neigh, the then S.L.A.O., Aligarh, the file was lost. One clerk, namely. Ram Rattan Lai Signal who was posted as Clerk in the office of S.L.A.O., Aligarh, was also involved in the matter. The Enquiry Officer also proposed action against the persons involved in the matter. It is further to make it clear that two officers, namely, Mr. Yadav as well as Mr. Neigh are still in service, but so far as Mr. Signal is concerned, he is not In service. A true copy of the enquiry report submitted by Additional District Magistrate (Finance), Saharanpur on 1.12.1994 is being filed herewith and marked as Annexure No. , S.A. 2" to this affidavit,

(emphasis).

25. Further averments in the, aforesaid affidavit are to the effect that the two officials who have been found to be negligent action is proposed to be taken against them and of the one who has retired it has been suggested by the District Magistrate to the revenue department that pensioner benefit of the official concerned be stopped.

26. Why did the District Magistrate and Collector not file his affidavit in this all Important matter on a state record being lost. Why did this official shirk his responsibility when he had by the order of 17 November, 1989 received a show cause notice. Even the District Magistrate, Hardware, (a district part bifurcated from Saharanpur) had been put on a show cause by an order of the Division Bench dated 5 October, 1993. Why did the District Magistrates, concerned, disrespect the proceedings when specially required to answer, but sent their clerks and deputies? This aspect does not render justice to a public justice system that the record on the basis of which public justice will be dispensed, has been arranged to be lost. The explanation of the Respondents is not that the record has been destroyed. In so far as the High Court is concerned the relevant aspect of keeping away the best evidence on the basis of which the Court could discern for itself the issues brought to Court by a citizen, now requires to be examined as the law would require it so, but strictly. It is settled law that the party which keeps away the best evidence from a Court renders itself in a position to have a presumption drawn that the record if produced would reveal circumstances which would go against the party which keeps away the record. This is the salutary principle u/s 114(g) of the Evidence Act, 1872. But if this principle needs any fortification the Supreme Court almost thirty years ago reiterated it in no uncertain but clear terms when certain accounts book would not be placed before the Court when summoned, drew an adverse presumption against the party keeping away the record. The parameters cannot be any different in the present case. Gopal Krishnaji Ketkar Vs. Mahomed Haji Latif and Others, : Khushalbai Mahijibhai Patel Vs. A Firm of Mohmadhussain Rahimbux, .

27. Now coming to other aspects on the complications which have arisen while this matter of land acquisition proceedings has not been permitted to see finality

since initiated thirty years ago in 1965. Coming home to the relevant point, the circumstances which have seen birth to create complications are that restoration of possession to the Petitioner in pursuance of the land acquisition proceedings or the orders of the High Court have been frustrated by the State Respondents. When the writ petition saw judgment in 1985, the circumstances were such that neither compensation had been paid nor possession restored to the Petitioner. The State Respondents yet lingered and stretched both the determination of acquisition as well Court proceedings so as to frustrate the result of both. After the judgment had been rendered in 1985 the State Respondents yet rely on a Notification dated 2 July, 1980, of which a mention has been made In the "short counter-affidavit" which was already before the Court when the writ petition was decided. The reference to the Notification of 2 July, 1980 is in paragraph 6 of the "short counter-affidavit". This is a Notification u/s 48 of the Act aforesaid. But this circumstance was already before the Court when the writ petition was decided on 8 April, 1985. Issues settled cannot be unsettled and there ought to be a finality on judicial decisions. So far as this case is concerned, the State Respondents evaded their responsibility at every given stage when the writ petition was pending and after a decision on it. The writ petition was never answered with responsibility and now it has revealed that the Respondents knew that their record would reveal an embarrassing state of affairs, and, thus, had the writ petition answered irresponsibly through their clerks and subordinate stall", but not themselves.

28. But if the ultimate consequence of render disrespect to a judgment of the High Court is such that it will be permitted to be compromised nine years after it was rendered and the State Respondents chose not to follow either the judgment or the procedure established by law, this Court cannot permit public justice to be compromised and will ensure that a writ of certiorari issues like an arrow to seek every nook and corner and takes out the thorn which frustrates and compromises a decision of the High Court. If things have come to such a state of affairs hat this Notification of 2 July, 1980 is being used as a tool lo avoid the judgment of the High Court against which the State Respondents chose not to go to the Supreme Court, then this Court has no hesitation on reflecting it"s attention on this Notification also.

