
(1996) 02 KL CK 0034

In the High Court Of Kerala

Case No : O.P. No. 5382 of 1983-K, 6498, 6807 and 6808 of 1986

Kandankutty and Others

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 09-02-1996

Acts Referred:

Constitution of India, 1950 — Article 14, 142, 226

Kerala Land Acquisition Act, 1961 — Section 3, 38, 4(1), 52, 52(1)

Citation : AIR 1996 Ker 337 : (1996) 2 ILR (Ker) 676

Hon'ble Judges : K. Sreedharan, J;J.B. Koshy, J

Bench : Division Bench

Advocate : T.C. Mohandas, for the Appellant; P.K. Shakeela, Govt. Pleader and Benny Gervacis, for the Respondent

Final Decision : Dismissed

Judgement

Koshy, J.—All the above original petitions were filed for quashing the acquisition proceedings initiated by Government notification u/s 3(1) of the Kerala Land Acquisition Act issued on the basis of requisition by the Palghat Municipality for acquisition of site for the construction of a stadium and shopping complex with approach road, According to the petitioners in O.P. No. 5382 of 1986, Palghat Municipality entertained a proposal for the construction of a stadium and shopping complex and for that, two sites lying in Sultanpet were considered. The first site consisted of slightly more than 23 acres of double crop lands where three crops were being raised. The second site lies on the eastern side of the first site and consisted of single crop lands having an extent of about 75 acres. The first site is unsuitable for stadium and shopping complex as the same has to be filled up to a height of 2 to 3 metres which could have been avoided if the second site was chosen. It was stated that at one corner of the first site there is a church and in another portion there is a temple. At about the middle there is a tank which supplies water. But to accommodate some of the Councillors, second site was not selected and first site was specifically chosen. Therefore, according to the petitioners, selection of the first site for the construction of the stadium

and shopping complex is governed by mala fides. The then District Collector objected to the site chosen. However, subsequently with the influence of the local M. L. A. the Municipality approached the Government for selecting the first site which is mainly double crop lands having an extent of 9.4859 hectares as site for the proposed construction of stadium and shopping complex and notification u/s 3(1) of the Kerala Land Acquisition Act, 1961 was published in the local dailies. Petitioners produced a copy of the notification published in Mathrubhoomy daily dated 10-1-1981 as Ext. P5. Plots covering temple and church were not included in the notification as those areas are not covered under the plan. In support of the allegation of mala fides, reports appearing in newspapers were also produced as Exts. P1 to P4. Petitioners are persons interested in portions of the notified land. Therefore, they filed objections to the proposed acquisition as can be seen from Ext. P6. The above objections, after due enquiry u/s 5, were rejected and Declaration u/s 6 was published in Mathrubhoomy daily dated 10-1-1982. Copy of the declaration is produced as Ext. P7. According to the petitioners, the decision for abandoning the acquisition of eastern portion is mala fide. The petitioners and some others challenged the above acquisition proceedings by filing O.P. No. 2436 of 1982 and by Ext. P8 judgment the above original petition was dismissed in limine. The matter was taken up in appeal. W.A. No. 223 of 1982 filed against the above judgment was also dismissed as evidenced by Ext. P9. Petitioners contended that the above decisions were pronounced by this Court without considering the contentions and since the original petition and writ appeal were dismissed in limine it cannot operate as res judicata.

2. By Resolution No. 400 dated 5-9-1981 the Municipal Council decided to complete the acquisition in respect of vacant lands and to take possession thereof leaving the sites occupied by buildings to be acquired at the second stage. Copy of the Resolution No. 400 is produced as Ext. P10. Accordingly, Section 9(5) notice for award enquiry was given only in respect of vacant lands covering 6.7745 hectares as evidenced by Ext. P12. The petitioners have land in the above area covered by award enquiry notice. Award was passed as early as on 7-4-1982. According to the petitioners, the award enquiry regarding the balance land covered in the original notification was started only subsequently and it was contended that in respect of lands covered by Section 6 declaration there should be single award and several award enquiries cannot be made as it is in violation of Articles 14 and 16 of the Constitution of India. It was further contended that Municipal Council by Ext. P14 resolution decided to exclude certain portions of the land covered by declaration. The relevant extract of the award dated 7-4-1982 was produced as Ext. P13. By Ext. P15 resolution, the Municipality decided to deposit an amount of Rs. 7,63,370/- as compensation in accordance with the award.

