
(1999) 07 AHC CK 0056

In the Allahabad High Court

Case No : C.M.W.P. No. 39622 of 1994 and 6826 of 1995

Maresh Dutta and others

APPELLANT

Vs

State of U.P. and others

RESPONDENT

Date of Decision : 21-07-1999

Acts Referred:

Constitution of India, 1950 — Article 226

Land Acquisition Act, 1894 — Section 16, 17, 17(1), 17(4), 18

Citation : (1999) 3 AWC 2646

Hon'ble Judges : R.R.K. Trivedi, J;M.C. Jain, J

Bench : Division Bench

Advocate : Ravi Kant and Pankaj Mittal, for the Appellant; S.C. Dinesh Dwivedi and Rakesh Dwivedi, for the Respondent

Judgement

R.R.K. Trivedi, J.—In the above writ petitions of fact and law involved are similar and they can be decided by a common order against which learned counsel for the parties have no objection. Writ Petition No. 6826 of 1995 shall be the leading case.

2. Facts, in short, which may be necessary to appreciate the controversy between the parties are that State of Uttar Pradesh initiated proceedings for acquiring land measuring 105 Blgha 2 Biswa and 16 Biswansi (65.7125 acres) by issuing a Notification No. 4240-P-III-84/2326-Land-80, dated 6.9.1984, u/s 4 of the Land Acquisition Act, 1894 (hereinafter referred to as the Act). The aforesaid notification was published in U. P. Gazette dated 8.9.1984, For correction of certain mistakes in the notification, a notification was further published on 10.1.1985. The public purpose for acquiring the land was for establishing a Thermal Power Project by the National Thermal Power Corporation Limited, respondent No. 2. A declaration u/s 6 of the Act was made by Notification dated 26.9.1984. In respect of this declaration also, corrigendum was published on 10.9.1985. The State Government also involved Section 17 of the Act for taking possession of the land in question and dispensing with the inquiry u/s 5A of the

Act. Notice u/s 9 of the Act was issued on 27.10.1984 and possession of the land was taken on 16.11.1984. Special Land Acquisition Officer gave his award on 24.9.1986. Dissatisfied with the compensation awarded landholders preferred references u/s 18 of the Act. The references were decided by judgment and award dated 20.11.1993. In reference, Additional District Judge enhanced the compensation considerably, aggrieved by which appeals have been filed against the judgment and award in this Court, which are pending and have been heard along with these writ petitions. While the appeals were pending in this Court. State Government decided to withdraw it self from acquisition of 88 Blgha-15 Biswa-19 Biswansi land (55.498 acres) and consequently published a Notification dated 11.11.1994, u/s 48(1) of the Act. a copy of which has been filed as Annexure-9 in the leading writ petition. For convenience, the text of the Notification is being reproduced below :

"No. 3404 P-3/XC1V-23-27 Land-P-84

Dated Lucknow, November 11. 1994

Whereas 105 Bigha. 2 Biswa and 16 Biswansi or 65.7125 acres land described and detailed in Schedule 1 below was needed for a public purpose, namely for the construction of Thermal Power Plant in district Ghazjabad by the National Thermal Power Corporation and for the acquisition thereof Notification No. 4240 P-3/84-23-27 Land-P-84. dated September 6. 1984 and No. 7575 P-3/84-23-27 Land-P-84. dated September 26, 1984 were Issued by the State Government respectively under sub-section (1) of Section 4 and sub-section (4) of Section 17 and u/s 6 read with subsection (1) of Section 17 respectively of the Land Acquisition Act, 1894 (Act No. 1 of 1894) :

And. whereas, out of the aforesaid land the land described and detailed in Schedule 2 below of which the possession has not been taken is no more needed for the said public purpose :

Now, therefore, in exercise of the, powers under sub-section (1) of Section 48 of the aforesaid Act, the Governor is pleased to withdraw from the acquisition of the land described and detailed in Schedule 2 below ;"

3. Aggrieved by the aforesaid action of the State Government withdrawing itself from the acquisition. three landholders filed Writ Petition No. 39622 of 1994 and 40 landholders filed Writ Petition No. 6826 of 1995.

