

(1976) 09 RAJ CK 0010
In the Rajasthan High Court
Case No : Civil Writ Petition No. 1824 of 1975

Jasraj	Vs	APPELLANT
State of Rajasthan and Others		RESPONDENT

Date of Decision : 24-09-1976

Acts Referred:

Constitution of India, 1950 — Article 226
Rajasthan General Clauses Act, 1955 — Section 23
Rajasthan Land Acquisition Act, 1953 — Section 4, 48, 48(1), 6

Citation : AIR 1977 Raj 150 : (1976) RLW 660 : (1976) 9 WLN 589

Hon'ble Judges : Rajindar Sachar, J

Bench : Single Bench

Advocate : C.L. Agarwal and B.R. Arora, R.N. Munshi, for the Appellant; H.N. Kalla, Dy. Govt. Advocate, for the Respondent

Final Decision : Allowed

Judgement

Ranjindar Sachar, J.—This is a petition under Article 226 of the Constitution seeking to quash the notification issued by the respondent No. 1 State of Rajasthan dated 21-11-1975 by which it has cancelled its earlier notification dated 12-11-1975 by which the State had in exercise of its power u/s 48(1) of the Rajasthan Land Acquisition Act (hereinafter to be called the "Act") had withdrawn the land of the petitioner from acquisition as declared in Section 6 notification dated 24-11-1973.

2. The petitioners are the owners and occupiers of land on Kila Nos. 1 to 5 of square No. 36, situate in Chak 3-E, District Sri Ganganagar. The State of Rajasthan published a notification D/- 18-1-1971 u/s 4 (1) of the Act, proposing to acquire the land for public purpose for extension of Abadi Ganganagar. The notification was published in the Government Gazette of 16-12-1971. Amongst others it included the petitioner's land in Kila No. 36. A further notification dated 24-11-1973 u/s 6 of the Act was published in the Government Gazette of 27-12-19-73. In the said notification by inadvertent error the number of the

petitioners" land was mentioned as 39 and this was corrected by the correction slip dated 19-2-1974.

3. The petitioner No. 1, it appears after obtaining permission from the Industries Department had installed a Saw Mill in Kila 1 of square 36 in April, 1974. It appears that adjacent to the land of the petitioners there are working some industries and they seem to have taken up with the Government the question of releasing the said land from acquisition.

This request seems to have been accepted by the Government and a notification dated 6-5-1975 was published by which the Government directed u/s 48 (1) of the Act that the land mentioned in the said order, is released. The representations which were accepted was of M/s. Krishna Cottage Industries, Nav Bharat Industries and Ganesh Oil and General Mills, and M/s. Sri Ganganagar Cotton Ginning and Pressing Factory. Some further representations about release of the land from acquisition were accepted by the Government by its notification of 12-9-1975 and some more land was released from acquisition u/s 48 of the Act. This apparently emboldened the petitioners to make representation asking that their land be also released from acquisition. Apparently the representation met with success and the Government issued a notification dated 12-11-1975 that the land (belonging to the petitioners) contained in Kila Nos. 1 to 5 in square No. 36 was released from acquisition u/s 48 of the Act. It was also directed in the said order that no compensation shall be paid to the petitioners who are owners of the land in accordance with the provisions of Section 48 of the Act. The notification was endorsed amongst others to the Collector, Ganganagar, to the Chairman, Municipal Council, Ganganagar and the petitioners.

4. Originally the petitioners filed writ petition on 25-11-1975 in this Court with the allegation that in spite of the order of 12-11-1975 the Tehsildar, Ganganagar respondent 4 came with members of the Police staff to the disputed land to take forcible possession of the factory on 15-11-1975. It was also alleged that the Tehsildar had pasted notices on the outer gate of the factory that possession will be taken by the Government even though the factory was working and the material of the petitioners was lying on the land. It was also alleged that on 17-11-1975 some employees of the Rajasthan State Transport Corporation respondent 5 numbering about 50 demolished a portion of the wall of the southern side and 3 or 4 buses standing inside the area belonging to the petitioners. This it was said was done because respondent 2 the Collector, Ganganagar was also the Chairman of the Urban Improvement Trust and had agreed to transfer this plot of land to respondent 5. The petitioner therefore sought to restrain the respondents from dispossessing the petitioner. Later on the petitioners filed an amendment to the effect that they had come to know that subsequently the Government had passed the impugned order dated 21-11-1975 by which it had withdrawn the notification of 12-11-1975. An amended petition was filed therefore seeking to have the said order of 21-11-1975 quashed also.