3. By Resolution No. 58 dated 20-4-1983 (produced as Ext. P18) Ext. P14 decision for provisionally excluding certain portions of land was approved by the Municipality by a majority vote. It was contended by the petitioners that once a notification has been issued, portions of the land covered by the notification

cannot be excluded and if such exclusions are made the entire notification will become invalid. For this proposition the petitioners relied on a Division Bench decision of this Court in *Sreenivasa Shenoy v. State of Kerala* (AIR 1968 Ker 325). It was also contended by the petitioners that the above resolution clearly shows that the entire acquisition proceedings are actuated by mala fides. The portions excluded by the above resolution are portion owned by two Councillors and it shows favouritism and therefore the entire proceedings are vitiated. By notification dated 24-9-1985 which was produced as Ext. P20, Government issued a notification u/s 52(1) of the Kerala Land Acquisition Act to withdraw from the acquisition proceedings certain portions of land comprising of a total extent of 0.06868 hectares. When proceedings for taking possession of the land were taken in accordance with award dated 7-4-1982, this original petition was filed and stay was obtained. Similar contentions are raised in O. P. Nos. 6807 and 6808 of 1986.

4. In O.P. No. 6498 of 1986 the petitioners owned land not covered by award dated 7-4-1982. On two portions of land covered in O.P. No. 6498 of 1986 notices u/s 9(3), dated 12-8-1986 were issued. Notices covered land comprised within Section 6 declaration. According to the petitioners, the above Section 9(3) notice dated 12-8-1986 should be quashed because first petitioner is a tyre retreading unit and second petitioner is running a small automobile workshop and it is their means of livelihood. It was also stated that Palghat Development Authority had come into existence and they had a scheme for construction of stadium and shopping complex. In view of the above scheme, the proceedings initiated at the instance of the Municipality will not survive. It was also contended that the above Development Authority granted permission to the second petitioner to construct an automobile workshop by Ext. P6 dated 19-5-1985. The plan given by the Palghat Development Authority shows that the plot of petitioners in O.P. No. 6498 of 1986 is not included in the plan for proposed shopping complex. It was again contended that if Ext. P6 permission can be given to the second petitioner similar relief can be given to the first petitioner also, and the above plots stand on the same strip of places and identical consideration should be extended to both plots. It was also contended that similar permission have been given to other persons also for residential house etc. as these plots are quite unnecessary for the construction of shopping complex as proposed by the Palghat Development Authority.

5. The major contentions raised in O.P. Nos. 5382 of 1983, 6807 and 6808 are : (1) The proposal for acquisition of lands in question are actuated by mala fides as another site was suitable and less expensive; (2) After Section 6 declaration only one composite award can be passed and separate awards cannot be passed. In this case, since steps were taken for taking possession of the vacant lands first and award was passed in respect of that land, proceedings taken for award enquiry for the balance land covered by declaration u/s 6 are invalid; (3) Since notification was issued for withdrawal of the acquisition proceedings in relation to a portion of the land covered by the declaration, entire acquisition proceedings

must fail, especially in view of the Division Bench decision of this Court in AIR 1968 Ker 325 (4) That no valid reasons are given for excluding certain portions of the land from acquisition and therefore, withdrawal of certain portions of land will vitiate the entire proceedings; (5) The withdrawal of acquisition proceedings in respect of certain portions of land establishes colourable exercise of power as is evidenced by Resolution No. 58 dated 20-4-1983. Buildings of certain Councillors etc. were excluded. It shows favouritism and therefore the entire proceedings should be quashed.

6. In O.P. No. 6498 of 1986 the major contentions are : (1) The acquisition proceedings at the initiation of Palghat Municipality is invalid following the formation of Palghat Development Authority; (2) In view of the certificate from the Palghat Development Authority that these areas are not covered in the proposed plan for the stadium and shopping complex and in view of the Government Order permitting the second petitioner to construct a building acquisition proceedings cannot be continued in respect of the lands belonging to petitioners; (3) If the second petitioner's land is excluded as in the case of several others, whether first petitioner can be discriminated; and (4) whether High Court can grant special reliefs to the petitioners as the petitioners are running small scale industry and it is their sole means of livelihood.