4. In first appeals already pending in this Court, interim orders were passed to the effect that appellant beneficiary shall deposit 50% of the enhanced amount within the stipulated time. The time granted was extended from time to time on the application made by the appellant but the amount could not be deposited in terms of the interim order. As already mentioned above Writ Petition Nos. 39622 of 1994 and 6826 of 1995 were filed challenging the said notification in which by an interim order, operation of the impugned notification was stayed. appellants of the first appeals who were respondents in the writ petition filed application for

modification of the Interim order, which was rejected by the High Court. Against the order of this Court, SLP was filed before the Apex Court which was dismissed on 14.10.1997 with the observations that proper remedy for the respondents in the writ petition (appellants in first appeals) is to approach the High Court for modification of the order granting stay in the first appeals. In pursuance of the aforesaid observations, application was filed by appellants for modification of the interim order. The application was heard and decided by a common order dated 6.3.1998 by the learned single Judge which was to govern all the cases listed before the learned single Judge. The learned single Judge modified the interim orders to the following effect :

"Therefore, in such circumstances, to my mind, it appears to be sufficient to modify the earlier orders to the extent that the deposit of the 50% of the enhanced amount may be relaxed and may not be made by the appellant subject to the appellant furnishing an undertaking in this appeal within a period of one month, to the effect that in case the appeals fall and the writ petitions succeed and any amount is found due and payable to the claimants, in that event it will pay the same within one month from the date of the decision in the appeal without compelling the claimants to recover the said amount through execution. Only upon furnishing such undertaking, the interim order shall continue till the disposal of the appeals."

5. Landlords, respondents in the first appeals, challenged the order of the learned single Judge before the Apex Court in Special Leave to Appeal (Civil) No. 11602 to 11617 of 1998 in which Hon"ble Supreme Court on 23.2.1999 passed the following orders :

"Heard counsel for the parties for some time.

We are of the view that the question whether possession has been taken by the Government pursuant to the land acquisition Notifications, one of the important dispute between the parties. That question has to be decided in the writ petitions pending in the High Court. The decision in the pending first appeals relating to possession will depend upon the result of the writ petitions. It will, therefore, not be appropriate for us at this stage to go into the question whether the possession was in fact physically taken from the claimants or not. This is a matter to be decided in the pending writ petitions.

It is stated that the writ petitions and the appeals are likely to be heard shortly by the High Court. We request the High Court to make it convenient to dispose of the writ petitions and the appeals as early as possible, at any cost before the closure of the High Court for summer vacation. List these S. L. Ps5. In the last week of July, 1999".

6. This bunch of first appeals and the writ petitions was pending before another Division Bench of this Court. However, the Division Bench expressed difficulty in sparing time. Hon"ble the Chief Justice by his order dated 12.5.1999 assigned these cases to us by the following order :

"Considering the urgency of the matter, let a Bench consisting of Hon. Mr. Justice R. R. K. Trivedi and Hon. Mr. Justice M. C. Jain, be made for day-to-day hearing of the matter in view of the observations of Hon"ble Supreme Court."

This is how this matter has come before us.

7. In both the writ petitions, counter and rejoinder-affidavits have been exchanged.

8. We have heard Shri Ravi Kant, learned counsel for petitioners in the leading writ petition and Shri Pankaj Mittal, learned counsel for petitioners in Writ Petition No. 39622 of 1994 and Shri Dinesh Dwivedi. learned counsel appearing for the respondents.

9. As the impugned notification has been Issued u/s 48(1) of the Act, it would be appropriate to notice the provisions contained in Section 48(1) :

"48. Completion of acquisition not compulsory, but compensation to be - awarded when not completed.--(1) Except in the case provided for in Section 36, the Government shall be at liberty to withdraw from the acquisition of any land of which possession has not been taken.