5. Mr. Munshi, learned counsel for respondent 5 and Mr. Calla appearing for the State of Rajasthan raised a preliminary objection to the maintainability of the writ petition. The first ground on which this objection is raised is that a joint petition by all the petitioners is not maintainable as the causes of action are separate and even if they are similar they are not one and each of the petitioners should have filed a separate writ petition. Reliance for this is placed on a Division Bench judgment of this Court in Chandmal Naurat Mal and Others Vs. State of Rajasthan and Another, In the said authority it has been laid down that unless the cause of action is same, a joint petition is not maintainable. In that case an objection had been raised by the office as to the maintainability of the joint petition and the same was conceded by the counsel for the petitioner because of the Rule 375 of the Rajasthan High Court Rules. Now here the petitioners are owners of the land Kila Nos. 1 to 5 of square No. 36 which is the subject-matter of the dispute is admitted. In the reply it has been asserted that the petitioners are not the joint owners and as there is no rejoinder to this it may be taken that they are not asserting to be joint owners of all the land in question. There is however the fact that in the notification under Sections 4 and 6 all the petitioners' lands have been included. It is possibly true as stated in the reply that separate notices were issued to the petitioners u/s 9 and the argument is that this shows that interest of the petitioners were separate so that if they were to challenge the compensation awarded to each of them they would have to do it separately. In the present case however the petitioners are not coming forth to challenge the notices given by the Land Acquisition Officers for the individual compensation assessed. Their community of interest and cause of action arises when the Government by an order u/s 48 (1) of the Act directed to release all the land of the petitioners by a common order of 12-11-1975. Their further community of interest continued when the Government issued the impugned notification of 21-11-1975 purporting to rescind the earlier notification of 12-11-19-75. The claim of the petitioners in short is that once the Govt. had passed an order u/s 48 (1) of the Act it has no jurisdiction to issue a subsequent notification on 21-11-1975 rescinding the 12-11-1975 notification. The petitioners are not raising any separate claim or asking for any separate determination of points with which one may be interested and the other may not be. They are aggrieved by the same common order of 21-11-1975 and the cause of action is the same.

The counsel for the respondent would have it that their causes of action may be similar but not same. I cannot agree. It should also be seen that unlike Chandmal's case no objection was raised by the High Court Office to the maintainability of the joint petition. Had that been raised it would have been open to the petitioners to file separate petitions. That having lot been done it seems to me that it would work injustice if the petition was to be thrown out now on this hyper-technical ground. And it seems to me more so, when even if this petition was dismissed on this ground it would be open to the petitioners to file fresh petitions with the result that all this time which has been spent in filing

replies and having the case ready will have to be gone into again. I do not see what purpose this time consuming process will serve. It cannot advance the cause of justice, because the petition even if dismissed now on this ground and the petitioners file a fresh one will have to be admitted because it does raise arguable points and I could hardly see any justice in throwing out this petition on this ground. It should also be noted that in Chandmal's case it was also observed that in such a case the petitioners must be given opportunity to choose as to on whose behalf he will continue the writ petition. Even if that course was adopted and the petition was to continue on behalf of one petitioner the result will be the same, apart from the formality of asking the petitioners to file separate though identical petitions. The petition cannot be thrown out as not maintainable on this ground.

6. The next preliminary objection raised by Mr. Munshi to throw out the petitions is that they have made deliberately false statements and therefore do not deserve that the matter be considered, on merits. This argument is based by making a reference to the averment in the petition wherein it is alleged that the petitioners obtained the copy of the order of 12-11-1975 on 13-11-1975 and that they met the Collector respondent 2 on 14-11-1975 and showed him the typed copy of the order of 12-11-1975 but in spite of that the Collector directed respondent 4 the Tehsildar to take possession of the petitioners' land. This allegation has been denied in the reply and Mr. Munshi refers me to a letter of the respondent 2 Collector dated 20-11-1975 written to the Secretary, Town Planning Department, Government of Rajasthan wherein it has been noted by the Collector that on 17-11-1975 the counsel for the petitioner had presented an order of 12-11-1975 deacquiring the land of the petitioners but that he has not yet received a copy of this order. Mr. Munshi also referred me to the application dated 17-11-1975 filed by the petitioners before the Collector requesting him that as the Government had passed an order u/s 48 of the Act the Collector may direct the Tehsildar, Ganganagar that he should not continue his proceedings, for taking possession of the land as it would be contrary to the order passed by the Government on 12-11-1975.

