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**(2008) 04 RAJ CK 0102**  
**In the Rajasthan High Court**

Inder Singh Bhati through his LRs.

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

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**Date of Decision :** 16-04-2008

**Acts Referred:**

Constitution of India, 1950 — Article 14, 226, 32  
Land Acquisition (Mines) Act, 1885 — Section 5  
Land Acquisition Act, 1894 — Section 16, 17, 4, 48, 49  
Provincial Insolvency Act, 1920 — Section 56

**Citation :** (2008) 3 RLW 2410

**Hon'ble Judges :** Vineet Kothari, J

**Bench :** Single Bench

**Final Decision :** Allowed

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## Judgement

Vineet Kothari, J.—This writ petition has been filed by the legal representatives Smt. Chandra Devi and others of Shri Indra Singh Bhati, who was son of Keshav Dev Bhati, whose land in question was acquired by the State Government for Urban Improvement Trust, Jodhpur under the provisions of Section 52 of the Urban Improvement Trust Act, 1961 by the notification u/s 52(1) of the Act dated 3rd June, 1974. The said land in question is situated at right side of Circuit House to Ratanada Road of Jodhpur and the said land was acquired for the purpose of "Residential-cum Shopping Scheme in between road from Ratanada Crossing to Circuit House and Police Line".

2. The notice to petitioner in this regard u/s 52(2) of the Act vide Annexure 3 dated 28.6.1973 shows that the land of the petitioner measured 3533 sq. yards and is earmarked as plot No. G-1 in the survey plan produced by the petitioner as Annexure 2 with the writ petition. The said land is said to have been purchased by the petitioners from the erstwhile Ruler of Jodhpur Maharaja Gaj Singhji by a registered sale deed on 13.10.1971. Vide Annex. 6 notification dated 26.1.1974 issued by the State Government, the State Government sanctioned the aforesaid scheme and it was stated in the said notification that the Scheme in question shall be completed within three years from the said notification dated

26.1.1974. It also appears from the record that the petitioner had earlier challenged these acquisition proceedings including the aforesaid notice dated 28.6.1973 and notification dated 3.6.1974 u/s 52(1) and 52(2) of the UIT Act before this Court by way of S.B. Civil Writ Petition No. 3346/1974 which was however, withdrawn by the petitioner on 26.10.1977. The petitioner has also produced a resolution No. 12 dated 22.1.1980 as Annexure 9 with the writ petition wherein it is stated that in accordance with the resolution No. 28 dated 18.9.1979 passed by the UIT in the case of one Shri Balveer Singh and others in terms of said decision the land of the present petitioner also be excluded from the said scheme. The said copy of the resolution No. 12 dated 22.1.1980 Annex.9 in respect of plot No. G-1 is the copy of resolution purportedly signed by the Chairman of the UIT, Jodhpur and certified copy was issued by the Secretary of UIT, Jodhpur on 14.2.1980.

3. The aforesaid person Shri Balveer Singh and 11 other petitioners whose land was also acquired by the same notification dated 3rd June, 1974 also filed a civil writ petition challenging the said notification before this Court, which writ petition No. 13/75 came to be allowed by learned Single Judge (Hon'ble Mr. Justice M.C. Jain) of this Court on 30th April, 1981. The judgment of learned Single Judge in Balveer Singh and Ors. v. State of Rajasthan and Ors. is reported in 1981 ILR (1981) 31 . The learned Single Judge held that mandatory conditions of Section 52(2) were not complied by the respondents and, therefore, the said notification dated 3rd June, 1974 Annex.18 of that writ petition was quashed by the learned Single Judge. The State filed an appeal against the said judgment of learned Single Judge which too came to be dismissed by the Division Bench of this Court on 22.8.1983. The said Division Bench judgment in Urban Improvement Trust and etc. Vs. Balveer Singh and Others, The matter was carried further by the State of Rajasthan to the Hon'ble Supreme Court where the said civil appeal Nos.4976-77 of 1984 came to be disposed by the Division Bench of this Hon'ble Supreme Court on 11th March, 1987 by a short order which is being reproduced hereunder for ready reference:

We think that while the judgment of the High Court in so far as and to the limited extent the impugned notification dated June 3, 1974 (Rajasthan Gazette October 10, 1974) has been struck down in regard to the lands belonging to respondents 1 to 12 has to be sustained we do not think that the rest of the judgment can be sustained. We wish to clarify that the impugned notification is quashed only in so far as it affects the lands under acquisition belonging to respondents 1 to 12 are concerned and to this limited extent only. The notification apart from this limited extent remains intact. We also wish to make it clear that the High Court was not justified in quashing the notification on the ground of alleged violation of Article 14 of the Constitution of India in the facts and circumstances of the present matters. The acquiring body was not bound to acquire all lands or to release all lands from acquisition. It is a matter which had to be decided by the acquiring body and the notification cannot be struck down on this account as being violative of Article 14 of the Constitution of India. Under

the circumstances, the judgment under appeals is modified to the aforesaid extent. Subject to this modification the appeals fail and are dismissed with no orders as to costs.

Sd/-

(M.P. Thakkar), J.

New Delhi,

March 11, 1987.

Sd/-

(B.C. Ray), J.

4. It is also considered opportune to to extract some part of the judgment of learned Single Judge as well as Division Bench of this Court.

