
(2001) 05 RAJ CK 0001

In the Rajasthan High Court

Case No : Civil Writ Petition No. 755 of 1988

Indrapuri Grah Nirman Sahakari Samiti Ltd.

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 31-05-2001

Acts Referred:

Constitution of India, 1950 — Article 226, 252

Land Acquisition Act, 1894 — Section 10, 17, 3, 4, 5A

Transfer of Property Act, 1882 — Section 2, 57

Citation : (2002) 3 WLN 122

Hon'ble Judges : K.S. Rathore, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

K.S. Rathore, J.—The petitioner is Housing Co-operative Society registered under the Rajasthan Co-operative Societies Act, 1965 in the year 1970 bearing registration No. 2490L. The aims and objects of the petitioner society are to provide housing accommodation to its member on "no profit no loss" basis.

2. The petitioner society purchased the land bearing Khasra No. 2 measuring 16 bigha 17 biswas situated in village Mahapura/Kukarkheda, Tehsil Jaipur from the Khatedar Shri Ram Singh son of Shri Ishardan Singh Charan through a registered sale deed which was executed on 3.8.1970.

3. After purchase of the said land the petitioner society checked out a plan for construction of residential houses over the aforesaid land in accordance with the by-laws and rules made by the erstwhile Urban Improvement Trust, Jaipur and the map of plan was also submitted on 28.2.1983 with the U.I.T., Jaipur.

4. Thereafter, the petitioner society applied for sanction of sub-division of the aforesaid land and deposited an amount of Rs. 2100/- on 28.2.1983 along with the application to the Erstwhile Urban Improvement Trust, Jaipur. On account of registered sale deed executed in favour of the petitioner society on 3.8.1970, the

mutation in the name of the society had also been recorded in the revenue record of the Tehsil Jaipur by the order dated 30.1.1988 of the Naib Tehsildar, Jaipur.

5. Mr. G.L. Pareek appearing on behalf of the petitioner submits that the site plan was prepared and submitted with the U.I.T. for the sub-division., The Tehsildar, Jaipur issued a notice u/s 91(3) of the Rajasthan Land Revenue Act. on 12.9.1975 on account of change in land use. The petitioner further submits that the State Government issued circulars dated 1.3.1982 and 3.4.1982 with a view to conversion and regularisation of agricultural land for residential/commercial purposes in which it was mentioned that-There are quite a large number of cases in which lands have been notified for acquisition by various departments of the Government either for public purpose directly connected with the Government or on behalf of the land Urban Improvement Trusts and Municipalities for residential, commercial and other non-agricultural purposes and number of them have even constructed buildings and other structures on such land, in other cases, lands have been transferred by the land holders. In some cases, after the issuance of the relevant land acquisition notification and so purchased by them, the question as to what policy and procedure should be adopted in cases of this nature; has been considered by the Government and the decisions also taken in view of the Annexures Ex. P-5 and Ex. P5-A.

6. In view of Circular dated 3rd April, 1982 and 1.3.1982 the members of the society has also applied for conversion of their plots.

7. Mr. G.L. Pareek, submits that master plan prepared by the U.I.T. came into force in the month of June, 1976. By Notification dated 25.5.1984 a part of land in the plan was converted to residential area and the land which was reserved for the Government in the master plan was converted to residential area for various Housing Co-operative Societies and similarly the land which was reserved for defence department was changed to residential scheme.

8. By the order of State Government dated 25.5.1984, the land use of Malviya Nagar was also changed and this order was published in the Rajasthan Rajpatra dated 1.6.1984.

9. Mr. G.L. Pareek submits that the petitioner society came to know with regard to notification which was issued on 31.7.1986 and was published on 26.11.1987 in the Rashtradoot daily whereby the State Government in Agricultural development had issued a notification u/s 4(1) of the Rajasthan Land Acquisition Act, 1953 whereby it was notified that the aforesaid land was intended to be acquired for Krishi Upaj Mandi Samiti, Jaipur.

10. The petitioner further submits that the Notification u/s 4(1) of the Rajasthan Land Acquisition Act, 1953 was issued on 31.7.1986 and this notification was published in the daily newspaper on 26.11.1986 i.e. after the expiry of 18 months from the date of notification. It was submitted by the petitioner that after knowing this fact the petitioner searched the publication of Notification

dated 31.7.1986 in the Rajasthan Rajpatra whereupon it was found that the said notification was published in the Rajasthan Rajpartra on 7.8.1986 in Part (1) (kh). Being aggrieved with the issuance of the Notification u/s 4(1) of the Rajasthan Land Acquisition Act, 1953 dated 31.7.1986 and a Public Notice of same in the Rashtrdoot on 26.11.1987, the petitioner filed his objections before the Land Acquisition Officer, Jaipur on 29.12.1987. On 4.12.1987 the declaration u/s (6) read with the provisions of Secs. 17(1) and 4 of the Rajasthan Land Acquisition Act, 1953 was published in the Rajasthan Rajpartra on 5.12.1987 Part 1(khh). The petitioner submitted that instead of showing the name of the petitioner society as Khatedar, the name of Shri Ram Singh Son of Shri Dan Singh Charan has been shown; whereas the Land Acquisition Officer was in knowledge of the titled deed of the petitioner society and knowing this fact the petitioner's society's name was not entered as the owner of the land in question. The State Government issued a public notice in the Rashtrdoot daily on 21.3.1988 of the notification dated 4.12.1987 under the provision of Section 6 read with the provisions of Sections 17(1) & 4 of the Central Land Acquisition Act and this notification was published in the Rastrdoot daily on 21.3.1988 and Rajpatra on 24.3.1988.