Mr. Munshi's suggestion is that as in the application of the petitioners of 17-11-1975 there is no mention that the petitioners had shown this order of 12-11-1975 to the Collector, it conclusively proves that the version of the petitioners that they had met the Collector on 14-11-1975 must be untrue and this is further supported according to him by the letter written by the Collector on 20-11-1975. This argument necessarily assumes that the petitioners could not possibly have come to know of the said order of 12-11-1975 by 14th Nov. 1975 and therefore their version that they could have told this to the Collector does not stand scrutiny. Now the petitioners have alleged that the copy of the Government's order dated 12-11-1975 was received by them through the agency of Shri Suraj Wadhwa who was their Tax Consultant at Jaipur and who had got it from the Town Planning Department on 13-11-1975 and had brought it to Ganganagar and handed it over to the petitioner on 14-11-1975. It has also

been alleged that the copy of the said order dated 12-11-1975 was received by the Municipal Board, Ganganagar on 14-11-1975 and an entry has been made with respect to that in the relevant record. It is true that there is a serious controversy as to whether the petitioners did or did not meet the Collector on 14-11-1975 (though it may be noted that no affidavit has been filed on behalf of the Collector that the petitioners did not meet him on 14-11-1975). Though therefore there may be uncertainty about the factum of petitioners having met the Collector on 14th unless the matter was further thoroughly investigated, this kind of allegation does not amount to such suppression of facts as to result in the dismissal of the petition without examination on merits. Mr. Munshi referred me to *Ramanarayan v. Municipal Board, Pali* 1971 WLN 452, *King v. General Commr. for the Purposes of the Income Tax Acts for the District of Kensington* (1917) 1 KB 486, *Mohd. Athar Rizvi Vs. State*, *Ananthan Pillai v. State* (AIR 168 Ker 234), *M. Haji Mohammed Ismail Sahib and Co., Tanners, Pernambut, North Arcot District Vs. The Deputy Commercial Tax Officer, Gudiyatham, North Arcot District*, *G. Appukkuttan Pillai Vs. Government of India and Others*, and *Abdul Gafoor Vs. State of M.P. and Another*,

7. In *Ramnarayan v. Municipal Board, Pali* 1971 WLN 452 the facts were that the notice to the respondent had been issued for 6-7-1970. The counsel for the petitioners however moved on June 3, 1970 the Court stating that the respondent had already been served in May, 1970 and asking that the stay matter be listed immediately. The matter for confirming the ex parte stay was then fixed for 9-6-1970. It was noted by the court that no one was appearing to oppose the stay and the order was confirmed. Later on the respondent moved on 6-7-1970 pointing out that the matter had been heard earlier than the date fixed. Shanghai J. (as his Lordship then was) noted that the counsel for the petitioner urged that there could be no question of non-appearance of respondent because the notice filled up by the petitioner had given the date 6-7-1970 as the date for appearance of the respondent. It was in that context that the learned Judge took the view that as the petitioner had obtained an interim order by deliberately concealing the true facts he was not entitled to be heard on merits. In this as well the other cases the principle laid down is that if an applicant deliberately suppresses material facts from the court in order to obtain an interim order he will not be allowed a hearing on merits. I do not see how the principles laid down in those cases are applicable here. The allegation that the petitioner showed the order of 12-11-1975 to the Collector was only to show the urgency with which the respondents were acting to dispossess the petitioner. The question of stay was based on the allegation that 12-11-1975 order had released the land of the petitioner from acquisition and their possession should not be disturbed. Even if there is a serious uncertainty as to whether the petitioners did or did not meet the Collector, the same does not come within the dictum laid down by the abovesaid cases and the petitioner cannot be non-suited on the ground of having suppressed the material facts and then obtained an interim order from this Court.

It may be noted that the fact that the respondents were acting in all haste to take possession of the land is clear from their own reply where they have stated that the Tehsildar, Ganganagar took possession of the land and after taking possession handed over the same to the U. I. T. on 16-11-1975 who in their turn are said to have passed on the land to respondent 5 on the next date 17-11-1975. So the apprehension of the petitioners that the respondents were acting in all speed to dispossess the petitioners cannot be said to be devoid of justification or a calculated falsehood. Another limb of this argument of Mr. Munshi is that in the un-amended petition the fact of the subsequent notification by the Government of 21-11-1975 having rescinded the earlier notification of 12-11-1975 was not mentioned and this also amounts to a suppression of material fact. This no doubt is an omission and the petitioners have tried to explain it by saying that they came for the purpose of filing this petition to Jodhpur earlier than 21-11-1975 and soon after they came to know about the notification they amended the petition and are now challenging the same. On the material on record it is not very clear whether the petitioners were aware of the notification of 21-11-1975 when this petition was filed. Of course it would be a serious matter if knowing about the said notification mention of it was not made when the original petition was filed because no doubt it was a very relevant factor. But I can see no real reason why the petitioners should have chosen to conceal this fact because if notification had been issued the same obviously could not be concealed from the court and the petitioners in any case would have to challenge it in order to get real relief. So in that state of doubtful facts I cannot hold the petitioners guilty of having suppressed material facts so as to disentitle them to a consideration of their case on merits.