7. We will first deal with the arguments raised in O.P. Nos. 5382 of 1983 and 6807 and 6808 of 1986 in the order above mentioned.

8. It was contended by the petitioners that other suitable site was available at less costs and the particular site was selected only to save the properties of some Councillors. On this premises it is contended that acquisition proceedings are liable to be set aside on the ground of mala fides and as a colourable exercise of power. In support of this argument, following decision was cited :

Collector (District Magistrate) Allahabad and Another Vs. Raja Ram Jaiswal, . It was held by the Supreme Court in the above case that if the power to acquire land is to be exercised, it must be exercised bona fide for the statutory purpose and for none other. If it is exercised for an extraneous, irrelevant or non-germane consideration, the acquiring authority can be charged with legal mala fides. If the acquisition proceedings are taken for taking vengeance on other and not bona fide, the proceedings for acquisition can be set aside. In the above case the Hindi Sahitya Sammelan attempted to prevent the construction of a cinema theatre on the land in dispute which was in the vicinity of its institution. It failed to prevent the cinema theatre coming up there. Therefore, it requested for initiating proceedings for acquisition of the land for constructing a museum. It was in evidence that the Sammelan had with them open lands for a long time for this purpose and those were kept unutilised. Proceedings for land acquisition were taken only to prevent construction of a cinema theatre near their property. In the instant case construction of a stadium and shopping complex was planned by the municipality not to spite any one. It is not disputed that acquisition in the instant case is for "Public Purpose" and it is not the case of the petitioners that

Municipality was in its possession any other suitable land for the said purpose. The acquisition of land for the purpose of constructing a stadium and shopping complex was necessary and that decision is not actuated by mala fides. Viewed in this light, the decision in the above case will give no support to the petitioners. The next decision relied on by counsel is State of Punjab and Another Vs. Gurdial Singh and Others,). In fact the principles stated in that decision go against the petitioners. The Supreme Court, in paragraph 8 of the judgment, observed :

"First, what are the facts ? A grain market was the public purpose for which Government wanted land to be acquired. Perfectly valid. Which land was to be taken ? This power to select is left to the responsible discretion of Government under the Act, subject to Articles 14, 19 and 31 (then). The Court is handcuffed in this jurisdiction and cannot raise its hand against what it thinks is a foolish choice, Wisdom in administrative action is the property of the executive and judicial circumspection keeps the Court lock-jawed save where power has been polluted by oblique ends or is otherwise void on well-established grounds. The constitutional balance cannot be upset."

In the case on hand no materials are placed before this Court to find that selection of the land was actuated by mala fides. Even though wild allegations have been made, according to us, petitioners failed in establishing them. Contention that other suitable land was excluded for helping a Councillor still remains to be an allegation. In the decision referred to above, the Supreme Court found that allegations in the petitions were not denied in the counter affidavit. The Government sought to acquire a particular land for establishing a grain market and then gave it up and selected another piece of land and High Court held that the acquisition was mala fide. Seven years after, the Government again sought to acquire the same land under emergency powers. Supreme Court therefore, found that the action of the Government was mala fide, No such situation exists in this case,

9. Apart from the above, we are of the opinion that these allegations cannot be made in this petition as it has been decided against the petitioners in the earlier writ petition and hence barred by constructive res judicata. When the acquisition proceedings were started, the petitioners in O.P. No. 5382/83 along with some others filed O.P. No. 2436/ 1982 before this Court and this Court dismissed the same. Appeal was filed and the appeal was dismissed with the following observations:

"Counsel for the petitioners-appellants had no complaint that the acquisition is not for a public purpose nor had he any complaint that the, provisions of the Land Acquisition Act have not been complied with. The thrust of his argument was that the lands owned by the petitioners are less suitable than the lands in the vicinity and that the Land Acquisition Officer and the authorities above him could have, chosen the adjacent lands in preference to their lands. All the relevant aspects have been considered at various levels including the Board of Revenue whose decision is Ext. P4. After going through the averments in the writ

petition and the memorandum of appeal supplemented by counsel's argument we are not satisfied that there is any ground to admit the writ appeal."