(2) Whenever the Government withdraws from any such acquisition, the Collector shall determine the amount of compensation due for the damage suffered by the owner in consequence of the notice or of any proceedings thereunder, and shall pay such amount to the person Interested, together with all costs reasonably incurred by him in the prosecution of the proceedings under this Act relating to the said land.

(3) The provisions of Part III of this Act shall apply, so far as may be, to the determination of the compensation payable under this section."

10. From perusal of sub-section (1) of Section 48, it is clear that the State Government is at liberty to withdraw from the acquisition of any land except such land of which possession has been taken by it. This exception has been provided for the obvious reason that possession of the land if taken, which is subject-matter of land acquisition proceedings, it vests in the State Government absolutely free from all encumbrances as provided for in Sections 16 and 17(1) of the Act. Thus, the core question which shall decide the fate of the present writ petitions is as to whether possession of the land in question was taken by the State Government or not at any time before the impugned Notification was issued on 11.11.1994.

11. Learned counsel for the petitioner Shri Ravi Kant and Shri Pankaj Mittal submitted that the possession was actually taken by the respondents on 16.11.1984 vide possession certificate, Annexure-3 to the writ petition, and same day possession was handed over to respondent No. 2 Corporation. It has also been submitted that after taking possession, the Corporation has constructed several buildings, roads, boundary, etc. In this connection, learned

counsel have relied on the award given by the Land Acquisition Officer who has accepted as a fact that possession was taken on 16.11.1984 and has relied on this date for calculating Interest. Learned counsel has submitted that the date was not disputed at any stage by the respondent Nos. 1 and 2. This date remained undisputed at the stage of hearing of reference. It has been further submitted that the possession of the entire area of 105 bigha, 2 biswa and 16 biswansi was taken on 16.11.1984. On the basis of the same proceedings and the document prepared respondents admit that possession was taken of 16 bigha, 6 biswa and 17 biswansi land, but they with a mala fide Intention deny possession in respect of 88 bigha. 15 biswa and 19 biswansi land which is subject-matter of the impugned Notification. It is not open to the respondents now to deny possession over part of the land. Learned counsel have also placed reliance on the statement of Bhopal Singh, Supervisor. P.W.D., N.T.P.C.. recorded in Reference Proceeding No. 271 of 1987 which has been filed as Annexure-8 to the writ petition. Petitioners have also filed several photographs showing constructions raised by respondent No. 2 as Annexure-7 to the writ petition. It has been submitted that land acquisition proceedings were completed and possession was taken on 16.11.1984. but after that pressure came from the Central Government that coal based power generator unit of such a sizeable capacity should not be located in this area and it was recommended that an alternative site may be selected for the purpose. Support has been sought for this submission from the letter dated 7.10.1985 filed as Annexure-6 to the counter-affidavit of Shri R. S. Bharadwaj. an employee of the Corporation. It is submitted that it is not open to the respondents to withdraw from the acquisition and the Impugned Notification is illegal and without authority. It is submitted that possession was taken according to the procedure provided in Paras, 38 and 39 of the Land Acquisition Manual of 1988. It is also submitted that the documents filed along with the counter-affidavits were prepared subsequently long after taking of possession and on the basis of such documents the taking of possession on 16.11.1984 cannot be disputed. It has also been submitted that the impugned notification is not legislative in nature as alleged and the factual aspect stated therein that possession was not taken of the 88 bigha. 15 biswa and 19 biswansi land cannot be said to be either final or binding. Learned counsel for the petitioners have placed reliance on certain judgments of Hon''ble Supreme Court, which shall be discussed, at the appropriate place.