8. The first contention of Mr. Agarwal the counsel for the petitioners is that the order dated 12-11-1975 u/s 48 (1) of the Act having been issued, the proceedings right from the issue of Section 4 Notification were washed away and there was subsequently no jurisdiction in the respondents to seek to rescind the same by the issue of a subsequent notification of 21-11-1975. In this argument the first question that has to be decided is whether an order u/s 48 (1) of the Act requires to be published in the official gazette because it is apparent that if that were so, the same was published on 20-11-1975 and if as the respondents allege and subject to it being so held that the respondents had taken possession of the land in dispute by 15-11-1975 no order u/s 48 (1) of the Act could have been issued because the said section clearly says that the State Government shall be at liberty to withdraw from the acquisition of any land of which possession has not been taken. Section 4 (1) provides that where the State Government considers it necessary or expedient to acquire land in any locality needed or likely to be needed for public purpose it shall by an order published in accordance with the provisions of Sub-section (4) of Section 45 require any officer specially authorised in this behalf to carry out survey and other things mentioned therein. Section 45 (4) states that a public notice required to be given under the Act shall be in writing and shall be signed and sealed by the officer giving the same and

shall be affixed at the notice board of the office of such officer and the copies of such notice shall be affixed on the notice board of the Tehsil concerned and on the notice board of the Village Panchayat concerned. Sub-section (5) of Section 4 requires that the Collector upon receipt of report made under Sub-section (4) shall on receipt of such report cause to be given to the Head of the Department and all other persons interested in the land proposed thereby to require a notice in the prescribed form. Sub-section (2) of Section 6 requires a declaration issued under Sub-section (1) to be published in the official gazette. Similarly Section 9 (1) requires the Collector to give public notice at convenient places on or near the land to be taken. Section 48 (1) however only says that except as in the case provided for in Section 36 the State Government shall be at liberty to withdraw from acquisition of any land of which possession has not been taken. There is no requirement of issuing a notification u/s 48 of the Act, Prima facie therefore it can be taken that as no public notice nor any other requirement of publication in the official gazette is contemplated by Section 48, a valid order can be passed u/s 48 (1) of the Act without complying with those requirements. Mr. Munshi however sought to urge that as the Government had used the word notification in its order of 12-11-1975 and as the Government also intended to publish in the gazette as is clear from the fact of publication on 21-11-1975 it must be taken that the Government had decided that the method of passing an order u/s 48 would require that the said order be notified in the gazette. He also draws my attention to the fact that the earlier orders of 8-5-1975 and 12-11-1975 passed u/s 48 of the Act by which the land of other persons and the petitioners had been released from acquisition u/s 48 of the Act were published in the official gazette. It may be that because of certain reasons, may be of convenience the Government chose to publish the said orders in the gazette. But that does not make the order u/s 48 (1) of the Act invalid, if not notified. It is apparent that u/s 48 (1) of the Act there is no such requirement. It is not disputed that no statutory rules have been framed which require the order u/s 48 (1) to be notified in the gazette. I am saying this because in some of the other States there is a statutory rule which requires the order u/s 48 (1) to be published in the gazette. In Madras Rule 5 of the Rules states that it is compulsory for the Government to publish a notification of the decision of the Government u/s 48 (1) withdrawing from an acquisition (vide Khan Bhahadur Chowkaran Keloth Mammad Koyi Vs. Province of Madras and Another, Section 48 (1) does not say that the Government has to follow any particular procedure in withdrawing from any land from acquisition (vide Jetmull Bhojraj Vs. The State of Bihar and Others, 9. In M. Siddalingaiah v. State AIR 1972 Mys 9 rules have been framed under the Land Acquisition Act in the year 1965 and Rule 8 lays down that when the Government decides that all or any land possession whereof has not been taken should not be acquired a notification cancelling the notification issued u/s 4 shall be published by the Government. It may be noted that in that very case reference was made to an earlier case decided before the coming into force of Rule 8 wherein it had been laid down that Section 48 of the Act did not expressly enjoin issuance of a notification for cancellation of a notification issued u/s 4 of

the Act.