11. The petitioner further submits that acquisition proceeding acquiring the writ petitioner's land is not only discriminatory but also arbitrary and contrary to the provisions of law and the petitioner has got no other option to file this present writ petition.

12. The petitioner society challenged the acquisition proceeding on several counts.

13. Mr. G.L. Pareek submits that acquisition proceeding itself is defective because of the reason that the impugned notification issued u/s 4 of the Rajasthan Land Acquisition Act on 31.7.1986 is void, ab initio because of the reason that Rajasthan Act stood impliedly repealed on the extension of the Central Land Acquisition Act, 1894 with effect from 24.9.1984. As the subject matter of acquisition of land is in III list of Schedule-VII of the Constitution of India and the Central Legislation superseded the repugnant provisions of the State Legislation on the same subject matter by virtue of Article 252 of the Constitution of India.

14. Mr. G.L. Pareek challenged the acquisition proceedings on the ground that public notification u/s 4 of the Rajasthan Act dated 31.7.1986 was published in the daily newspaper Rashtrdoot on 26.11.1987 after about 18 months of delay. Even if the aforesaid notification is considered to have been issued under the provision of Central Land Acquisition Act, 1894, the giving of public notice after 18 months is breach of the provisions of Section 4(1) of the Central Act which required the publication of the notification u/s 4 of the Central Act in the Rajpatra and public notices at the same time in the daily two newspapers.

15. Mr. Pareek submits that the declaration u/s 6 is to be issued under the

provision of Central Act as it was issued under the provision of Repealed Act (Rajasthan Land Acquisition Act, 1957) and it was of no avail because it was void ab initio and such illegality cannot be cured in any way.

16. Mr. Pareek submits that declaration u/s 6 could be issued within a period of one year from the date of publication of a notification u/s 4 of the Act. Since the declaration u/s 6 was not issued within a period of one year from 3.1.1987, the date of amendment came into force and the period of one year expired on 2.1.1988.

17. Mr. Pareek submits that admittedly till 2.1.1988 no declaration u/s 6 of the Central Act was ever issued and was published on 21.3.1988 in daily newspaper Rashtradoot and which discloses that the declaration was issued on 12.2.1988 and this admittedly after the expiry of one year and therefore, entire acquisition proceedings is void and ineffective.

18. Mr. Pareek submits that the respondents utterly failed to proceed in accordance with the provision of law as they have not taken any resort to urgent provisions as provided u/s 17 of the Act. The State Government has not shown as to how and in what way there was an urgent need from 1986 to 1987 and the State Government did not apply its mind before issuing notification u/s 17(4) of the Act.

19. Mr. Pareek submits that Jaipur Development Authority and earlier the erstwhile Urban Improvement Trust, Jaipur had neglected to give decision on the application for sanction to sub-division and approval of plan of the petitioner society dated 28.2.1988. By virtue of Rule 27(4) of the Rajasthan Urban Areas (Sub-division) Rules, 1973 the application of the petitioner for sub-division stands as deemed to have been sanctioned with effect from the expiry of a period of 90 days from the date of application i.e. 28.2.1983.

20. Mr. Pareek referred the provisions of Rajasthan Co-operative Society Act, 1965. He referred Section 10 under which registration of a co-operative society shall render it a body corporate by the name under which it is registered, having perpetual succession and a common seal, and with power to hold property, enter into contracts, institute and defend suits and other legal proceedings and to do all things necessary for the purposes for which it was constituted. Section 10(2) provides "Registered Co-operative Societies" is also covered in definition of company, defined in Land Acquisition Act, u/s 3-E of the Act. Since the Registered Housing Co-operative Societies is a "Public purpose" are covered in definition in Section 3-F of the Land Acquisition Act.

21. Mr. Pareek also given emphasis on the Government policies in view of which the land in question which belongs to the petitioner society should be deacquired.

22. Reply to the show cause notice and writ petition on behalf of J.D.A. have been filed.

23. Objections with regard to maintainability and survival of the writ petition

were submitted by the non-petitioner No. 3. It was submitted that the land in question was purchased by the society on 3rd August, 1970 but the mutation in revenue record has been effected in the name of the Society only on 30th January, 1988. Since no document worth the name has been produced to show that the allotment of the plots have been made to its members. Even the list of the members of the Society has not been given. Further objection was made on the ground that notice u/s 91(3) of the Rajasthan Land Revenue Act was given to the petitioner Society as the petitioner Society has changed the land use. No development and construction of houses over the land has been made by the members of the petitioner Society and no such detail has been given and appended along with the writ petition.

24. It is further submitted that in the master plan of Jaipur City, the land has been shown as "for industrial area purpose." Therefore, for the public purpose, the land which was required for the Krishi Upaj Mandi Samiti, notification u/s 4 of the Rajasthan Land Acquisition Act, 1953 dated 31st July, 1986 was published in the Rajasthan Rajpatra on 7th August, 1986. But the petitioner Society filed its objection before the Land Acquisition Officer on 29th December, 1989 and after the declaration u/s 6 read with Section 17(1) and (4) of Rajasthan Land Acquisition Act, 1953 dated 4th December, 1987 published in Rajasthan Rajpatra on 5th December, 1987. Similarly, declaration u/s 6 read with Section 17(1)(4) of the Central Land Acquisition Act, 1894 dated 12th February, 1988 published in Rashtradoot dated 21st March, 1988.