29. How the aspect of the Notification dated 2 July, 1980. It was issued u/s 48 of the Act. Section 48 operates in a field to permit withdrawal from an acquisition of any land. But the premise on which this power rests with the Government is that the possession of the land should not have been taken. It is only where the Government has not taken possession of the land that the law gives the State a concession to withdraw an acquisition proceeding. Whether such was the state of affairs in the present case so as to permit the State Government to withdraw from acquisition of the land of which it had already taken possession? The anchor sheet on which the aforesaid notification of 2 July, 1980 has been issued has its origins on the suggestion which had been made by the Deputy Collector in his letter dated 2 July, 1970 written after the notification under Sections 4 and 6 had

been published. A reminder was sent by the same officer to the Collector, Saharanpur, on his suggestion by his letter of 11 January, 1971. These facts are available from Annexure "3" to the writ petition. Be that as it may that It was, a matter inter se between the officials of the Collector's office to suggest that the land acquisition proceedings be recalled but the fact of the matter is that between the suggestion and the notification of 2 July, 1980 u/s 48 of the Act as it as printed In the Gazette another ten years had passed. And, the unilateral exercise to devoutly the acquisition of land in context, was done fifteen years after the land had been acquired under Sections 4 and 6 of the Act. These are matters of record. Also on record is the aspect that the Petitioner repeatedly had drawn the attention of the State Respondents that possession of the land had been taken for on behalf of the Collector, Saharanpur on 16 May, 1965 in pursuance of the Notification No. 4830/XXIII-PWA-55-L W/64 dated November 26, 1964 in reference to plot No. 1/3 (Part) area 1.04 acres. The possession certificate apart from lying in the office of the Collector and/or of the Special Land Acquisition Officer concerned, stood marked to the Public Works Department, Rampur region, Rampur, and the Public Works Department, Saharanpur. The possession certificate is Annexure "1" to the petition. Five years after the notifications for the acquisition of the land of the Petitioner, the Special Land Acquisition Officer was writing to the Executive Engineer, Provincial Division, P.W.D., Saharanpur recommending that "regarding payment of compensation of land for 1.04 acres (sic) for the interim period. Please settle the case by private negotiation as already mentioned by office endorsement No. 5352 (i) dated 2.7.70 to avoid legal complications in the matter". This letter is Annexure "9" to the petition. From the record it is clear that possession of the land in the hands of the State was never In Issue. Settling the matter by private negotiation implies payment of compensation of land which is in possession of State. This was the context of correspondence. Four years after the Special Land Acquisition Officer had suggested to the Executive Engineer, P.W.D. to settle the matter by private negotiation, the latter (Executive Engineer, P.W.D.) was placing on record that the acquisition of land cannot be recalled nor possession redelivered but the matter of compensation be processed, and the land according to fresh instructions of the Government is required by the department. This is the letter dated 20.4.1974 from the Executive Engineer, P.W.D., Saharanpur to the Petitioner appended as Annexure 11" to the petition. Simultaneously, in his correspondence the Petitioner was drawing the attention of the Respondents, particularly the Special Land Acquisition Officer by his communications dated 4 September, 1975 and 16 October, 1975 (Annexure -5" to the petition) that the acquired land was being encroached by trespassers. In his letter of 16 October, 1975 (Annexure "6" to the petition) the Petitioner had already drawn the attention of the Special Land Acquisition Officer, of the misplaced or lost record without which his claim for compensation was being delayed. All these are matters of record not denied by the Respondents when they evaded filing a counter-affidavit and Instead filed a "short counter-affidavit".