10. Mr. Munshi however contends that the word "acquisition" in Section 48 (1) must relate back to Section 6 because it is only when a declaration is made u/s 6 that acquisition can be said to have been finalised and as therefore a notification issued u/s 6 of the Act has to be published in the official gazette, the same procedure of publication in the official gazette must be made when the State Government passes an order to withdraw from acquisition of any land. In my view the argument of Mr. Munshi is much too tenuous and seeks to equate a declaration u/s 6 of the Act with the start of acquisition proceedings which obviously start with the issue of notification u/s 4 of the Act wherein it is provided that where the State Government considers it necessary to acquire any land in any locality it shall issue an order in accordance with the provisions of Sub-section (4) of Section 45. The condition precedent for valid acquisition of any land is the issue of a notification u/s 4 (1) of the Act; without such a notification all acquisition proceedings would be illegal. Therefore when u/s 48 (1) of the Act the Government passes an order withdrawing from acquisition, it is obviously referring to withdrawal of acquisition proceedings which had been started with issue of notification u/s 4 of the Act. No procedure for passing an order u/s 48 (1) of the Act has been laid down in the Act or the rules. The insistence by Mr. Munshi that an order to be valid must be by publication in the gazette has no basis in law and must be repelled. What has to be seen is whether the Government has in fact passed an order u/s 48 (1) of the Act. I cannot therefore accept the argument of Mr. Munshi that as an order u/s 48 (1) of the Act was gazetted on 21-11-1975 it could not be effective from an earlier date of the order i.e. 12-11-1975.

11. In *State of Madhya Pradesh and Others Vs. Vishnu Prasad Sharma and Others*, it has been laid down that the effect of Section 48 is to withdraw the acquisition proceedings including the notification u/s 4 with which it started and similarly that once a declaration has been made u/s 6 of the Act that exhausts the notification u/s 4 and that notification will no longer remain in force to justify successive declaration u/s 6 in respect of different area included in it. It was also held that Section 48 (1) is not the only way in which a notification u/s 4 (1) can be withdrawn and that an authority which has the power to issue a notification includes the power to rescind it. It is open to the Government to rescind a notification u/s 4 or u/s 6 and withdrawal u/s 48 (1) is not the only way in which a notification u/s 4 or Section 6 can be brought to an end. Section 48 (1) confers a special power on Government of withdrawal from acquisition without cancelling the notification under Sections 4 and 6. This authority therefore makes it clear that once an order issued u/s 48 (1) of the Act has been passed it has the effect of putting the notification u/s 4 completely out of way.

12. In *Jai Narain and Others Vs. The Land Acquisition Collector, Delhi and Others*, it has also been held that where Government withdraws u/s 48 (1) the Section 4 notification on the basis of which the land was being acquired has exhausted

itself, and if the Government considers fit again to acquire the land it shall have to act in accordance with the provisions of Sections 4 to 8 of the Act.

13. In *Brij Nath Sarin Vs. Uttar Pradesh Government and Another*, it was held that if a Government has ordered withdrawal u/s 48 (1) of the Act it is not precluded to restart an acquisition proceeding by issue of a fresh notification u/s 4 of the Act.

14. In *Lt. Governor of Himachal Pradesh and Another Vs. Avinash Sharma*, it has been held that the power of withdrawing a notification u/s 48 of the Act by issuing notification u/s 21 of the General Clauses Act to cancel or rescind the notification issued u/s 4 or 6 of the Act cannot be exercised after the possession of land has been taken and it vests in the State.

15. Mr. Munshi had also argued in the alternative that as Section 23 of the Rajasthan General Clauses Act empowers the State Government to rescind the notification issued by it, it was open to the Government to withdraw a notification issued by it u/s 48 of the Act itself. This argument is naturally on the assumption that a notification is required to be issued when passing an order u/s 48 (1) of the Act. If as I hold, that in law there is no requirement to issue a notification u/s 48 (1), then obviously help cannot be sought by invoking Section 23 of the General Clauses Act. There can also not be any inherent power in Government to withdraw an order issued u/s 48 of the Act. The effect of an order u/s 48 of the Act is to completely take away Section 4 notification. Once that order i.e. u/s 48 of the Act has been passed, result is that the Government has withdrawn from the acquisition land which formed the subject-matter of Section 4 notification. Thereafter if it wants for any reason to start acquisition proceedings, the only manner permissible in law is by issuing a fresh notification u/s 4 of the Act. It cannot by resort to the power u/s 23 of the General Clauses Act revive and bring back Section 4 notification which was wiped away and ceased to exist when order u/s 48 (1) of the Act was passed. The position under the law is that an order u/s 48 of the Act has the result of withdrawing the notification issued u/s 4. This means that there is a clean slate and if subsequently the Government wants to acquire the land it must start from the stage of issuing a fresh notification u/s 4 of the Act. It is not open to it, as Mr. Munshi seeks to urge, just to withdraw the order u/s 48 and maintain that by the withdrawal of order u/s 48 all the earlier proceedings including Sections 4 and 6 notifications have revived. If this argument was to be accepted it would have startling results. Government may in that case today issue an order u/s 48 of the Act which would in law be a notice to every one that notification u/s 4 has been withdrawn and many persons may deal with the said land legitimately and many rights may accrue. And yet it would be open to the Government many years later by merely purporting to withdraw the order issued u/s 48 seek to take possession of the land about which Section 4 notification had been issued earlier.