25. Learned Counsel appearing on behalf of the Krishi Upaj Mandi Samiti submits that the petitioner has challenged the Notification dated 31st July, 1986, 4th December, 1987 and 12th February, 1988 and the acquisition proceedings as a whole on a number of grounds and it is submitted that none of the grounds taken by the petitioner is tenable in eye of law because of the reasons that it is wrong to say that Rajasthan Land Acquisition Act, 1953 stood impliedly repealed. The petitioner Society has utterly failed to point out any repugnancy whatsoever. Moreover, admittedly the petitioner filed its objections against the acquisition on 29th December, 1987 and hence it is stopped from making any submissions in this respect.

26. It was further submitted that admittedly the notification dated 31st July, 1986 was published in the Rajasthan Raj Patra on 7th August, 1986 and it is not disputed that notification also published in the newspaper. The Rajasthan Act was repealed with effect from 3rd January, 1987 and admittedly the petitioner filed objections on 29th December, 1987 before the Land Acquisition Officer and also before filing of the writ petition. This itself shows that sufficient compliance of provisions of Section 4(1) has already been made.

27. It is further submitted that the mistake which has been committed has been rectified by the non-petitioner No. 1. Thus, the State Government as well as the Central Government are competent to make law regarding the acquisition of land. In view of these facts, the Act 1953 does not automatically stood repealed

and hence, the ground taken by the petitioner is not tenable.

28. The provision of Section 17 has rightly been invoked by the non-petitioners because there was sufficient material available before the State Government that the land is needed urgently which is apparent from the notice itself issued u/s 17.

29. Learned Counsel appearing on behalf of the Krishi Upaj Mandi Samiti further denied that the petitioner submitted any application for sanction of sub-division and approval of the plan of construction and given emphasis that the land was not converted so far from agriculture to that of urban and hence, no question of any sub division whatsoever does arise.

30. It is also submitted that as per the petitioner's own case mutation has been ordered in its favour only on 30.1.1988. In view of this fact, prior to 30th January, 1988 the name of the predecessor in title of the petitioner was entered as Khatedar in the revenue records and hence his name has rightly been shown in the notification. Since the petitioner has already filed its objections against the application meaning thereby the petitioner was well aware of all the facts and hence no prejudice has been caused to the petitioner.

31. Reply to the writ petition has also been filed on behalf of respondents No. 1 and 2. They submitted in their reply that this writ petition does not survive because of the reason that the petitioner has got relaxation to challenge the acquisition proceedings. They admit the writ petition to the extent that the petitioner submitted an application for sanction of sub division and the same has not been granted for the reason that the application itself was misconceived. It is submitted that the application could be moved for sub-division of urban land and not for agricultural land and the land of the petitioner was admittedly an agricultural land. An information was already sent the petitioner vide letter dated 25.4.1986 in this regard and the refusal of grant of sub-division has not been challenged by the petitioner and the same could not be challenged after a lapse of more than two years.

32. It is an admitted fact that in the master plan prepared under Chapter-II of the Rajasthan Urban Improvement Act, 1959 for the City of Jaipur the land use of the land in question has been shown to be industrial. Obviously, there can be no question of approval of the subdivision of the land for the purpose of housing. On behalf of respondents No. 1 and 2 same objection has been raised regarding survival of the writ petition as that of respondent No. 3 that the petitioner failed to submit any document showing the name of his society allottee and even the list of the members of the society has not been given. Therefore, the question of allotment by the society to its members is misconceived. Any allotment made by the society to its members is of no conscience. Once master plan which is statutory in character has come into force, the land cannot be used for the purpose other than indicated in the master plan. With regard to reference to certain circulars issued by the Rajasthan Government efficacy of these circulars qua the master plan should be considered by the Court in the light of the

provisions of the Jaipur Development Authority Act, 1982 and also in the light of the statutory master plan prepared under Chapter-II of the Rajasthan Urban Improvement Act, 1959. These circulars do not confer any legal right on the petitioner to get the land use changed from industrial to that of residential. Any change in the master plan can be effected only in accordance with the provisions of Section 25 and other provisions of the Jaipur Development Authority Act, 1982. No such notification has been issued by any competent authority till date and therefore, the land use of the land in question would continue to be industrial one.

33. With reference to notification Ex.P-6 it was submitted that conversion was made from industrial to residential for settlement of Kacchi Bastis. 600 families were living and they had raised their houses on the land in dispute. Therefore, it was thought proper to convert the land in the interest of poor public. Similarly, by the second notification referred to change has been brought about looking to the requirement of residential scheme and looking to the fact that about 1000 houses had been constructed, therefore, it was considered proper to change the land from industrial to residential and only such land has been regularised. In each case, Jaipur Development Authority has correctly examined the matter on merits and then passed appropriate order for change of the land use. No discrimination has been practiced in this matter qua the petitioner.

34. The petitioner also submitted an application on 8.1.1998 Under Article 226 of the Constitution of India for taking subsequent events and documents on record and prayed that the documents Ex. 12,13 and 14 may kindly be taken on record and consider with respect to the claim of the petitioner and subsequent application was filed Under Article 226 of the Constitution of India dated 21.5.1998 by which Annexures 15 and 16 were sought to be taken on record. Thereafter on 4.10.1999, the petitioner society's secretary submitted an additional affidavit and also placed Ordinance Rajasthan Land (Ordinance No. 3 of 1999) which came into force with effect from 15th day of January, 1999. it was also submitted that this Ordinance has now been promulgated and in view of the Ordinance the land belonging to private persons and a vast number of plot holders even on Govt. land or acquired land may be benefited. Along with additional affidavit the order dated 24.9.1999 was also placed by which the State Government has fixed the rates of allotment or regularisation in Jaipur. The petitioner along with his additional affidavit also submitted a notification which was published in the Rajasthan Raj Patra dated 24.2.1988 to show that in view of the notification Under Sections 6 and 17 of the Central Land Acquisition Act, issued on 12.2.1988, previous acquisition proceedings stood elapsed.