30. The mystery or the hesitation or the embarrassment In producing the original record, no apparently stands answered on why the State Respondents could not settle the claim of the Petitioner or were attempting to devotely land acquisition proceedings or were rendering a state of affairs so that the Petitioner can neither have possession nor compensation. The answer lies in the missing record. This record was lost. The position was no different twenty years ago than is now. In the meantime, the land which the State Respondents acquired was permitted to be encroached by third parties. In fact the process of encroachment had already begun much before the Notification of 2 July, 1980 had even been contemplated. The Petitioner has already brought on record communications about encroachments on acquired land when he was perusing and pressing his claim for payment of compensation. The Respondents had rendered themselves into a situation that having taken possession of acquired land they had permitted it's occupation by strangers. The land could not be redelivered as its possession was lost while the State of U.P. was possessed of it. The question now arose on who would, in the circumstances, take the responsibility for the payment of the compensation to the Petitioner. The easiest way out was to frustrate the process of payment and loose the record of land acquisition proceedings. The exercise of making the record disappear succeeded, but only to the extent of harassing the Petitioner. In the meantime the situation took for the worst and the story had ended from where it started. The record was seen to be lost in 1975. Today, the State Respondents, in 1995 accept by an affidavit that the record has been lost. In the Intervening period the Land Acquisition Act, 1894 has been drastic amendments. In the matter of payment of compensation, in 1984 the Act was amended to provide for (a) market value of land, (b) solatium and (c) 15% interest on delayed compensation for the land acquired. The State Respondents cannot get out of this situation as now the change In the legislation, unfortunately happens to be the law.

31. It is for this reason that time and again different Division Benches of the High Court had been cautioning the State Respondents to settle the matter out of Court and with private negotiation with the Petitioner. This the State Respondents did not do and until the time when they were cornered by the issue of a show cause notice for a contemptuous situation they avoided filing affidavits though arrayed as party State Respondents.

32. It was unavoidable that further complications would arise in this case. Third parties have applied to be impleaded as Respondents and prayed that they be granted an opportunity to file a counter-affidavit. The question arises as to which proceedings? The court cannot permit the filing of a counter-affidavit to a writ petition which was brought Into court and notice issued on it in 1983. Besides, certain Petitioner who claim rights are upon encroachment. They claim adverse possession. The person who has affirmed the affidavit accompanying the impleament application, today is 33 years of age. This implies that at the time when, the notification under Sections 4 and 6 had been issued he was at best 3 years old. Was he in a position to occupy the land so as to claim even adverse

possession? Clearly it was not against the Petitioner as it could only be against the State. How much period does a man need to claim a right of adverse possession against the State is not an answer which this Court has to give as this, the law already provides by a statute on limitation. It is for this reason that the Court does not see any necessity of complicating the situation, already complicated by the State Respondents. This matter today is admittedly on payment of compensation to the Petitioner in lieu of a land already acquired and possessed by the State of U.P. In so far as those who have encroached on the acquired land, they themselves admit of a wrong act done by them. They have no title or sanction of the State of U.P. to frustrate the acquisition by illegal possession. Who are these persons and how they came upon the land has to be a matter of serious inquiry by the administration. Also to be inquired is the aspect as to how many of these persons or their parents or relatives or kinsmen, were officials and staffs of the Land Acquisition Office, Collector's office, of the Public Works Department, or were in a fiduciary capacity as officials of the State, but colluded between themselves to occupy an acquired land. And for all these reasons the court cannot permit interference by encroaching adversaries, inequitable in their conduct in a decided writ petition. Permission to be impleaded is, thus, declined.

33. The only issue now is of the reliefs that may be granted in furtherance to the judgment of 8 April, 1985, the review of which the State Respondents seek instead of complying with it. The paramount aspect which is before the court is that public justice be not compromised. All defenses were taken by the State Respondents on advice or otherwise to avoid the judgment dated 8 April, 1985 on the writ petition. This Court does not need to certify a contempt as this would only be reiterating it. On record the task of the Court has been made easier. This aspect has already been taken care of by orders of earlier Benches. One order is of 17 November, 1989, passed by Hon'ble K.C. Agarwal and Hon'ble R.K. Gullet, JJ. At that time the situation was contemptuous for every time when the Court passed an order by invoking a certiorari to produce the evasive record, the order was not satisfied. Thus, the Hon'ble Division Bench, aforesaid, cautioned that violating a writ of certiorari is a contemptuous action. Unnoticed to the earlier Hon'ble Division Benches when seized of this matter was the situation that the State Respondents would not answer the petition by their affidavits but sent their subordinates to do so, another contemptuous situation had been rendered. The demeanor of the officials of the State, if these proceedings are an exemplar, is such that should such a state of affairs be encouraged, then, the very edifice of the writ jurisdiction of the High Court under Article 226 of the Constitution of India will be destroyed. The two cardinal principles on which a writ Jurisdiction functions to render public Justice is that, firstly, a writ of certiorari must be honoured by the State as rendering the record on an action in its true state but with speed. Secondly, a writ must be responded to by the person to whom it has been issued, unless an exception is made by the High Court or the law. When this respect is given to a motion on a writ, the High Court on a true record

brought forth by the official Respondent to whom the writ was ordered, renders its decision to certify a state action as correct or incorrect. The relief to an aggrieved citizen is rendered accordingly.