The above Bench decision of this Court in W.A. No. 223/1982 bars the petitioners from raising the very same contentions again. In this connection, we also refer to the Bench decision of this Court in *Ramesh v. State of Kerala* 1992 (1) KLT (268) wherein it was held by this Court that principles of res judicata will be applicable to proceedings under Article 226 of the Constitution. In *The Direct Recruit Class-II Engineering Officers' Association and others Vs. State of Maharashtra and others*, Supreme Court held that principles of constructive res judicata will also apply to proceedings under Article 226 of the Constitution. Petitioners contend that since the original petition was dismissed in limine and writ appeal was also dismissed at the stage of admission, the above principle will not apply in view of the observations of the Supreme Court in the judgment in *Hoshnak Singh v. Union of India* (: AIR 1979 SC 1328) that petitions dismissed in limine without speaking order is not binding. Supreme Court went on to state:

"If a writ petition is dismissed in limine and an order is pronounced in that behalf whether or not the dismissal would constitute a bar would depend upon the nature of the order. If the order is on the merits it would be a bar; if the order says that the dismissal was for the reason that the petitioner was guilty of laches or that he had an alternative remedy it would not be a bar except in cases indicated in the judgment."

As can be seen from the quoted portion of the judgment in W.A. No, 223/1982 it can be seen that a Division Bench of this Court considered the contentions and given opinion on merits and therefore the above dismissal will bind the petitioners and similar contentions cannot be allowed to be raised by them as it is barred by principles of res judicata. Therefore, we hold the above point against the petitioners.

10. The second point we consider is whether separate awards can be passed in respect of the lands covered by one notification and one declaration. For this purpose petitioner cited the decision of the Privy Council in AIR 1932 102 (Privy Council) *The Privy Council* in the above decision did not deal with such an issue. The Privy Council only held that the Land Acquisition Act 1894 does not appear to contemplate that where more than one person is interested in a parcel of land there should be more than one award relating thereto. This does not mean that the whole of the land covered by one notification and one declaration should be dealt with in one award. The above proposition actually goes contrary to the contention raised by the petitioners. The next decision cited by petitioners is *State of Madhya Pradesh and Others Vs. Vishnu Prasad Sharma and Others*,). There the Supreme Court held that after issuing a Section 4 notification several declarations u/s 6 cannot be issued. Their Lordships did not deal with the number of awards that can be passed in respect of lands covered by the notification or declaration. After the above decision of the Supreme Court, Kerala Land Acquisition Act was amended and the following sentence was included:

"and different declarations may be made from time to time in respect of different parcels of any land covered by the same notification under Sub-section (1) of Section 3, irrespective of whether one report or different reports has or have been made under Sub-section (2) of Section 5:

Provided that no declaration in respect of any particular land covered by a notification under Sub-section (1) of Section 3 shall be made after the expiry of (three years) from the date of publication of such notification,"

In view of the amendment the decision of the Supreme Court in State of Madhya Pradesh and Others Vs. Vishnu Prasad Sharma and Others,) is of no help to the petitioners. In any event the facts are entirely different and it cannot help the appellant and Supreme Court did not consider the question raised in this original petition. Petitioners then cited a Division Bench decision of this Court in Malankara Rubber & Produce Co. Ltd. v. State of Kerala (1987 (2) KLT 321) In fact the above decision goes against the points raised by the petitioners. This Court observed:

"Plurality of awards under the Land Acquisition Act is judicially recognised by the Privy Council in AIR 1932 102 (Privy Council) The legislative intent and indication seem to follow the same direction. An award under the Land Acquisition Act is an offer made by the Government to pay a certain amount of compensation for a well defined land acquired for public purpose. The party may accept the offer and receive the compensation; or he may accept under protest or refuse to accept the compensation and he may choose to claim enhanced compensation as provided under the Act. The enquiry conducted after the Section 6 declaration is thus limited to the nature of the respective interest in the land, the particulars of the claim to compensation for such interests and the objections, if any, to the measurements already made. This is thus a post declaration enquiry, in no way affecting -the validity of the declaration, in no way, . attempting to reopen questions regarding identity of the land acquired or the public purpose sought to be achieved. If an offer relating to compensation can be made in respect of a definite piece of land covered by the declaration, more than one offer can be made with respect to different pieces of land and it cannot be said that the offers are without jurisdiction and the Act does not contemplate piecemeal offers. The character and content of the award, therefore, lead to the conclusion that there can be more than one award arising out of the same declaration."