35. Learned Counsel Mr. G.L. Pareek submits that the Acquisition provisions are contrary to Law and deserve to be quashed which was issued on 31.7.1986 as the Notification u/s 4 has been issued under the provisions of the Rajasthan Land Acquisition Act, 1953, which stood repealed with effect from 24.9.1984. In this regard he has cited the case of Banwari Lal Mittal v. State of Rajasthan in

1989(1) RLR 733 of this High Court wherein it has been held as under:

Whether under any provision of the Central Act as it stands after insertion of Section 56 by Amendment Act of 1987 the notice issued u/s 4(1) of State Act is saved-Held, there is no provision Under Sub-section (4) of Section 56 of Central Act which would save a notice u/s 4(1) of State Act-But it will have to be seen whether notice u/s 4(1) of State Act was in accordance with provisions of Section 4(1) of Central Act--If an action under State Act in terms of provisions of Central Act is taken, mere mention of Sub-section (1) of Section 4 of State Act would not have any relevance--Notice issued u/s 4(1) of State Act found not to be in compliance of provisions of Section 4(1) of Central Act--Held, subsequent acquisition proceedings are invalid.

36. The petitioner placed reliance on the case State of Rajasthan v. Deepa and Others (S.B. Civil Misc. Appeal Nos. 87 to 94 of 1991) decided on 21.5.1991 wherein the Division Bench held that "Secs. 1, 4, 23 and 34--Rajasthan Act of 1953 stood repealed with effect from 24.9.1984--Notification u/s 4 issued on 1.5.1985 and award given on 31.8.1987--Held, Central Act applicable and not Rajasthan Act".

37. In view of the provisions of Section 3(f)(VI) of the Land Acquisition Act, 1894, the Krishi Upaj Mandi Samiti, being a local authority under definition of the term local authority in the General Clauses Act and also in Section 3(aa) in Land Acquisition Act, 1894, should have got its scheme approved by the State Government prior to initiation of acquisition proceedings, and in view of the purposes carried out on the land by petitioner society the land cannot be acquired for an another public purpose and the killing of one purpose for established another public purpose, will not be a public purpose. In this regard he cited the case of H.M.T. House Building Co-operative Society Vs. Syed Khader and others, wherein it was held as under:

In view of Section 3(f)(vi) any housing co-operative society lands can be acquired by the appropriate Government, treating the same as acquisition for the public purpose. On such acquisition, there is no question of application of the provisions of Part-VII of the Act. Such acquisition shall be on the mode of acquisition by the appropriate Government for any public purpose. In Section 3(f)(vi) the expression "housing" has been used along with educational and health schemes. As such the housing scheme contemplated by Section 3(f)(vi) shall be such housing scheme which shall serve the maximum number of members of the society. Such housing scheme should prove to be useful to the public. If requirement of Section 3(f)(vi) is not strictly enforced, every housing co-operative society shall approach the appropriate Government for acquisition by applying Section 3(f)(vi) instead of pursuing the acquisition under Part-VII of the Act which has become more rigorous and restrictive. In this background, it has to be held that the prior approval, required by Section 3(f)(vi), of the appropriate Government is not just a formality; it is a condition precedent to the exercise of the power of acquisition by the appropriate Government for a housing scheme of

a co-operative society. It is incumbent on the part of the appropriate Government while granting approval to examine different aspects of the matter so that it may serve the public interest and not the interest of few who can as well afford to acquire such lands by negotiation in open market.

38. Acquiring land by showing the wrong person as owner of the land proposed to be acquired. The acquisition proceedings are rendered as void, the petitioner society cannot be put to loss and damage on account of mistake of revenue officers, so all the notifications issued Under Sections 4 and 6 of the Act deserve to be quashed on this ground also. To support this contention the learned Counsel Mr. G.L. Pareek cited *Hindustan Oil Mills Ltd. and Another Vs. Special Deputy Collector (Land Acquisition)*, ; *Bahori Lal Vs. Land Acquisition Officer and Others*, ; *Corporation of the City of Bangalore Vs. M. Papaiah and Another*, and the decision of this Court in the case *Indrapuri Grah Nirman Sahakari Samiti v. State of Rajasthan* dated 4.5.1983 in S.B. Civil Writ Petition No. 1549/72) wherein it has been held that "The persons who are interested and who are concerned have not been issued notice because of this mistake and therefore, the entire proceedings of the land acquisition are void".

39. As the provisions of Section 4 of the Act have not been complied with, the notification u/s 4 dated 31.7.1986 is bad in law and deserves to be quashed. Here it was published in one News paper only and no public notice was issued. To support this contention he has cited *Collector (District Magistrate) Allahabad and Another Vs. Raja Ram Jaiswal*, "The collector (Distt. Magistrate) Allahabad v. Raja Ram Jaiswal" Wherein it was held as under:

In order to be a valid notification u/s 4(1), it has to be published or notified for general information in the Official Gazette and for purposes of Section 5-A of the Act, it would be taken to have been published on the date of such publication in the Official Gazette, and the second part of Section 4(1) requires the publication of the substance of the notification in the locality. This being not been complied with, the notification was bad and invalid.