5. The learned Single Judge in the detailed judgment after considering the various case laws proceeded to examine provisions of Section 52(2) of the Act in the following manner:

Having referred to the cases cited at the bar I may now proceed to examine the provisions of Section 52(2) in the light of the principles of interpretation enunciated in order to find as to whether a particular provision is mandatory or directory. As has been observed in some of the cases, referred to above and in the treatises of interpretation the question has to be determined on the basis of the language employed in the provision, the object of the provision, the provision read along with other relevant provisions and the scheme of the Act and the consequences which may flow on account of non-observance. It may be stated that Section 52 deals with compulsory acquisition of land so these provisions have to be strictly followed. Sub-section (2) of Section 52 is couched in an imperative language not only with regard to issuance of notice and service of notice on the owners of the land and on the persons interested and also with regard to publication of notice in the Official Gazette as well as for pasting it on some conspicuous place of the locality. Further compliance of Sub-section (2) has been made a condition precedent for publishing a notice under Sub-section (1). From the contents of Sub-section (2), the intention of the legislature appears to be quite manifest. The legislature was not satisfied with simply issue of notice to the owners of the land and persons who may be interested in the opinion of the State Government. The legislature appears not only concerned with service of notice on the owners and the persons interested, but appears to be equally very much concerned with publication of the notice in the Official Gazette and pasting of the same on some conspicuous place of the locality. That is why emphasis was placed by the legislature that notices shall be individually served and besides that the notice shall also be published in the Official Gazette " at least" 30 days in advance and ?shall? be pasted on some conspicuous place in the locality. The words "also" and "at least" further signify the peremptory legislature intent. To

me it appears that emphasis has been given on publication and pasting because of introducing a deeming clause in the concluding part of para (2) of Section 52(2), for it may be possible that service may not be practicable to be effected on all the owners of the land and persons interested and there may be persons interested in the land other than those, who are so interested in the opinion of the State Government. The expression used in the last sentence of para (2) is ? upon all other persons who may be interested therein?. These words are wider import than the expression ?any other person who in the opinion of the State Government may be interested?. The object behind such a provision appears to be obvious. The legislature intended to give wide publicity of the intended acquisition, so that all persons having any interest whatsoever may come to know of the intended acquisition and may file their objections u/s (3).

The inevitable result of the above discussion is that the whole of the provision of Section 52(2) is mandatory. Not only it is essential that service of the notice has to be effected individually on all the owners and persons interested, but a publication of notice in the Official Gazette and pasting thereof in the locality is equally essential. Noncompliance of the provision would amount to an illegality, which will violate acquisition proceedings and the notice published u/s 52(1).

6. After considering mandatory compliance with Section 52(2) of the Act, the learned Single Judge proceeded to consider the facts of the case like this:

Thus in view of the additional affidavit of Shri Balveer Singh, the position on the petitioners, other than Balveer Singh. As regards the third requirement of pasting of notice, reference has been made to the affidavit of Shiv Nath Singh and to the notice bearing his report and to the order-sheet. A perusal of the notice said to have been pasted, clearly shows that it was not a public notice. It is a copy of notice Annexure 8, in the name of four persons. Looking to the contents of the notice, it only calls upon the individuals to whom it is addressed to show cause within 30 days why the land should not be acquired and the notices were given to them as owners of the land. Thus, the notice said to have been pasted on the notice board of Nala at the spot, is not a general or public notice but in the names of individuals, which does not satisfy the requirement of law. Besides that notice Annexure R/2 was only in respect of 19,240 sq. yds. land and this notice had no concern with the lands of owners mentioned at S. Nos. 2, 3, 4, 5, 6, 7 and 8 measuring 57,660 sq. yds. In Annexure 18. Even in the order-sheet dated August 28, 1976, what is stated is that notice u/s 52(2) be issued to Kesheo Deo, Hari Ram. Balveer Singh, Baldeo Singh etc. for information at the spot and to show cause within 30 days. Firstly, it may be stated that compliance of this order-sheet has not been made, as the notice has not been addressed to other individuals other than the four persons. Even the word ?etc.? is not there in Annexure R/2. Further the order-sheet too does not speak that a general notice be issued to be pasted on the conspicuous place of the locality. Thus, the requirement of pasting of notice in the locality too has not been complied with. What can thus be found is that only one individual, namely,

Balveer Singh, has been individually served with notice and no other compliance of the requirements of Sub-section (2) of Section 52 has been made.

7. The learned Single Judge, therefore, found that there was non-compliance with the provisions of Section 52(2) in the present case and, therefore, the notification for acquisition was liable to be quashed. The Court in this regard held as under:

When Sub-section (2) of Section 52 has been disregarded in its breach substantially and such disregard dis-entitles the authority to proceed to act under Sub-section (1), then in that case it cannot be said that no substantial injustice has resulted from failure of compliance of Sub-section (2) of Section 52 or that any omission, defect or irregularity has not affected the merits of the case. I have already stated that it is not a case of omission, defect or irregularity, but it is a case of illegality and a case of illegality is not covered under Clause (a) of Sub-section (1) of Section 101. Even if it is taken that the word 'omission' covers a case of non-publication of notice in the Gazette or non-pasting of notice in the locality, still it cannot be said that such omission does not affect the merits of the case.

In view of the mandatory provisions of disregarded in its 52(2) and in view of the legislative policy and object behind it, in my opinion, the question of prejudice has no relevance.

8. Learned Single Judge also found that the acquisition proceedings in question were liable to be quashed on the anvil of Article 14 of the Constitution of India as some portion of the land which lied in between two portions of the land sought to be acquired was left out of the acquisition proceedings. The contention of the learned Counsel for the petitioner in this regard was noticed like this:

Shri Bhandari, learned Counsel for the petitioners, also assailed the notification on the ground of breach of equality clause under Article 14 of the Constitution. It was in respect of 91,739 square yards, out of which land measuring 18,440 square yards was left out from the notification Annexure 18 and only the remaining land has been acquired.