34. In the present case the State Respondents over the last decade violated both the fundamentals of a prerogative writ Issued as a motion to them. They never answered the writ petition on the basis of the true record which they either did not want the High Court to see or they arranged to have it mislaid. Consequentially they avoided the record when there was no occasion to and despite an opportunity granted chose to file a suppressed defence in a "short counter-affidavit". A writ of certiorari, a constitutional prerogative writ deriving its sanctity from Article 226 of the Constitution of India, was dishonored and the Constitution disrespected. But, matters did not cease here. Those to whom the motion of the prerogative writ was issued, avoided it as if they would rather not answer It. They sent their clerks, subordinates and deputies to depute for them. They did not render Justice to public justice In not discharging their obligation to respond to the prerogative writ as responsible official Respondents. In the net result, the correct response as from the record was never given to the High Court, even after contempt proceedings were initiated, and in between these last ten years the officials came and went on their postings. For every State Respondent who violated and disrespected the prerogative writ he also disrespected the Constitution. These State Respondents presented their shabby and unsatisfactory defenses, did not conform to the judgment of the High Court delivered ten years ago, avoided the Supreme Court, and yet stretched a settled litigation to seek review of the judgment after one decade when they were issued a show cause notice on proceedings for contempt. They played havoc with the procedure of the law, with a public justice system, all at the expense of and on the tax payers money.

35. In this matter before the Court with the background that the land acquisition proceedings were Initiated thirty years ago and the Highly Court gave a decision ten years from today yet Justice eludes the Petitioner with a decision in his favour. The priorities before the court are that public justice must not be compromised. True, six years ago on 17 November, 1989 a Division Bench of this Court certified that the action of the State Respondent is contemptuous and had put them on a notice of show cause why proceedings for contempt ought not to be initiated against them. Later, another Division Bench on 25 October, 1994 had an occasion to record and reexpress its concern on a continuing contempt. True, the law is settled that contempt must not go unpunished. But between the time when a series of contemptuous situations had continued without a break, State officials in the ex-officio capacity arrayed as Respondents have been Hushed out of the district for the simple reason that no official who was posted when motion was issued on the petition twelve years ago, has continued to remain in the district. The exercise today will amount to chasing the contemner and enlarging the contempt proceedings. If this exercise is taken to its logical conclusion, then it would virtually amount to requiring the presence of each contemner to attend

the proceedings of this Court and arraign them to offer a defence why they ought not to be punished for contempt. On the other hand, public Justice requires that justice be done and delivered to the citizen who sought it in 1983 with a judgment in his hand in 1985, with speed,. The arrangement of the officials who had committed contempt will divert the attention of the court at the expense of delivering the fruits of public Justice. No official who was found to be in contempt will be available at the district and apart from the fact (hat they may have moved out, some may have retired or even died. Contempt was committed by abusing the sovereign powers of the State by the agency of the State. Punishing the contemnors is an exercise on strict proof liability. The State officials whoever they be, have successfully ridiculed the writ jurisdiction of the High court. While finding the contemner to be punished on a strict proof liability may turn out to be a frustrating exercise, the record of the matter today shows that the State on whose behalf sovereign power was exercised, is itself in contempt. It is not that the State cannot be in contempt, only the State cannot be punished to jail. *Dibakar Satpathy Vs. Hon"ble The Chief Justice and Judges of The High Court of Orissa.*, : *The State of Bihar Vs. Rani Sonabati Kumari*, .

36. The officials of the State who were certified as having committed contempt of the High Court by orders dated 17 November, 1989, 5 October, 1993 and 25 October, 1994 have virtually laughed at the proceedings of the High Court as if suggesting to themselves what can the High Court do even after issuing show cause notice for initiating the proceedings for contempt against them. Such successes are short-lived. These officials have shown contempt to the powers while they were meant to utilise in the discharge of their official functions, acting as agencies of the State, by collusion and collaborating of false defences and of disappearing records. For the contempt they committed repeatedly and handed down the contempt which they committed to each succeeding successor in office, they have made the State of U.P. commit contempt. The State of Uttar Pradesh is answerable for them whether they be in office, retired or dead. The officials may have escaped in bogging a land acquisition proceeding. The inquiry on officials is an obligation of the State of Uttar Pradesh For the contempt which was committed in exercise of misutilising sovereign power, public Justice cannot be made redundant or infructuous. The contempt will remain as contempt and for this the State of Uttar Pradesh shall pay as a redressal to the system. For let no official get away by abusing a prerogative writ for that would be debasing the Constitution as a prerogative writ issues Under Article 226 of the Constitution of India and the State is obliged to have it answered truthfully in content and spirit. Only costs against the State of Uttar Pradesh shall mitigate the contemptuous situation, certified by more than one court in these proceedings. The innumeration of the costs will be at the end of this Judgment.