40. In *State of Mysore Vs. Abdul Razak Sahib*, it was held that (i) Publication of notice u/s 4 of the Land Acquisition Act is a mandatory requirement. Under certain circumstances publication in the Official Gazette is presumed to be notice to all concerned. But in the case of a notification u/s 4 of the Land Acquisition Act the law has prescribed that in addition to the publication of the notification in the Official Gazette the Collector must also give publicity of the substance of the notification in the concerned locality. Unless both these conditions are satisfied, Section 4 of the Land Acquisition Act cannot be said to have been complied.

(ii) Section 4 of the Land Acquisition Act has an important purpose behind it. In the absence of such publication the interested persons may not be able to file their objections about the acquisition proceedings and they will be deprived of the right of representation provided u/s 5-A, which is a very valuable right.

41. In *Deepak Pahwa and Others Vs. Lt. Governor of Delhi and Others*, it was held that "Publication in the Official Gazette and public notice in the locality are the essential elements of Section 4(1) without which the steps contemplated u/s 4(2) cannot be undertaken. But Section 4(1) does not require that the two must be contemporaneous. The two must necessarily be separated by a gap of time. What is necessary, is that the continuity of action should not appear to be broken by a gap so large as may lead one to the prima facie conclusion of lack of bonafides in the proceedings for acquisition. If the notification and the public notice are separated by such a large gap of time it may become necessary to prove further to discover if there is any cause for the delay and if the delay has caused prejudice, to anyone.

42. In view of the provisions of Sub-section (4) of Section 56 of the Land Acquisition Act, 1987 which was inserted by Rajasthan (Land Acquisition) Amendment Act, 1987, which came into force with effect from 30.1.1987 the declaration could only upto 2.1.1987 and the declaration issued on 12.1.1986 and published in Rajasthan Rajpatra on 24.3.1988 is beyond limitation and the acquisition proceedings deserved to be quashed." The earlier notification u/s 6 of Rajasthan Act was bad in law and stood superseded by the subsequent notification. In this respect he has cited 1999 (1) LACC 82. *the Kanyakumari Diocese of the Church of South India v. The State of Tamil Nadu* and another wherein it was held-Delay in declaration-Notification u/s 4(1) issued on 17.5.1979 for acquisition of land for wider road-Notification challenged by the land owner-court quashed the declaration on 10.10.1991-order communicated to the Authoritie on 9.11.1991-Authorities directed to issue fresh declaration after fresh enquiry-Fresh Declaration issued on 12.12.1996 held to be beyond period prescribed Under the Act-Declaration as well as Section 4(1) Notification quashed".

43. Similar views have been taken in the cases reported in 1995(1) LAL 83 (Raj) ; *Shrimati Daya Wati and Another Vs. Collector, Saharanpur and Another*, .

44. Mr. S.M. Mehta, Advocate Gerneral appearing on behalf of the State of Rajasthan, in support of his contentions placed reliance on the judgment reported in 1989(1) RLR 733 *Banwari Lal Mittal v. State of Rajasthan and Ors.* wherein it was observed as under:

The challenged to the aforesaid notifications is on the ground that the said notifications were issued after the extension of the Land Acquisition Act, 1894 (for short, the Central Act) to this State with effect from September 24, 1984. When the Central Act was extended as aforesaid to this State, the State Act stood repealed and no action could be taken under the State Act.

It is to be seen whether under any of the provisions of the Central Act as it now stands after insertion of Section 56 as aforesaid the notice issued Under Sub-section (91) of Section 4 of the State Act is saved? Sub-section (2) of Section 6 of the State Act only deals with the cases which were pending on the date of

extension i.e. September 24, 1984, and it does not deal with the situation where any proceedings had been initiated after the date of extension as aforesaid. Sub-section (3) of Section 56 is also not relevant as it relates to things done, action taken or orders made in regard to acquisition of any land for the Union on or after the date of extensions aforesaid. Such things done, actions taken or orders made shall be deemed to have been done, under the directions of the Union. Sub-section (4) of Section 56 is in respect of proceedings pending under the State Act on the date of extension or instituted after the said date. It will be proper to read Sub-section

(4) of Section 56 which is as under:

(4) Where in any proceeding pending under the State Act on the date of extension or instituted after the said date a declaration u/s 6 or an award u/s 11 has been made after any of the respective periods so specified in Section 6 or 11, as the case may be, has expired, the said period or the periods, as the case may be, shall be deemed to have been extended upto the date of such declaration or award. In a proceeding pending on the date of commencement of the Land Acquisition (Rajasthan Amendment) Ordinance, 1986, such period or periods shall be deemed to have been extended upto and the declaration or the award, as the case may be, shall be made within one year and two years respectively after such commencement.

45. In RLR 1989 (1) 691 Shree Narain v. State of Rajasthan it was held as under:

Sub-section (2) of Section 56 of the Central Act as introduced by Land Acquisition (Rajasthan Amendment) Act, 1987 saves actions of the State Government, in any proceedings under the State Act pending on the date of extension of the Central Act to the State or even actions of the State Government taken before the coming into force of the Land Acquisition (Rajasthan Amendment) Act which as per Sub-section (3) of Section 1 of the Land Acquisition (Rajasthan Amendment) Act, 1987 shall be deemed to have come into force on 3.1.1987. Therefore, the Land Acquisition Officer who was appointed u/s 3(c) of the said Act will be deemed to have been appointed under the Central Act and any award made by him cannot be without jurisdiction.

46. In Para 8 of the judgment it was held that Sub-section (4) of Section 56 of the Central Act as introduced by the aforesaid Land Acquisition (Rajasthan Amendment) Act, 1987 clearly provides that a notification u/s 6 and the award u/s 11-A of the Central Act, as the case may be could have been made within one year and two years respectively after the commencement of the Land Acquisition (Rajasthan Amendment) Act, 1987. In other words, the notification u/s 6 could have been published upto 2.1.1988 and the award could have been made within two years thereafter.