The land left out is marked as F, F-1, F-2, F3, and F4 and there was no justification for exclusion of that land from the notification Annexure 18, so discrimination was practised. Thus, the acquisition by Annexure 18 is hit by Article 14. Reliance was placed by Shri Bhandari on a decision of this Court in *Ram Pratap v. The State of Rajasthan* (25), wherein land of one nursery was de-acquisitioned, whereas the land of other nursery was not de-acquisitioned, and it was held that it was a glaring case of discrimination.

9. The findings of learned Single Judge in this regard are reproduced hereunder:

I have considered the submissions of both the sides. Admittedly the land measuring 18,440 square yards forms of the West Patel Nagar Scheme 6-A. It is also an admitted position that so far no notification u/s 52(1) has been issued in

respect of this land. No explanation has been offered as to why this land was excluded at the time of publication of notification Annexure 18, dated June 3, 1974. It is really very strange that in respect of the land, which is the subject-matter of Annexure 18, no notice u/s 52 has been published, whereas in respect of the land left out in Annexure 18, notice u/s 52(2) has been published in the Official Gazette. Of course this has no relevance on the point in question. Notice u/s 52(2) dates back to December 17, 1973, much earlier to the notification Annexure 18. If the land, subject-matter of notice of December 17, 1973, was the part of the scheme, there was no justification for excluding that land in Annexure 18. Even no justification has been offered so that it can be said that in fact discrimination was not practised. Rather the land was excluded due to some reasons. Say by mistake land can be left out or there may be any other reason. The only explanation, which has been offered for non-inclusion in Annexure 18 is that the land has been surrendered. It is not the State case that the land has been surrendered prior to June 3, 1974. What is to be seen is as to what was the reason for exclusion of the land from Annexure 18 of June 3, 1974. When no reason is forth coming, then, it can only be said that the excluded land has been treated differently. The theory of surrender, as has been put forth in the affidavit of Shri Richpal Singh also does not appear to be correct, if viewed in the light of the application dated January 30, 1978. What is stated therein is that the five parties have no objection to the acquisition of the land belonging to them and on negotiation and agreement prices may be settled soon and they stated that there is no need to publish any notification u/s 52(1) and fair price of the land be arrived at by negotiation. An affidavit of Shri Anand Prakash Bhoot, one of the five parties, has been placed on record in which he has deposed that the land is in their possession and they have never surrendered the land in favour of the State.

Thus, it is clear that there has been no surrender of the land and the land has been acquired and no valid reasons are forth coming for non-acquiring of the land till now and no reasons have been brought on record to show as to why the disputed land was excluded in Annexure 18 on June 3, 1974. In the absence of any explanation, I am inclined to hold that the owners of the land which form part of a particular scheme, have been differently treated.

10. However, the learned Single Judge negatived the contention of the learned Counsel for the petitioner in regard to subsequent development in the form of resolution of the Trust dated 16th June, 1979 to restore the land to the petitioners and calling upon the petitioners to deposit the money in connection with the subdivision of the land. The relevant extract of the judgment of learned Single Judge in this regard is also produced hereunder for ready reference:

Shri Bhandari, learned Counsel for the petitioners contended that in the present case the development of subsequent events shows that the scheme has been found not viable and the Trust by its resolution dated June 16, 1979 has decided to restore the land to the petitioners and has called upon the petitioners to

deposit the money in connection with the sub-division and thereafter the plan for sub-division will be considered and approved. The Chairman of the Trust informed the Secretary to the Government, Urban Development and Housing Department, Rajasthan, by his letter Annexure 23 that, in view of the writ petition filed in the High Court, the scheme could not be taken in hand and the Trust decided that in West Patel Nagar, the land belonging to 12 parties, was decided to be dropped from the scheme and a prayer for de-notification was made in respect of the land belonging to the petitioners and the land of Shri Kesheo Deo and three other measuring 3,533 sq. yds. (the land involved in the present writ petition). The petitioners were sent a copy of the letter (Annexure 20) addressed by the Chairman to the Deputy Town Planner, Jodhpur, requesting him to finalise the case and send the approved plan of sub-division and the Chairman by his letter dated February 19, 1980 informed the petitioner Balveer Singh to deposit a sum of Rs. 16,106/- as subdivision application charges vide letter Annexure 24.

11. The learned Single Judge on the aforesaid contention of the learned Counsel for the petitioner held as under:

I have carefully considered the submissions of the parties and I am of the opinion that the contention advanced by Shri Bhandari cannot be upheld. The notification u/s 52(1), in my opinion, would not be rendered invalid, because of any subsequent resolution passed by the Trust. The validity of the notification is to be judged from the facts and circumstances as they existed at the time of the issuance of the notification. Whether the power has been exercised properly, bona fide or not or that it was exercised in a colourable manner or by way of fraud on the statute, such like subsequent events cannot be put forward to adjudge the acquisition as invalid.

In the Fruit and Vegetable Merchants Union Vs. Delhi Improvement Trust, , the connotation of the word 'vest' was considered and it was observed that the word 'vest' is a word of variable import, is shown by provisions of Indian statutes also. Reference was made to Section 56 of the Provincial Insolvency Act and it was observed that the property of the insolvent vests in the receiver not for all purposes but only for the purpose of the Insolvency Act and the receiver has no interest of his own in the property, whereas under ss.16 and 17 of the Land Acquisition Act the property vests absolutely in the Government free from all encumbrances, so the property acquired becomes the property of the Government without any conditions or limitations either as to title or possession, and the Legislature had made it clear that the vesting of the property is not for any limited purpose or limited duration.

Under Section 52(4) of the Act as well, vesting is free from all encumbrances. Thus, the title having been vested in the State Government by notification u/s 52(1), that title continues to remain with the State Government and subsequent resolution of the Trust is of no consequence.