It appears to me that the objections which prevailed with the Supreme Court in *State of Madhya Pradesh and Others Vs. Vishnu Prasad Sharma and Others*, in

not permitting the Government to issue a declaration u/s 6 successively must apply with equal force resulting in a decision that it is not open to the Government to withdraw an order passed u/s 48 of the Act. The Supreme Court noticed that if power u/s 6 to issue a declaration successively by drawing from the reserve of earlier notification issued under S, 4 was to be allowed, the Government may issue Section 6 notification after a great deal of delay with the result that a person will lose considerably in compensation because of the great delay between the notification u/s 4 (1) and the notification u/s 6. It has been held in *Lt. Governor of Himachal Pradesh and Another Vs. Avinash Sharma*,

"After possession has been taken pursuant to a notification u/s 17 (1) the land is vested in the Government, and the notification cannot be cancelled u/s 21 of the General Clauses Act, nor can the notification be withdrawn in exercise of the powers of the Land Acquisition Act u/s 48."

On a parity of reasoning in the present case power is permitted to the Government to withdraw the order issued u/s 48 of the Act which had even the effect of putting Section 4 notification completely out of the way, similar unhealthy and unwarranted results will follow as were deprecated by the Supreme Court wherein it was observed that no prejudice to the Government will happen if this argument is rejected for it can always issue a fresh notification u/s 4 (1) after the previous one is exhausted. It has therefore to be held that as the order u/s 48 (1) of the Act was passed on 12-11-1975, and the same did not require for its validity to be published in the official gazette, it would become operative from the date the order was passed or was communicated to the petitioner and there could be no subsequent withdrawal or rescission as was purported to be done by the impugned notification of 21-11-1975.

16. The next limb of argument of Mr. Munshi is that even if it be assumed that the order dated 12-11-1975 u/s 48 (1) of the Act also did not require to be published in the gazette, yet it could become effective only when it was communicated to the petitioner and others and as the possession was taken by the Government on 15-11-1975 before the petitioners came to know of the order dated 12-11-1975, order u/s 48 (1) never assumed validity. This argument was also surprisingly supported by respondent No. 1 the State. I say, surprising, that one wing of Government should cast doubt on the validity of the order dated 12-11-1975 passed by another wing of the same Government. But this claim by Mr. Munshi is seriously contested by the petitioners. In the writ petition it has been averred that the order of 12-11-1975 was despatched by the Town Planning Department to various endorseees including the petitioner and it was received by the latter on 14-11-1975. It has also been stated in the rejoinder that the said order was initialled by the concerned officer of the Municipal Board, Ganganagar on 14-11-1975 and it was entered in the Receipt Register on 15-11-1975 at No. 1759 and that this copy was put on the Notice Board of the Municipal Board, Ganga-nagar. I directed the record to be called and this notice was produced from the record of the State. I must however mention that Mr. Munshi casts

serious doubt on the authenticity of the signatures in token of the notice having been received on 15-11-1975 but no such effective proof is on record to doubt the receipt of that by the Municipal Board. The petitioner had also mentioned that the order of 12-11-1975 was collected by their counsel from the Office of the Urban Improvement Trust and brought to them the next day at Gangamignr. Mr. Munshi had criticised the claim of the petitioner to have known of the order of 12-11-1975 by 14-11-1975 by referring to the letter of the Collector dated 20-11-1975 wherein there is no mention that the petitioners had met him and showed him any such order of 12-11-1975 earlier to 17-11-1975.