47. In Chain Singh and etc. Vs. State of Rajasthan and Others, It was held as under:

The Central Act as amended was extended to the State of Rajasthan. There were no time bound provisions similar in nature as they are there in the Central Act, so, certain transitory and special provisions were considered necessary to be made for the disposal of the proceedings pending under the State Act and for payment of compensation and interest etc. in accordance with the Central Act. It is worth this object in view that the provisions consequential to the extension of the Central Act have been made by Section (2) of the Rajasthan Amendment Act, whereby Section 56 has been added in the Central Act. It may be stated that where the declaration u/s 6 is not made within one year or the Award has not been made within two years in the land acquisition proceedings pending on the date of extension, the provision has been made for such pending proceedings in Sub-section(4) and provisions has also been made in respect of those proceedings, which have been instituted after the date of extension i.e. if the proceedings are pending on 24.9.1984 or instituted after 24.9.1984 and the periods prescribed u/s 6 or Section 11-A have expired then such period shall be deemed to have been extended up to the date of declaration or Award. In any case, if the proceedings are pending even on the date of commencement of the Rajasthan Amendment Act the declaration or award has to be made within a period of one year and two years respectively after 3.1.1987 Sub-section (4) has been enacted only for the purpose of prescribing time for declaration and awards in pending proceedings, not only on the date of extension of the Central Law but also on the date of commencement of the Rajasthan Amendment Act, 1987. From the reading of Sub-section (4) as a whole and further having regard to the dominant object of the Rajasthan Amendment Act, it cannot be conceived that the Legislature ever contemplated that any proceedings will lapse on 3.1.1987 and for such lapsed proceedings, no provision is made. The word "pending" would mean the proceedings, which have not been disposed of. For undisposed proceedings on 3.1.1987 outer limit has been fixed as one year or two years after the date of commencement of the Rajasthan Act. That appears to be the intention behind Sub-section (4).

48. Mr. Mehta placed reliance on the judgment in 1993 (1) WLC 466 Smt. Geeta Devi Ghatiwala and Ors. v. State of Rajasthan and Ors. This judgment is referred by the Advocate General in reply to the submission made by the petitioner that the petitioners name as being Khatedar land in question has not been shown in the acquisition notification u/s 4(1). The Court has held as under:

Notification and declaration not invalid merely on ground of non-mention or wrong-mention of names of owners of land when notification discloses names of earlier Khatedars along with locality, area and Khasra numbers.

No doubt, the names of petitioners were not mentioned, though they had purchased the land in dispute from earlier Khatedars but the names of earlier Khatedars were given as owners and other particulars, namely, Khasra numbers, area, locality etc. were also given. The said particulars were sufficient to give notice, more so, after publication had taken place in all the modes provided u/s

(91) to enable the persons interested to file their objections u/s 5-A, and so far as the petitioners are concerned, they did file their objections. Even if their names are not mentioned and if other particulars, such as locality, area, Khasra numbers, etc. are given, there was sufficient compliance with Section 4(1) and on that count, the notification cannot be challenged, the requirement of law being not that notification must contain the names of the owners.

49. Similar view has been taken by the High Court of Madras in the case P. Tamarasan Vs. State of Tamil Nadu and two Others, wherein it was held as under:

It is clear that a duty is cast on the Land Acquisition Officer to verify the revenue records and send individual notices to the person concerned. However, there is any transfer of ownership and information is furnished to the Land Acquisition Officer either during 5-A enquiry or at any stage by the person concerned, it is mandatory on the part of the Land Acquisition Officer to afford an opportunity to the person who is really interested in the land. Individual notices mandatory only to those persons whose names are found in the revenue records or who are found by the Collector as persons interested. Where the land under acquisition was sold but neither the transferee nor the owner took any steps to get the name of transferee mutated, no grievance could be made when no notice was issued to the transferee and he was, consequently not afforded opportunity of hearing.

50. In Yadu Nandan Garg Vs. State of Rajasthan and Others, it was held as under:

Land Acquisition and Requisition Rajasthan Land Acquisition Act, 1953--Sections 4 and 6--Delay in issuing declaration u/s 6--Appellant himself purchasing the property long after notification u/s 4(1)--He cannot take the plea of unexplained delay between the date of issuance of notification u/s 4(1) and declaration u/s 6--Land Acquisition Act 1894, Sections 4 and 6.

"Land Acquisition and Requisition Rajasthan Land Acquisition Act, 1953--Secs. 4 and 6--Delay in issuing declaration u/s 6--Held, a valid notification u/s 4 does not become invalid on ground of delay in issuing declaration u/s 6 due to inaction on the part of the subordinates--Land Acquisition Act, 1894, Sections 4 and 6".

51. Mr. S.M. Mehta, in reply to the objections raised by the petitioner regarding laches defects stated that writ petition challenging its validity filed after two and half years is liable to be dismissed and also stated that raising the disputed question of fact no case for interference is made out since the petitioner has not alleged any mala fide allegations. Therefore, notification u/s 17 (4) cannot said to be bad despite delay in commencing construction.

52. Mr. R.P. Singh appearing on behalf of respondent No. 3 placed reliance on the judgment reported in 1997 (1) SCC 35 wherein it was held as under:

Administrative Law--Administrative action--Public policy--Must be for public good

and welfare and in public interest--It cannot be camouflage for abuse or misuse of power--Court has to ascertain where the policy of the Govt. was a means to fritter away the public property for personal gains--Where land acquired for public purpose Land Actuation Act and property vesting in the State free from encumbrances, Govt. Policy to allot a part of the same lands to the owner apart of the same lands compensation would be against public policy.