12. Thus, the writ petition was allowed by the learned Single Judge as under:

As I have found that the notification u/s 52(1) is invalid for non-compliance of Section 52(2) and also on the ground of discrimination and violation of Article 14 of the Constitution, it is not necessary to deal with the other points raised by Shri Bhandari, learned Counsel for the petitioners.

In the result, the writ petition is allowed, the notification Annexure 18 is declared invalid and the acquisition proceedings culminating in the notification Annex. 18, are quashed.

13. The Division Bench while upholding the said judgment of learned Single Judge not only upheld the quashing of the notification on the ground of non-compliance of Section 52(2) of the Act but also upheld the findings of learned Single Judge with respect to Article 14, on the ground of discrimination as under:

In our opinion, the argument is not tenable, for, the compliance of second para of Section 52(2) of the Act is a pre-requisite condition for the issuance of notice under Sub-section (1) of Section 52 of the Act and non-compliance thereof is an illegality. The provisions contained in second para of Section 52(2) have been completely disregarded and their breach is substantial. The authority under the Act could not proceed to take action under Sub-section (1) without complying with the provisions of Section 52(2) of the Act. We have already held that it would be difficult to say that no substantial injustice has resulted from failure to comply with Sub-section (2) of Section 52 or that mistake or defect or irregularity has not affected the merits of the case. It is a case of illegality. Illegality does not embrace mistake, defect or error in the proceedings. In this case, non-observance of Section 52(2) has caused substantial failure of justice inasmuch as the petitioners/respondents would be deprived of the property on account of the disregard of the mandatory provisions and without authority or law. We do not mean to say that in all cases, when there is breach of mandatory provision, the Court should invoke its extraordinary jurisdiction. In appropriate cases, the Court may decline to give relief to the parties in exercise of the extraordinary jurisdiction. The learned Single Judge was right in granting relief to the petitioners/respondents under Article 226 of the Constitution also fails.

14. The State took the matter to the Hon"ble Supreme Court as aforesaid and civil appeals came to be disposed of by the short order of the Hon"ble Supreme Court which is quoted above in extenso.

#### 15. THE CONTENTION OF THE PETITIONER

The contentions raised on behalf of the petitioner in the present case through learned Counsel Mr. L.M. Lodha may be summarized as under:

(i) That non-compliance with the provisions of Section 52(2) of the Act which resulted in quashing of the notification dated 3rd June, 1974 in the case of Balveer Singh applies equally to the case of the present petitioners and, therefore, for that very reason which has been upheld by the Hon"ble Supreme



Court, the said notification deserves to be quashed qua the present petitioners also.

(ii) That though the ground of discrimination and violation of Article 14 of the Constitution upheld by the High Court in the case of Balveer Singh did not find favour with the Hon''ble Supreme court, but dismissal of the State's appeal by the Hon''ble Supreme Court and upholding the judgment of Hon''ble High Court of learned Single Judge as well as of Division Bench with respect to 12 petitioners including Balveer Singh clearly shows that the quashing of that notification dated 3rd June, 1974 on the ground of non-compliance with the mandatory provisions of Section 52(2) of the Act has been upheld and the same reasons would apply in the present case also and notwithstanding the delay in challenging the said notification, the land acquisition proceedings qua the petitioner also deserves to be quashed.

(iii) That the State and UIT cannot sit tight over the matter for long 30 years and not to put the said scheme into operation for long number of years which shows that the very public purpose behind the said scheme stands frustrated and is over and, more so in view of abandonment of scheme by UIT vide its resolution No. 12 dt.22.1.1980 vide Annex.9, therefore, the singularly left plot No. G-1 of the present petitioners, LRs of Keshav Deo cannot be acquired for the same scheme or even for any other so called 'public purpose' for the respondent UIT.

(iv) That notwithstanding the taking of compensation as per the award under protest and withdrawal of the earlier writ petition filed by the petitioners, the petitioners are not estopped from challenging the impugned land acquisition proceedings qua the petitioners as the respondent UIT has failed to utilise the land of the petitioners of plot No. G-1 in any manner and the land is being encroached upon by unauthorised persons.

(v) That the case of the present petitioners, who were claiming through Keshavdeo was integrally twined and connected with that of Balveer Singh and even the land in question in the present measuring 3533 square yards has been referred to in the judgments of High Court in the case of Balveer Singh and, therefore, the petitioner is entitled to the same relief through this Court as was granted to those petitioners Balveer Singh and others.

(vi) Lastly, Mr. Lodha contended without prejudice to aforesaid, that either the respondent UIT should pay the compensation at current market price to the petitioner as it has unduly delayed any improvement in implementation of the said land, or on the alternative, let respondent UIT re-convey the said land to the petitioner at current market value in preference over the others.

Mr. L.M. Lodha, learned Counsel for the petitioner relied upon a decision of the Full Bench decision of Punjab and Haryana High Court in case of Radhey Sham Gupta and Others Vs. State of Haryana and Others, the relevant extract of which is reproduced hereunder:

Apart from this the continued non-action on the part of the respondent-State for well-nigh nine years had rightly led the earlier owner to believe that the land was no longer required for acquisition and stood tacitly released therefrom. Equally, the petitioners were thereby induced bona fide to accept this position and make purchases in Aug., 1980. In the meantime the High Court had opined in no uncertain terms on the invalidity of an acquisition which was tainted by long and unexplained delays thus further buttressing the petitioner's position.