I have already indicated that though there is a controversy on this aspect but it is not a matter on which it can be said without any manner of doubt that the petitioner's version that they came to know about order of 12-11-1975 by 14th is totally unbelievable. The anxiety of the petitioners to be aware of any orders is understandable as they were taking keen steps. I had also called the record of the despatch from the State wherein it was found that the order of 12-11-1975 which had been endorsed to the petitioners had not been sent out by postage which indicated that possibly the said order had been personally collected. This would seem to be in accordance with the version of the petitioner that the copy of the order meant for them had been collected by their counsel Mr. Suraj Wadhwa at Jaipur from the Town Planning Department on 13-11-1975 and was brought to Ganganagar and handed over to the petitioner on 14-11-1975. This date tallies with the receipt of the letter by the Municipal Board, Ganganagar and the version of the petitioner cannot be lightly brushed aside. The respondents' action in purporting to take possession of the land was also marked with a speed and a manner which to say the least does seem somewhat unacceptable considering the manner of dealing with such matters usually. The award was made by the Collector on 13-11-1975. It appears that as far back as 16-4-1975 a letter had been addressed to the Collector by the General Manager respondent No. 5 praying that they may be allotted part of the land including that of the petitioners which was being acquired by the State. The matter remained pending and when the award was given on 13-11-1975 the Collector authorised the Tehsildar to take the possession of the land who is said to have gone on the spot and claims possession of it was taken over on 16-11-1975 and the same day it is said to have been handed over to the Corporation and thereafter the Collector on 20-11-1975 wrote to the Secretary, Town Planning Department that as the possession had been taken earlier to the receipt of the notification dated 12-11-1975, the latter should be withdrawn.

Mr. Agarwal naturally makes a grievance of this alleged claim to possession and maintains that this is all paper claim. It has been alleged in the petition that the factory is running and the possession is even still with the petitioners. As there was some dispute about the exact nature of the possession Lodha J. on 30-4-1976 directed the District Judge to depute one of the Munsifs under him to go to the spot and after making on the spot inquiry submit a report. The same has been submitted and has been accepted as correct by both the parties.

According to this report Kila No. 1 in which the Saw Mill is situate is being operated by the petitioner. As regards the shops in dispute it is stated that the rent is being paid to the petitioners. There are two rooms in the portion marked with brown in Kila No. 1 which are being used by the Office of the Corporation and in Kila No. 2 the yellow portion which is extended a little has a Saw Machine in possession of the petitioner. In Kila No. 3 there are two rooms marked with blue of which possession is claimed by both the petitioner and the Corporation. Then there is a platform which extends to Kila Nos. 1 to 5 on southern side on which buses are standing. This platform was admittedly made by the petitioner and was let out to Food Corporation of India for storage of grain. The wall separating Kila Nos. 1 to 5 from Kila Nos. 7, 8 and 9 which are admittedly with the Corporation have some portion broken and bricks are spilt over. As regards the blue portion marked in Kila No. 3 the petitioner's case is that they used to tie their cows and cow dung was stored there though the Assistant Engineer of the Corporation stated that the Watch and Ward Staff were living there. The District Judge however found that the cow dung was spread on the floor though none of the rooms was locked and the District Judge could not say in whose possession the rooms were though he did not find any guard or cows on the spot.

It is thus apparent that the case of the respondents that possession had been taken from the petitioners is not borne out by the report of the District Judge which clearly shows that the petitioner is in physical possession of quite a portion of the property in dispute. The case of the respondents was that the Tehsildar had taken possession of the land in dispute from one Vikram Jeet. The petitioners have however stated in their reply that Vikram Jeet was only an employee and was not a partner nor an owner and his mere signatures on paper possession were not enough to show that the possession has been surrendered by the petitioners. In fact the petitioners had even stated that they were running their saw mill and had even paid electricity bills in token of the consumption of electricity. In this state of affairs it is not possible to accept the argument of Mr. Munshi that the possession had been taken by the respondents much earlier to the order of 12-11-1975 being known to the petitioners.

I may note that in the state of affairs as mentioned above, I am not disinclined to accept that the petitioners may have come to know of the order of 12-11-1975 by 14-11-1975 and on that basis, the possession even if taken on 15th or 16th November, 1975 would be without authority of law because by then the order of 12-11-1975 releasing the land from acquisition had already become effective. Moreover it must be realised that the possession by the Government which makes Section 48 inapplicable is possession taken under the Act and full possession totally excluding the person whose land is being sought to be acquired. Possession cannot be accepted to have been taken in the manner as in the present case where the person Vikramjit from whom possession is said to have been taken has apparently no authority, to part with possession. Moreover it is clear from the record that the petitioners are continuing to run their factory, are receiving rents from shops, and their material is lying on the land. no doubt

the Corporation has also its buses and boundary wall is broken. But this can hardly be said to amount to total exclusion of the petitioners from the land. In that situation even if (as) Mr. Munshi claims that the petitioners came to know of the order of 12-11-1975 only by 17-11-1975, is accepted it would not avail him. The reason is that as possession had not been taken as held by me above, it would mean that the order of 12-11-1975 would become operative by 17-11-1975 and the purported cancellation of the order of 12-11-1-975 by notification of 21-11-1975 could not result in reacquiring the land which had already been released from acquisition. Thereafter if the Government wanted to acquire the land it must resort to a fresh notification u/s 4 of the Act.