53. Reliance on the cases reported in JT 96 (10); 1989 (2) RLR 255 and 733 and 1992 (1) RLR 140 was also placed by Mr. R.P. Singh.

54. To resolve the present controversy, certain on provisions of Land Acquisition Act are required to be examined.

55. Section 4 publication of preliminary notification and powers of officers there upon (1) Whenever it appears to the appropriate Government that land in any locality is needed or is likely to be needed for any public purpose or for a company a notification to that effect shall be published in the Official Gazette (and in two daily newspapers circulation in that locality so which at least one shall be in the regional language) and the Collector shall cause public notice of the substance of such notification to be given at convenient places in the said locality (the last of the dates of such publication and giving of such public notice, being hereinafter referred to as the date of publication of the notification).

56. Section 6-Declaration that land is required for a public purpose (1) Subject to the provisions of Part-VII of this Act, when the Appropriate Government is satisfied after considering the report, if any, made u/s 5A. Sub-section (2), that any, particular land is needed for a public purpose, or for a company, a declaration shall be made to that effect under the signature of a Secretary to such Government or of some officer duly authorised to certify its orders and deferent declarations may be made from time to time in respect of different parcels of any land covered by the same notification u/s 4, Sub-section (1), irrespective of whether one report or different reports has or have been made (wherever required u/s 5-A, Sub-section (2)

(2) Every declaration shall be published in the Official Gazette, and in two daily newspapers circulating in the locality in which the land is situate of which at least one shall be in the original language, and the Collector shall cause public notice of the substances of such declaration to be given at convenient places in the said locality (the last of the date of such publication and the giving of such public notice, being hereinafter referred to as the date of publication of the declaration), and such declaration shall state) the purpose for which it is needed, its approximate area, and where a plan shall have been made of the land, the places where such plan may be inspected.

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

Section 17. Special powers in cases of urgency. (1) In cases of urgency, whenever the Appropriate Government so directs, the Collector, though no such award has been made, may, on the expiration of fifteen days from publication of the notice mentioned in Section 9, Sub-section (1) (take possession of any land needed for a public purpose). Such land shall thereupon vest absolutely in the Government, free from all encumbrances.

(4) In the case of any land to which, in the opinion of the appropriate Government, the provision of Sub-section (1) or Sub-section (2) are applicable, the appropriate Government may direct that the provisions of Section 5-A shall not apply, and if it does so direct, a declaration may be made u/s 6 in respect of the land at any time (after the date of the publication of the notification u/s 4, Sub-section (1)).

57. Section 2 of Transfer of Property Act, 1882 reads as under:

2. Repeal of Acts, saving of certain enactments, incidents, rights, liabilities, etc. In the territories to which this Act extends for the time being the enactments specified in the schedule hereto annexed shall be repealed to the extent therein mentioned" But nothing herein contained shall be deemed to affect (a) the provisions of any enactment not hereby expressly repealed; (b) any terms of incidents of any contract or constitution of property which are consistent with the provisions of this Act, and are allowed by the law for the time being in force, (c) any right or liability arising out of a legal relation constituted before this Act comes into force any relief in respect of any such right or liability; or (d) save as provided by Section 57 and Chapter IV of this Act, any transfer by operation of law or by, or in execution or, a decree or order of a Court of competent jurisdiction.

58. Section 10 of Co-operative Societies Act, 1965 reads as under:

10. Co-operative Societies to be bodies corporate.--The registration of a co-operative society shall render it a body corporate by the name under which it is registered, having perpetual succession and a common seal, and with power to hold property, enter into contracts, institute and defend suite and other legal proceedings and to do all things necessary for the purposes it was constituted,

2. Registered Co-operative societies is also covered in definition of company, define in Land Accusation Act, u/s 3-E of the Act which is as under:

(e) the expression "Company" means a company registered under the Indian Companies Act, 1882, or under the (English) Companies Acts, 1862 to 1890, or incorporated by an Act of Parliament (of the United Kingdom) or by an Indian Law or by Royal Charter or Letters Patent (and includes a society registered under the Societies Registration Act, 1860 (21 of 1860), and a registered society within the meaning of the Co-operative Societies Act, 1912 (2 of 1912), (or any other law relating to co- operative societies for the time being in force in any State.

(f) the expression "public purpose" includes the provision of village sites in districts in which the (appropriate Government) shall have declared by notification in the Official Gazette that it is customary for the Government to make such provisions:

After hearing the rival contention of the parties and perusing reply and the documents annexed with the writ petition and relevant provision of law as well as decision cited before me, this is not disputed by the petitioner to this effect that the notification u/s 4 was issued on 31.7.1986 and the mutation in favour of the petitioner society was entered in the revenue record on 30.1.1988 i.e. after one and half year two years of publication of Acquisition Act u/s 4. Further it is also not disputed that the declaration u/s 6 read with Section 17 (1) and (4) issued under the Registration Act showing the original Khatedars tenant as owner on 4.12.1987. Admittedly, issuance of notification u/s 4 and declaration u/s 6 read with Section 17 (1) (4) was much earlier to the mutation order dated 30.1.1988. This is also an admitted fact that the petitioner submitted objection on 29th December, 1987. On that date also the land was not recorded in the name of the society in revenue record. Notification of declaration u/s 6 read with Section 17 (1) and (4) of the Central Act was also issued 12.2.1988 meaning thereby prior to the mutation order passed in favour of the petitioner society dated 30.1.1988 notification Under Sections 4 and 6 and 17(1)(4) under the Acquisition Act and under the Central Act were already issued in the name of original Khatedar tenant Ram Singh and objections were filed by the Society on 29.12.1987 and that date also mutation was not entered in favour of the petitioner. Therefore, objections raised by the petitioner with regard to this fact that no notice was given to the petitioner is irrelevant and contrary to the factual aspects and the Land Acquisition Officer has rightly recognised Khatedars tenant and issued the notification showing Shri Ram Singh as owner of the land and the argument that the name of Shri Ram Singh as owner has been shown wrongly is not tenable.