37. The abuse of the sovereign power was the issue of notification of 2 July, 1980, u/s 48 of the Act. The record has now clearly shown beyond a reasonable doubt that the possession had always been with the State of U.P. The land which was acquired under Sections 4 and 6 by notifications dated 25.7.1964 and

26.11.1964, was the subject matter of a decision on the writ petition. Section 48 is virtually a power reserved to the State for denotifying an acquisition proceeding. But the exercise of this power rests on very fundamental principle. The premises for the exercise of this power are that the possession must not have been taken by the State. If the State is possessed of the land which is acquired, then Section 48 cannot be resorted to for denotifying the land acquisition proceedings. In the present case, the State of U.P. was possessed of the land at every given stage, the powers u/s 48 were only used as a subterfuge to get out of a messy situation so that neither compensation is paid to the Petitioner nor the obligation of reconveying the land ever arises. Taking the second aspect first, it was the State of U.P. which by its negligence or callousness, while in possession of the land in question, lost it to third parties who encroached it illegally. In so far as the Petitioner is concerned, delivery of possession or reconveying land to him is well-nigh impossible in the face of encroachment by third parties. On the first aspect, as possession of the land had already been taken by the State of U.P., and these aspects are on record, compensation is the only inevitable consequence of the land acquisition proceedings. If the mere issue of a notification u/s 48 of the Act is becoming an excuse to evade the delivery of public Justice, the court has no hesitation in removing this thorn which interferes with Justice. The exercise of the power to issue this notification was, in any case, an abuse of sovereign power as the condition precedent to the exercise of this power did not exist. This notification, thus, must go. As the State of Uttar Pradesh and/or its officials had sought review of this judgment delivered by the High Court on 5 April, 1985, the review is not possible on the state of record as it stands today. The notification of 2 July, 1980 is, thus, by a writ of certiorari quashed so that hereinafter it will not interfere nor encourage any official of the State to complicate this matter further.

38. The balance of the situation which now remains is to ensure that the justice is delivered to the Petitioner and for this, this Court issues the following directions, regard being had to the circumstances already noticed:

(a) Compensation to be paid to the Petitioner on the land in question in pursuance of the land acquisition proceedings initiated under Sections 4 and 6 of the Land Acquisition Act, shall be the market value of the land as of date determined as a consequence of the amendments brought into the Land Acquisition Act, 1894. Consequently 30 per cent solatium shall follow the determination of compensation. Thereafter, should this compensation and solatium be delayed, 15 per cent, interest shall become payable to the Petitioner on the delayed compensation and solatium, beyond the directions of these orders;

(b) the compensation shall be paid not later than three months of a certified copy of the judgment being placed before the Collector, now Hardwar, or Collector, Saharanpur, as the case may be, as it is the Respondents contention that now the Collector, Hardwar, is seized of the matter, the award as a

consequence of the land acquisition proceedings shall be rendered within this period ;

(c) for the continuing contempt of the various orders of the court, as already noticed, and not truthfully honouring writs of certiorari and putting the proceedings of the court into ridicule and for compromising public justice and for abusing and disrespecting the prerogative writs issued under Article 226 of the Constitution in this case, the State of Uttar Pradesh shall render costs which will stand at Ks. 10,000.00. This will be deposited with the Registrar. High Court within three months from today. Thereafter, Rs. 5,000.00 shall be paid by the Registrar to the committee for Implementing Legal Aid Schemes, Department of Legal Affairs, Ministry of Law, Justice and Company Affairs, New Delhi and the balance Rs. 5,000.00 to the Petitioner:

(d) the review application is rejected accordingly; and,

(e) all other applications pending hitherto shall receive consequential orders as to give effect to this order.

In the result, the review application dated 10 April, 1990 filed by the State of U.P. is dismissed with costs, as above.