Long explained procrastination, either by itself and in any case coupled with other factors clearly tends to prove the lack of bona fides in the exercise of the power of acquisition. If it can be established beyond cavil that the real motivation behind the acquisition was not any specific public purpose and its expeditious execution but was a mere ruse to peg down the prices by an issuance of notification u/s 5 and thus holding the citizens to ransom for years at the whim and caprice of the State to finalise the acquisition proceedings when it chooses if at all it is so done is clearly a factor for establishing the colourable exercise of power. It must, therefore, be held that unexplained inordinate delay is certainly a starkly relevant factor if not a conclusive one for determining the colourable exercise of power or otherwise in the context of proceedings under the Act.

It would follow logically that where the gross delays on the part of the State are themselves the foundations for assailing the proceedings, the petitioner cannot be non-suited in the writ jurisdiction for approaching it after a long period of time from the initiation of the acquisition. It is by now elementary that the writ jurisdiction is for the vigilant and the litigant who sleeps over his rights inordinately is to be frowned upon heavily within this forum. However, it seems to be equally plain that where the cause of action itself stems wholly or in part from the allegations of unexplained delay and procrastination of the State, it can hardly lie in the mouth of the State to make a grievance thereof. Examining the matter in some detail, it may well be possible that when originally initiated, the acquisition proceedings may superficially appear to be well founded in the normal course. However, the absence of any meaningful public purpose or its expeditious execution may be plainly negated by gross inaction in finalising the acquisition. Indeed such long procrastination and unexplained delay by the State would itself be a pointer to the conclusion that the initiation of the original proceedings far from being directed to an immediate or foreseeable public purpose and its execution, was but a device to misuse the provisions of Section 4 and peg down the prices of land in shadowy anticipation of some vague unspecified need which might arise in futuro. Indeed it will be such inordinate delays which will put in a lurid light what might originally have appeared as a bona fide exercise of power. It must, therefore, be held that where long unexplained delay is a foundation stone for the attack on the ground of colourable exercise of power, it would be vain for the respondent-State to claim that the writ petitioner should have approached the Court at the very inception of the acquisition proceeding and in a way is an attempt to take advantage of its own wrong. Indeed in this context the very cause of action (namely), the colourable exercise of power) may well arise

only by virtue of a long drawn out unexplained inaction of the State and far from providing a shield to the respondent-State, it would only sharpen the sword of attack on the basis of the taint of colourable exercise of power.

It must, therefore, be concluded that in the peculiarities of this particular context the mere chronological delay in approaching the writ Court from the initiation of the acquisition proceedings cannot by itself non-suit the petitioners and indeed may well be a factor in their favour rather than against them.

15. On the side opposite Mr. S.G. Ojha, learned Counsel appearing for the respondents submitted the following contentions:

(i) That the petitioner was estopped from challenging the land acquisition proceedings at this belated stage after approximately 30 years of the land acquisition proceedings initiated vide notification dated 3rd June, 1974 and in view of the withdrawal of the earlier writ petition by the petitioner.

(ii) That merely because the scheme originally envisaged by the UIT could not be put in place and implemented, the public purpose is not lost and the UIT is entitled to use the said land acquired from the petitioners for any other public purpose and the land in question cannot be re-conveyed to the petitioners.

16. He relied upon the following judgments in support of his submissions:

- (1) Gulam Mustafa and Others Vs. The State of Maharashtra and Others,
- (2) Satendra Prasad Jain and Others Vs. State of U.P. and Others,
- (3) Govt. of A.P. and Another Vs. Syed Akbar,
- (4) Northern Indian Glass Industries Vs. Jaswant Singh and Others,
- (5) State of Kerala and others Vs. M. Bhaskaran Pillai and another,
- (6) 2000 WLC (2)(Raj) Page 143 Noor Mohd. South v. State of Rajasthan
- (7) AIR 1993 (Raj.) 157 para 49 Jagroop Singh v. State of Rajasthan.
- (8) Narain Das and Others Vs. The Improvement Trust, Amritsar and Another,
- (9) Civil Appeal No. 4976-77/84 State of Rajasthan v. Balveer Singh

16. A Brief resume of the case laws cited by the learned Counsel for the respondents may be made here.

17. In the case of Northern Indian Glass Industries Vs. Jaswant Singh and Others, , the Hon'ble Supreme Court while dealing with the writ petition filed after 17 years of finalization of acquisition proceedings to challenge the same held as under:

In our view, the High Court was also not right in ordering restoration of land to the respondents on the ground that the land acquired was not used for which it had been acquired. It is well-settled position in law that after passing the award

and taking possession u/s 16 of the Act, the acquired land vests with the Government free from all encumbrances. Even if the land is not used for the purpose for which it is acquired, the land owner does not get any right to ask for revesting the land in him and to ask for restitution of the possession.

If the land was not used for the purpose for which it was acquired, it was open to the State Government to take action but that did not confer any right on the respondents to ask for restitution of the land. As already noticed, the State Government in this regard has already initiated proceedings for resumption of the land. In our view, there arises no question of any unjust enrichment to the appellate company.

18. In the case of State of Kerala and others Vs. M. Bhaskaran Pillai and another, the Apex Court held as under:

It is settled law that if the land is acquired for a public purpose, after the public purpose was achieved, the rest of the land could be used for any other public purpose. In case there is no other public purpose for which the land is needed, then instead of disposal by way of sale to the erstwhile owner, the land should be put to public auction and the amount fetched in the public auction can be better utilized for the public purpose envisaged in the Directive Principles of the Constitution.

19. In the earlier judgment in the case of Gulam Mustafa and Others Vs. The State of Maharashtra and Others, , the Hon<sup>ble</sup> Supreme Court held that surplus land even after original scheme having been implemented could not be revested in the original land owner. The Court said in para 5 as under:

...Apart from the fact that a housing colony is a public necessity, once the original acquisition is valid and title has vested in the Municipality, how it uses the excess land is no concern of the original owner and cannot be the basis for invalidating the acquisition. There is no principle of law by which a valid compulsory acquisition stands voided because long later the requiring authority divers it to a public purpose other than the one stated in the Section 5(3) declaration.