59. The argument of the petitioner to the effect that notification of declaration u/s 6 read with Section 17(1)(4) of the Central Act was issued beyond the period of limitation and since the limitation already expired the acquisition proceedings is bad in law and because it has been done under a repealed law of the Rajasthan Land Acquisition and thus is void ab initio.

60. Section 56 as aforesaid and Sub-section (91) of Section 4 of the State Act Sub-section (2) of Section 6 of the State Act which deals with regard to the pending cases on the date of extension i.e. September 24, 1984 and the same controversy is dealt with in the judgment which was cited before me and reported in 1989 (1)RLR 691 Shree Narain v. State of Rajasthan. The Division Bench held that Sub-section (4) of Section 56 of the Central Act as introduced by the aforesaid Land Acquisition (Rajasthan Amendment) Act, 1987 clearly provides that a notification u/s 6 and the award u/s 11-A of the Central Act, as the case may be could have been made within one year and two years respectively after the commencement of the Land Acquisition Act, 1987. In other

words, the notification u/s 6 could have been published upto 2.1.1988 and the award could have been made within two years thereafter.

61. Similar controversy was also discussed in the case reported in Chain Singh and etc. Vs. State of Rajasthan and Others, Also in Yadu Nandan Garg Vs. State of Rajasthan and Others, the Apex Court has held that a valid notification u/s 4 does not become invalid on ground of delay in issuing declaration u/s 6 due to inaction on the part of the subordinates.

62. Here, in the instant case the petitioner himself purchased the property but not get it mutated in the name of society prior to the notification u/s 4(1) and the petitioner cannot take place of unexplained delay between the date issuance of notification u/s 4 and declaration u/s 6 of Land Acquisition Act, 1894. More so, the petitioner preferred to file this present writ petition before this Court after a lapse of 2-3 years and since the petitioner has not taken steps in appropriate time and for the delay caused, the petitioner cannot take advantage of his own wrong. Therefore, defects pointed out by the petitioner in acquisition proceedings are not well founded and explained and also not supported by the provisions of law and the judgment cited before me by the learned Advocate General Shri S.M. Mehta squarely cover the present controversy and the judgment cited by the petitioner with regard to challenge of the acquisition proceedings on technical grounds that Section 4 was not published in two newspapers and also defective on account of non-compliance of provision of Section 4(1) of the Act are not applicable in the instant case as the petitioner himself unable to make out his case since the petitioner has said to be purchased the said land by registered sale deed dated 3.8.1970 and the mutation was entered in favour of the petitioner only on 30.1.1988 i.e. after 18 years of purchase of the land.

63. The Land Acquisition Officer has rightly examined the revenue record and as per the revenue record the notices were rightly been issued in the name of the original owner of the land in accordance with the land revenue record and the petitioner further not chosen to submit his objections at the time of issuance of notification Under Sections 4 and 6. Petitioner only submitted his objection after issuance of the notification u/s 4 and declaration u/s 6 on 29th December, 1987.

64. In view of the above said facts the petitioner in the writ petition has got no locus standi to challenge the acquisition proceedings on belated technical grounds.

65. The petitioner referred the certain provisions of Co-operative societies Act and also the provision of Indian Companies Act and Section 10 of the Co-operative Societies Act which is already reproduced hereinabove and by a perusal of Section 10 of the Co-operative Societies Act, 1965 reveals this fact that there is no application of Section 10 in the present controversy. The petitioner also referred Sections 3-E and 3-F of the Land Acquisition Act which also does not cover the present controversy.

66. I have also considered the arguments of the petitioner and the non-petitioner

with regard to the declaration issued u/s 6. The land is required for public proposes and the objection of the petitioner that no mind has been applied while issuing declaration u/s 6 read with Section 17(1)(4) is baseless and unfounded.

67. The petitioner only challenged the acquisition proceeding on technical ground much after the issuance of Notification Under Sections 4, 6 and declaration u/s 17(1)(4) and not challenged the same at the relevant point of time and the petitioner also not alleged any malafide allegations to this effect.

68. As already discussed hereinabove, in view of the judgment cited before me and the provisions of the Land Acquisition Act, the land acquisition proceedings initiated by the Land Acquisition Officer are absolutely in accordance with the provisions of law and merely on technical grounds, the acquisition proceedings cannot said to be bad as alleged by the petitioner.

69. The petitioner also filed an application for taking certain documents on record and the certain orders with regard to land conversion and regularisation. Since the petitioner has got no legal right to challenge the acquisition proceeding as has not rightly been challenged on the relevant point of time and the acquisition proceedings already taken place, therefore, in view of the subsequent orders which are passed for regularisation and conversion of the land having no application to the instant case and these documents cannot be looked into for the purpose of deciding this petition.

70. As a result of above discussion, the writ petition does not survive and deserves to be dismissed. The same is accordingly, dismissed. No orders as to cost.