17. Another argument urged by Mr. Agarwal for impugning the acquisition was that as Section 4 notification had specifically mentioned that the land was being acquired for the extension of Abadi and that as now the land was admittedly being given to respondent No. 5 which was a company the acquisition was bad because admittedly the procedure required by Section 40 of the Act had not been followed. It is no doubt true that originally the notification mentioned that the land was required for public purpose for the extension of Abadi of Ganganagar. It is also not disputed that the land of the petitioners now is being sought to be handed over to respondent 5. That State Road Transport Corporation under the Road Transport Corporations Act is a company under the Land Acquisition Act has been decided in Valjibhai Muljibhai Soneji and Another Vs. The State of Bombay (Now Gujarat) and Others, where it has also been held that where the land is being acquired for the benefit of a Company and the entire compensation is to come out of a company the acquisition will be bad when the provisions of Part VII of the Land Acquisition Act have not been complied with. The difficulty in the way of Mr. Agarwal however is that the notification u/s 4 says that the State Government is of the opinion that it was necessary to acquire land for a public purpose. From the notification it is clearly mentioned that the land is being acquired for a public purpose. It is not known whether the State is going to pay a part of the compensation amount itself or whether the whole of it is going to be paid by respondent 5. It is true that in Ex. R/2-A when possession is said to have been taken by respondent 5 it is written that whatever price is determined by the Government will be paid by respondent 5. But it is not possible to give a definite finding from the record that the State Government will not contribute even a small amount of the compensation amount. It is true that the petitioners have made a grievance of the hurry with which the land is said to have been given to the respondent 5 without even agreeing to the price or even holding a meeting of the Urban Improvement Trust or settling other details. It does look a little unusual, the way the land is said to have been handed over to respondent 5 by the State Government without deciding the price or the amount or other essential details and it may lend some credence to criticism of the petitioners' counsel that all this hurry shows that the respondents were aware that an order u/s 48 had been passed on 12-11-1975 and it was with a view to nullify it that all this unusual hurry was resorted to to create an impression as if possession had

been actually taken much earlier.

Be that as it may, as it is not possible to hold that State was not to even contribute a part of the funds it is not possible to find fault on this ground because it is well settled that:

"an acquisition for a Company may also be made for a public purpose, within the meaning of the Act, if a part or the whole of the cost of acquisition is met by public funds. In such a case, it is not necessary to go through the procedure prescribed by Part VII." (vide Pandit Jhandu Lal and Others Vs. The State of Punjab and Others,

That the use to which the land is being sought to be put by giving to respondent 5 for the construction of a bus depot is admittedly for a public purpose cannot be denied. So in the absence of any finding that the total amount is to be paid by respondent 5, the argument of Mr. Agarwal that the acquisition is bad on the ground of non-compliance with Part VII of the Act must be repelled.

18. However in view of my finding that the order of 12-11-1975 withdrawing the petitioners' land from acquisition could not have been validly withdrawn or cancelled by the impugned notification of 21-11-1975, the petition has to be allowed. I would therefore quash the impugned notification of 21-11-1975 with the result that the notification of 12-11-1975 u/s 48 of the Act would hold the field. I would also issue a mandamus restraining respondents from in any manner interfering with the possession of the petitioners over the land in dispute except in accordance with law,

19. The writ petition is therefore allowed as above with one set of costs.

20. I had heard this petition and reserved the judgment on 10-8-1976. On a day or so later I was told by the counsel for the parties that efforts were being made to come to a mutual arrangement and that I should withhold my judgment. At one stage the petitioners had offered to be satisfied if only Kila No. 1 was released to them while the rest of their land may be kept with respondent 5 the Corporation. The Corporation however found itself unable to agree to this arrangement as in its view the requirement of the workshop and the arrangement for the bus did not permit it to give more than half of Kila No. 1. Be that as it may the matter remained pending for quite some time and it was only on 9-9-1976 that I was told that possibilities of compromise have failed and that I should announce the judgment. It is for this reason that the judgment is being announced somewhat late.