The ground for making separate award enquiry is also reasonable. Since the proposed property sought to be acquired includes buildings, for completing valuation it will take more time. Considering the huge expenses in acquiring building sites the properties were split up into two groups : vacant lands and lands with buildings. Accordingly enquiry relating to vacant lands was completed first after serving notice under Sections 9(3) and 10. After hearing the parties award was passed in respect of those lands. Thereafter award enquiry was initiated in respect of building sites. Therefore, passing separate awards in respect of vacant lands and lands with buildings is not illegal or violative of

Article 14 of the Constitution. Hence we hold against the petitioners on that point also.

11. The third point raised by the petitioners is based upon a Bench decision of this Court in *Sreenivasa Shenoy v. State* (AIR 1968 Ker 325) In the above case an extent of 1.78 cents was notified for acquisition for a public purpose viz. for construction of a colony for Harijans. It appears, on account of an unusual sea erosion twenty fishermen families living in the village were rendered homeless and so they trespassed into the land notified for acquisition. Thereafter, Government withdrew the acquisition proceedings in respect of certain parts of the land and confined the proceedings to 0.76 cents for housing the above families of fishermen. It was contended that confining acquisition proceedings to part of the land for housing the families of fishermen was a purpose different from the original purpose and so cannot be proceeded with. This contention was accepted by the Division Bench taking the view that it is not open to the Government to withdraw from the acquisition of any part of the land scheduled to the declaration. It was held that Government cannot u/s 52(1) of the Kerala Land Acquisition Act, withdrawn the proceedings in respect of a portion of land comprised in declaration u/s 5 of the Cochin Land Acquisition Act and therefore entire acquisition proceedings will become invalid. In this case under consideration a small portion of the land was excluded from acquisition by issuing notification in Kerala Gazette No. 38 dated 24-9-1985 involving the powers u/s 52(1) of the Kerala Land Acquisition Act. Hence it is contended that the entire proceedings must be deemed to have lapsed. In fact these original petitions have been referred to the Division Bench only on account of the above decision. The reference order stated as follows :

"The facts of the case read along with paragraphs (16) and (17) of the Division Bench judgment reported in *Sreenivasa Shenoy v. State* (AIR 1968 Ker 325) raise important questions which, in my opinion, should be examined by a Division Bench."

The question regarding the effect of the withdrawal of proceedings in respect of a portion of the land was considered by the Supreme Court subsequently. In the decision in *Chandra Bansi Singh and Others Vs. State of Bihar and Others*, the Supreme Court held that where a large tract of land belonging to several persons was sought to be acquired for the purpose of construction of houses, exclusion of certain land from the above after several years do not vitiate the original notification. If the exclusion is invalid that will affect only the excluded area. The Supreme Court held as follows:

"The release being a separate and subsequent act of the Collector, could not invalidate the entire notification but would only invalidate the portion released, with the result that the original notification would be restored to its position as it stood on 19.8.174."

Section 52(1) of the Kerala Land Acquisition Act provides that except in the case

provided for in Section 38 the Government shall be at liberty to withdraw from the acquisition of any land of which possession has not been taken. Therefore, the withdrawal from acquisition of a portion of the land is fully justified. Section 52 of the Act makes it clear that acquisition of the entire area notified or declared is not compulsory and it is left to the discretion of the Government to withdraw from acquisition of any land of which possession has not been taken. The expression "any land" means any portion of the land. If the Government is at liberty to withdraw from the acquisition of any land, it has got power to withdraw from the acquisition of any portion of the land which was the subject matter of the notification made originally u/s 4(1). The Madras High Court in the decision in *The Spl. Tahsildar (R.W.L.A.) Srivilliputtur Vs. Sri Pethavanallur Mayurauathasami Temple, Rajapalayam*, held that it is left to the discretion of the Government to withdraw from the acquisition of any portion of the land of which possession has not been taken and it will not vitiate the original notification. In this connection we also refer to the decision of the Andhra Pradesh High Court in *The Andhra Pradesh Industrial Infrastructure Corporation Ltd. Vs. Chalasani Vijaya Lakshmi and others*, wherein the decision in AIR 1968 Ker 325 was dissented from.