20. Similar view was expressed by the Hon<sup>ble</sup> Supreme Court in the case of Govt. of A.P. and Another Vs. Syed Akbar, when the Court said in para 9 as under:

It is neither debated nor disputed as regards the valid acquisition of the land in question under the provisions of the Land Acquisition Act and the possession of the land had been taken. By virtue of Section 16 of the Land Acquisition Act, the acquired land had vested absolutely in the Government free from all encumbrances. u/s 49 of the Land Acquisition Act, Government could withdraw from the acquisition of any land of which possession has not been taken. In the instant case, even u/s 48, the Government could not withdraw from acquisition or to re-convey the said land to the respondent as the possession of the land had already been taken. The position of is well settled.

21. In a recent judgment in the case of Tamil Nadu Housing Board Vs. Keeravani Ammal and Others, reiterating the aforesaid principle, the Hon<sup>ble</sup> Supreme Court held as under:

High Court cannot issue direction to the State to reconsider the writ petitioners' representation u/s 48B to reconvey the land to them as the order had been allowed to become final. In view of the plea raised by the State, merely because a land in the adjacent village had been released from acquisition, it cannot be assumed that this scheme had been abandoned.

However, in para 5, the Hon<sup>ble</sup> Supreme Court rejected the plea of estoppel against the State on the ground that earlier SLP was withdrawn by the State. Court said:

5. Learned Counsel for the contesting respondents relying on the decision in Kumaran Silks Trade (P) Ltd. v. Devendra raised a contention that the appeals by the Tamil Nadu Housing Board being appeals against the orders in review petition were not maintainable since the Tamil Nadu Housing Board had withdrawn the earlier petition for special leave to appeal filed by it against the original order reserving only liberty in itself to seek a review in the High Court. On the facts and in the circumstances of the case on hand, however, in our considered opinion, the withdrawal of earlier petition for special leave to appeal by the Housing Board cannot stand in the way of our examining the correctness of the decisions rendered by the High Court in view of the fact that the State of Tamil Nadu had not earlier challenged the original order of the Division Bench before this Court and now alone it seeks to challenge the original order, the order on the review petition it had filed and the order in the contempt of Court case in the appeals it has filed before this Court. The principle recognized in Kumaran Silks has no application to those appeals. Learned Counsel for the contesting respondents pointed out that there was delay in filing the petitions for special leave to appeal leading to those appeals. But obviously, the delay was condoned and leave granted and we now have the three appeals before us for final hearing and disposal. In these appeals, we have necessarily to examine the correctness and propriety of the directions issued by the High Court.

#### CASES WHERE ACQUISITION WAS QUASHED

22. In the case of Narendrajit Singh v. State of U.P. reported in 1970 (1) SCC 125 the Hon<sup>ble</sup> Supreme Court held that:

It becomes clear from a perusal of the sections of the Act that the process of acquisition must start with a notification u/s 4. Even in extremely urgent cases the notification u/s 4 is a sine qua non. The issue of a notification u/s 4(1) is a condition precedent to the exercise of any further powers under the Act and a notification which does not comply with the essential requirement of that provision of Law must be held to be bad. Any notification which is the first step towards depriving a man of his property must be strictly construed and courts ought not to tolerate any lapse on the part of the acquiring authority in the issue

of such notification if it be of a serious nature.

The notifications suffer from a very serious defect in that the locality where the lands were needed was not specified. The defect in a notification u/s 4(1) cannot be cured by giving full particulars in the notification u/s 6(1). In this case it is apparent that even before the issue of the first notification, Government had made up its mind to acquire the lands of the petitioners inasmuch as there was no enquiry in between the two notifications and no valid reason has been put forward to explain why the details specified in the notification u/s 6(1) could not be given in the one u/s 4(1). The defects were not cured and cannot be glossed over by reason of the fact that the petitioners went to Court after the issue of the notification u/s 6(1).

23. Similarly in the case of *Datla Sreeramchandra Raju v. District Collector, Vishakhapatnam* reported in 1986 (1) ALT 409, the A.P. High Court held that non-publication of the substance in the locality as required u/s 4(1) of the Land Acquisition Act is fatal to the entire acquisition proceedings and since admittedly no notice has been issued u/s 4(1) listing out the names of the beneficiaries and the extents of the land proposed to be assigned to them as postulated in the Government order and since this noncompliance will have to be held as fatal, the consequences would be it wipes out the entire proceedings initiated u/s 4(1) indeed the very purpose u/s 4(1) itself.

24. In the case of *Ram Chand and Others Vs. Union of India (UOI) and Others*, the Hon<sup>ble</sup> Supreme Court held that inaction on the part of the Government after issuance of notification u/s 4 for a period of 14 to 20 years was not justified and it was intended to peg the market value of the lands which resulted in great injury to the petitioners. However, instead of quashing the acquisition proceedings, the Hon<sup>ble</sup> Apex Court awarded additional compensation of 12% per annum. While deprecating the inaction for such long period, the Hon<sup>ble</sup> Supreme Court held that the statutory authority cannot take a plea that although it has not performed its duty within a reasonable time, but it is of no consequence because the person, who has been wronged or deprived of his right has also not invoked the jurisdiction of the High Court or of the Supreme Court and such question of delay in invoking the writ jurisdiction has to be considered along with the inaction on the part of the authorities. The Hon<sup>ble</sup> Supreme Court, therefore, advanced the date of notification under Sub-section (1) of Section 4 of the Act, so that market value of the land so acquired is paid at a just and reasonable rate. The Hon<sup>ble</sup> Supreme Court held as under:

The statutory authority cannot take a plea that although it has not performed its duty within a reasonable time, but it is of no consequence because the person, who has been wronged or deprived of his right, has also not invoked the jurisdiction of the High Court or of the Supreme Court for a suitable writ or direction to grant the relief considered appropriate in the circumstances. The question of delay in invoking writ jurisdiction of the High Court under Article 226 or of the Supreme Court under Article 32 has to be considered along with the

inaction on the part of the authorities who had to perform their statutory duties. By not questioning, the validity of the acquisition proceedings for a long time since the declarations were made u/s 6, the relief of quashing the acquisition proceedings has become inappropriate, because in the meantime, the lands notified have been developed and put to public use. The lands are being utilized to provide shelter to thousands and to implement the scheme of a planned city, which is a must in the present set-up. The outweighing public interest has to be given due weight.

Therefore, it shall not be proper exercise of discretion on the part of the Supreme Court to quash the proceedings because, in that event, it shall affect the public interest.

Moreover, third party interests created in the meantime are also likely to be affected and such third parties are not impleaded. The relief of quashing the acquisition proceedings having become inappropriate due to the subsequent events, the grant of a modified relief, considered appropriate in the circumstances, would be the proper course to adopt. The High Court or the Supreme Court, can grant a modified relief taking into consideration the injury caused to the claimants by the inaction on the part of the respondents and direct payment of any additional amount, in exercise of power under Article 226 or Article 32. Where proceedings have remained pending for years after issuance of declaration u/s 6, in order to protect the petitioners concerned from irreparable injury i.e. getting compensation of their lands acquired with reference to the date of notification under Sub-section (1) of Section 4, which may be more than a decade before the date of the making of the award, the Court has advanced the date of notification under Sub-section 1 of Section 4 of the Act, so that market value of the land so acquired is paid at a just and reasonable rate.

25. While dealing the question of estoppel against the State in acquisition proceedings in the case of Akhara Brahm Buta Vs. State of Punjab and another, , the Hon?ble Supreme Court held that where acquisition proceedings were challenged by the appellant - landowner in a writ petition before the High Court and a compromise was entered into between the appellant and the Improvement Trust as also the State for excluding a part of the land from the Scheme framed by the Trust and to pay compensation for the remaining part at the rate of Rs. 2 per square yard, but the Scheme was not amended accordingly and in contempt petition filed by the filed by the appellant, the Trust gave an undertaking in presence of State Counsel to release part of the land, still no steps were taken to release the land by amending the Scheme, in subsequent writ filed for implementation of the compromise, the Hon?ble Supreme Court held that the High Court erred in dismissing the writ petition. The State was bound to modify the scheme in view of its stand before the High Court in pursuance of which judgment in the earlier writ petition was given. Having taken advantage of the agreement in part and having repeatedly agreed to the terms of the compromise between the appellant and the Improvement Trust, the State Government cannot

now be permitted to back out. However, the Hon'ble Supreme Court noted that since houses have already been constructed on the acquired land in accordance with the Scheme and appellant being willing to accept only compensation for the entire land to be calculated at market rate prevailing on the date on which the second writ petition was dismissed by the High Court, the Hon'ble Supreme Court issued directions accordingly.

26. In the case of Ujjain Vikas Pradhikaran Vs. Raj Kumar Johri and others, , the Hon'ble Surpeme Court like in the case of Ved Prakash v. Union of India held that on account of delay on the part of the State in implementation of the Scheme, the date of notification u/s 4(1) deserves to be extended in peculiar facts. The Court said in para 4 as under:

It is the admitted case before us that the undisputed huge patch of land has been substantially improved upon under the Scheme. Cancellation of the notification does not bring the matter to an end. Obviously fresh proceedings would be taken after complying with the defect if the judgment of the High Court is allowed to stand. If the acquisition is not made the respondents should enjoy usual benefits of their land on account of the development of the neighbouring area and if the reacquisition is made there would be claim for higher compensation. Looking at the matter from these different angles, we have thought it appropriate to allow the appeal, vacate the judgment of the High Court and allow the acquisition to remain subject, however, to the condition that the notification u/s 4(1) of the Act issued in 1985 shall be deemed to be one dated January 1, 1988 and the market value of the land for the acquisition shall be determined with reference to that date.

27. I have heard learned Counsels at length and perused the record of the case as well as the judgments cited at the Bar and I have given a thoughtful consideration to the entire mater.

28. In the light of aforesaid facts and law, this Court is of the opinion that since in the present case admittedly the Scheme for which the land in question was sought to be acquired stands totally frustrated and can no longer be implemented, which position is not disputed by the learned Counsel for the respondent - UIT, and more so in view of the fact that the notification given in the present writ petition itself stood quashed qua 12 petitioners for larger part of the land than that of the petitioner in the case of Balveer Singh and 11 others which has been upheld upto the Apex Court of the country, the said notification qua the petitioner also deserves to be quashed on the same ground as was done in the case of Balveer Singh and ors as admittedly noncompliance with the provisions of Section 52(2) of the Act qua the petitioner also is not disputed by the respondent UIT in the present case.

29. Though the ground of discrimination and violation of Article 14 of the Constitution of India did not find favour with the Apex Court in the case of Balveer Singh in the appeal filed by the State, there is no denial of the fact that



the judgment of this Court both from the learned Single Judge as well as Division Bench in the case of Balveer Singh and ors was upheld by the Hon<sup>ble</sup> Supreme Court on the ground of admitted violation of Section 52(2) of the UIT Act.

30. The contention of the learned Counsel for the respondent - UIT that the public purpose is not lost and even the land of the present petitioner measuring 3533 sq. yards under the same notification acquired by the State for UIT can still be used for some other public purpose, does not impress this Court. A small piece of land in comparison to total land sought to be acquired for the Scheme framed by the respondent - UIT for which the impugned land acquisition proceedings were initiated admittedly cannot be used for the same Scheme now. No material was placed before this Court by the respondent - UIT to show any other existing public purpose for which the land in question of the petitioner was sought to be put to use. Possibility of some future scheme of the UIT cannot be a ground to save acquisition proceedings at this stage, particularly when the same very notification came to be quashed by this Court, which was however, only limited qua 12 petitioners by the Hon<sup>ble</sup> Apex Court by the order quoted above. Since parity of grounds for challenging the said notification is available in this case also, there is no reason that a different stand should be taken in the present case than the one taken in the case of Balveer Singh and 11 others. The fact that the land involved in the present case, namely, 3533 sq. yards was mentioned along with the name of Keshav Deo through whom the present petitioners are claiming also in the judgment of Balveer Singh and others clearly shows that the case of present petitioner was integrally connected to that of Balveer Singh and ors. Therefore, leaving out present small patch of land while all other part of the land originally acquired is already out of the land acquisition proceedings would cause serious prejudice to the petitioner which cannot be permitted. This may be made clear here that it is not on account of discrimination or violation of Article 14 of the Constitution of India that this Court is inclined to quash the land acquisition proceedings qua the petitioner, but it is on account of noncompliance with mandatory provisions of Section 52(2) of the UIT Act which ground prevailed earlier also with this Court in the case of Balveer Singh and others so also with the Hon<sup>ble</sup> Supreme Court while upholding those judgments and which ground still holds the field, is the ground for quashing land acquisition proceedings in the present case also.

31. The judgments relied upon by the learned Counsel for the respondent - UIT are not applicable to the facts of the present case because in all the cases cited by him, Scheme in question was implemented fully or substantially and the question arose only for reconveying the surplus land in question to original owners to the unutilized extent and secondly the challenge to land acquisition proceedings did not succeed before the Court and acquisition was otherwise found to be valid. In other words, finding of the Court was that the land acquisition proceedings have acquired finality and validly so, but in the present case challenge to the validity of land acquisition proceedings of the petitioner succeeds on the ground of admitted non-compliance with the mandatory

provisions of Section 52(2) of the Act as it then stood.

32. On the other hand, the judgments relied upon by the learned Counsel for the petitioner in which the Courts upto the Apex Court of the country have consistently deprecated long delay and procrastination of the land acquisition proceedings and the date of notification u/s 4 of the Act was postponed by the Courts to disallow beneficiaries of the land acquisition like UIT etc. from getting market value pegged down or the land acquisition proceedings were quashed by the Court. These judgments clearly support the case of the present petitioner also.

33. The question of estoppel against the petitioner on the ground of delay in filing the writ petition in the year 2006 for challenging the land acquisition proceedings initiated on 3rd June, 1974 after a delay of about 30 years also does not confer any benefit to the respondents because for the said period of 30 years, admittedly, the respondent - UIT and the State have also failed to implement any part of the said Scheme which has not proceeded even an inch further and the land in question went out of the hands of the State and the UIT either on account of successful Court litigation as in the case of Balveer Singh and ors or leaving part of the land by the respondents themselves out of the net of acquisition proceedings. Thus, keeping clutch or grip over the miniscule part of the land belonging to the present petitioner only for the so called possible future public purpose does not behove a welfare State. Under the garb of public purpose, the respondent - Trust cannot be permitted to indulge in profiteering at the cost of the petitioner, whose land was compulsorily acquired. The word 'public purpose' is not untouchable area which does not permit judicial scrutiny by this Court under Article 226 of the Constitution of India. This Court cannot simply be asked to refuse the relief to the petitioner by raising the plea of public purpose at such belated stage by the respondents when no such public purpose has been pleaded or shown much less established with cogent material. This Court is, therefore, not inclined to save the impugned notification dtd.3.6.1974 merely on the ground of delay on the part of the petitioner to have approached this Court by way of present writ petition. As a matter of fact, looking from the other angle, the petitioner always had a continuous cause of action in the matter and with lapse of long period in which the respondents failed to implement the scheme, this furnished a continuous cause of action to the petitioner to challenge the land acquisition proceedings at this stage. The withdrawal of the earlier writ petition by the petitioner on 26.10.1977 is also not a ground to dismiss the present writ petition. Said withdrawal order does not contain any reason for which the petitioner withdrew the earlier writ petition. The said withdrawal of the writ petition, therefore, does not decide the controversy between the parties and therefore, cannot be raised as a plea of res judicata against the petitioner. Such fizzly withdrawal of writ petition without any decision from the Court can hardly stop the petitioner from challenging the acquisition proceedings particularly when this Court finds that there was non-compliance of mandatory provisions of Section 52(2) of the Act and gross delay on the part of the respondents to

implement the scheme in question and there was no other public purpose shown before the Court for smaller part of the land.

34. That in view of the land acquisition proceedings against the petitioner being quashed by this Court, it is needless to say that the respondents would be free to recover back the amount received by the petitioner under protest under the award passed in the matter giving compensation for the land in question to the petitioner. The petitioner shall be bound to refund back the said amount of compensation to the respondents within a period of three months from demand thereof by the respondent UIT.

35. In view of the aforesaid this writ petition is required to be allowed and same is accordingly allowed and the impugned notification dtd.3.6.1974 is quashed qua the present petitioner also. No order as to costs.