12. As the authority which initiated acquisition proceedings, Government have power to withdraw the proceedings subject to the restrictions mentioned in Section 52(1) of the Kerala Land Acquisition Act. In view of the subsequent authoritative pronouncement of the Supreme Court in *Chandra Bansi Singh and Others Vs. State of Bihar and Others*, we hold that the bench decision of this Court in AIR 1968 Ker 325 is no longer good law. We also refer to the decision of the Supreme Court in *Special Land Acquisition Officer, Bombay and Others Vs. Godrej and Boyce*, wherein Supreme Court held that u/s 48 of the Land Acquisition Act, State has got power to withdraw from the acquisition proceedings even after notification u/s 4 or declaration u/s 6 or notice u/s 9 was issued, before possession has been taken over. There is no provision in the Act to the effect that when withdrawal is only in respect of portion of the land the entire notification will become invalid. Therefore, we are of the opinion that in view of the decisions of the Supreme Court in AIR 1984 SC 1967 and *Special Land Acquisition Officer, Bombay and Others Vs. Godrej and Boyce*, the notification to acquire the land issued did not become vitiated because of a part of the land under the notification and declaration were excluded subsequently.

13. The questions whether valid reasons are stated for withdrawal from acquisition of a portion of the land and the said withdrawal is actuated by mala fides to help some Councillors etc. can be considered together. The contention that the withdrawal from acquisition of certain portions of the land is to help the Councillors is based on resolution No. 58 of the Municipal Council dated 20-4-1983. The above resolution was not acted upon by the Government and it is seen that the above resolution was stayed by the Government by letter dated 4-5-1983 and later Municipality itself changed the above resolution and what is now excluded is only a small portion of 0.06868 hectares. The Councillors whose

names are mentioned in the original petition are not possessing any land or building in the excluded property. This was made clear in paragraph 10 of the counter affidavit filed on behalf of respondents 1 to 3 and 5 in O.P. No. 5382 of 1983, It has been also mentioned that the area excluded is thickly populated by economically backward low income people and if that place is acquired Municipality will find it difficult to give them alternate site for their rehabilitation. Therefore it cannot be stated that there is any mala fides. This is clear from the fact that withdrawal notification was issued, not to help any of the Councillors. It can be seen from the plans produced in this case that the entire land covered by Section 6 declaration, except to a small portion of 0.6868 hectares of land covered by the notification u/s 52(1) of the Kerala Land Acquisition Act, have been acquired and taken possession of. The lands owned by the petitioners were not taken possession of only because of the order of stay issued by this Court. The lands which belonged to the Councillors were also taken possession of and therefore, there is no merit in the contentions raised by the petitioners. Apart from the above it is clear from the decision of the Supreme Court in Special Land Acquisition Officer, Bombay and Others Vs. Godrej and Boyce, that order of withdrawal need not be backed by reasons and Government has got absolute power to withdraw from the acquisition proceedings already initiated before possession has been taken over.

14. With regard to the contentions in O.P. No. 6498 of 1986 it can be seen that Palghat Development Authority was constituted only on 8-10-1982. Section 3 notification was issued and Section 6 declaration was issued before the constitution of the Palghat Development Authority. Even the first award covering the vacant land was also passed on 7-4-1982, much before the constitution of the Palghat Development Authority. Therefore there is no force in the argument that after the constitution of the Palghat Development Authority the requisition made by the Municipality for which action was already taken under the Land Acquisition Act became null and void. Further the Palghat Development Authority is also going ahead with the construction of the stadium. We have seen the plan and progress of the construction. Almost 80% of the work of the stadium is over and the authorities could not complete the construction because of the inability to take possession of the land of the petitioners because of the order of stay issued by this Court. All other portions including the land owned by the Councillors for which mala fides were alleged were taken over by the Collector and possession was also handed over to the Municipality.

15. With regard to the contention that Palghat Development Authority had given permission to the second petitioner in O.P. No. 6498 of 1986 to construct the building as can be seen from Ext. P 6, it can be stated that nothing was mentioned regarding the pending acquisition proceedings and it was issued without considering the above acquisition proceedings. However, permission was granted subject to permission from the Municipal Commissioner, Palghat. No permission was given by the Municipality. In Ext. P8 issued by the Government also it is only stated that the site does not fall under any area proposed to be

acquired by the Palghat Development Authority. It is not disputed that acquisition proceedings were already taken after Section 6 declaration and notice was received u/s 9(5) for award enquiry and except the two plots of land for which order of stay was issued from this Court award was also passed. Other lands have been taken possession of pursuant to award. Therefore, Ext. P8 order of the Government is one issued without knowing the facts and Exts. P6 and P8 cannot be relied on for holding that these are areas not covered by the proposed plan. There is also no basis for the contention that since petitioner was granted permission there will be discrimination if the first petitioner is also not granted permission. As we have already stated Exts. P6 and P8 were issued without taking note of the fact that Section 6 declarations were issued in respect of those lands and Section 9(5) enquiry was started in respect of the above lands and the permission given therefore has no basis. Apart from that, they were asked to obtain licence from the Municipality for starting construction and Municipality has not given it. Hence even the second petitioner cannot claim exemption and there is no discrimination as between the two petitioners, We have gone through the acquisition proceedings. Except the two small plots owned by the petitioners, which is ear-marked for car parking, the entire adjacent plots have acquired and possession taken. Therefore, there is no basis for the contention that identical plots nearly situated were exempted and petitioners also should be given similar benefit.

16. The next contention raised is regarding taking a sympathetic view with regard to the petitioners as they owned relatively small plots and it is their means of livelihood. It was also pointed out that Supreme Court in the decision reported in Chandra Bansi Singh and Others Vs. State of Bihar and Others, has granted some reliefs while granting the amount of compensation. However, the Supreme Court in that case held that:

"The other question raised by the counsel for the appellants was that there was sufficient delay between the date of the Section 4 notification and taking over possession of the lands during which period the price of land had appreciated substantially and, therefore, the compensation should be paid according to the value of the land prevailing on the date of actual taking over of possession. This argument also is without substance for the following reasons:--

(1) that it is not the fault of the Collector for causing the delay in taking over the possession because the matter was pursued both in the Courts and before the Government and the proceedings had to be stayed, as a result of which the Collector was prevented from taking possession or giving his award, although all other proceedings had taken place.

(2) the landowners being in continuous possession of the land had enjoyed the usufruct of the same, particularly the lands happened to be mostly mango orchards and they must have derived large benefits by selling them in the market."

In view of the special powers under Article 142 of the Constitution which is vested with the Supreme Court, it granted some reliefs. That power cannot be exercised by the High Court. From the decision in State of Punjab and others Vs. Surinder Kumar and others, it is clear that the jurisdiction of the High Court, while dealing with writ petitions, is circumscribed by limitations and it cannot transgress the limits on the basis of whims or subjective sense of justice. The High Court cannot be equated with the Supreme Court. The Constitution has, by Article 142, empowered the Supreme Court to make such orders as may be necessary for doing complete justice in any case or matter pending before it, which authority the High Court does not enjoy. Therefore we are unable to grant any compassionate relief. Apart from the above it is not a case where any discretion has to be exercised. The acquisition proceedings were initiated in 1982. There were writ petitions from the very beginning to stop the acquisition. Entire lands covered by notification and declaration except those belonging to the petitioners herein have been taken possession of after passing the awards. Because of the delay in taking possession of the land, construction of the stadium and shopping complex was stopped. Almost 80% of the work of the stadium has been completed. Because of the order of stay it was not completed. On account of the long delay a construction of public purpose has been delayed for more than thirteen years. On account of escalation in the price of building materials the municipality will have to spent four or five times the amount estimated. In such circumstances, we refer to the anguish expressed by Supreme Court in Awadh Bihari and Other Vs. State of Bihar and others, . Their Lordships were distressed in the practise of delaying land acquisition proceedings by some means or other to defeat the public purpose. The case on hand is on such where the land acquisition proceedings for the purpose of construction of a stadium and. shopping complex has been successfully delayed for more than a decade. More distressing aspect is that 80% of the land had been taken possession while petitioners" land are retained by them. Comparatively a small portion of the land belonging to petitioners alone was not taken possession of and construction of the stadium could not be completed. Municipality has now been compelled to shoulder additional monetary burden. Petitioners are not entitled to any compassionate relief.

In view of the above circumstances, we are of the opinion that these original petitions are liable to be dismissed with cost. Accordingly, we dismiss all the four original petitions with cost.