12. Shri Dinesh Dwivedi, learned counsel for the respondents, on the other hand, submitted that taking of possession means actual physical possession for which visit of the spot was necessary which has not been done in the present case. Learned counsel has submitted that the date 16.11.1984 is regarding a period when all the fields consisting of the land in dispute must have been covered by Rabi crop. There is no mention of any crop in the alleged possession certificate filed as Annexure-3 and this fact totally rules out taking of actual possession at the spot. Learned counsel has submitted that the Notification u/s 48(1) of the Act is legislative in nature and there is a determination of the precondition that

possession was not taken of the area in respect of which the State has withdrawn itself from the acquisition. Learned counsel has placed reliance on the various reports which preceded that of notification and which have been filed as Annexure-C.A. 2. out of one which is a report dated 18.8.1994, addressed to the Additional Collector, in which it has been said that the Corporation is in possession of only 10.215 acres of land and the rest of the 55.49 acres of land is in possession of the land owners and their crops are standing. Learned counsel has also placed reliance on the statement of Bhopal Singh. a copy of which has been filed as Annexure-7 to the counter-affidavit. C.A. 9 is the letter of the Collector, dated 3.9.1994 in which it has been stated that the spot inspection was made and it has been found that 55.498 acres of land is in possession of the land owners and their crops are standing thereon and rest of the 10.215 acres of land is in possession of the Corporation. The report also says that from perusal of Khasra (record of possession) and Khatauni (record of rights) it is clear that the names of land owners are still recorded and it is clear that the Corporation is not in possession. To the same effect is the report of the Lekhpal, which is Annexure-C.A. 10. In this report it has been said that the names of the landholders are still recorded and proceedings for mutation of the Corporation have not been started. Lastly, the Commissioner/Director of Land Acquisition submitted his report to the Government for withdrawing from acquisition. In this report dated 8.9.1994, it has been said that the names of landlords are still recorded in revenue papers. They have been paying land revenue and they were cultivating and growing crops throughout and in this manner the landholders are still Bhumidhars and owners of their land. This report has been filed as Annexure-11 to the counter-affidavit.

13. Learned counsel has also submitted that the alleged possession certificate is not conclusive proof or evidence of taking possession. There is no evidence that any Panch or Independent person signed it so as to lend it credence to become acceptable in legal proceedings. It remained only a paper transaction, which was completed in the office. No evidence has been adduced to show that possession was taken at the spot. It is submitted that the burden of proof that the condition was not satisfied is on the person challenging the Notification. Learned counsel has also placed reliance on the entry in khasra (field book or record of possession) of the Fasli year 1400 in which two crops have been shown against the plots in question. He has extensively referred to para. 4 of the counter-affidavit filed by R. K. Bharadwaj and Para. 21 of the written statement (Annexure-4 to the counter-affidavit) filed by the Corporation in Land Acquisition Reference proceedings before the 2nd Additional District Judge, wherein it has been said that out of the total acquired area in question, the respondents utilised only a portion of the land by construction of their statellite building while the remaining area could not be put into use by the respondent Corporation, since the land is in actual physical possession of the land owners and they are deriving" all the fruits from the land and the respondent is having only a symbolic possession over the same. Learned counsel has submitted that the

stand of the Corporation was from the beginning that it was only symbolic possession and it was not given actual possession of the land in dispute. It has been submitted that symbolic possession could not be sufficient to vest the land in the Government free from all encumbrances as provided in Sections 16 and 17(1) of the Act. It is also submitted that the petitioners have been throughout in possession of their land and they have been cultivating and getting benefit of the same which is fully established from the evidence on record. It has also been submitted that in the present writ petition under Article 226 of the Constitution such a highly disputed question of fact regarding possession cannot be appropriately decided. It has been submitted that the Notification dated 11.11.1994 is legal and valid and does not suffer from any error of law.

14. It has also been submitted that no prejudice is going to be caused to the petitioners from the impugned Notification as they will retain their land and also be entitled for compensation if they have suffered any loss. On the other hand, a great public interest shall be served by saving Rs. ten crores of public money. which has become necessary as the coal based thermal power unit cannot be established on the land in dispute in view of the objection raised by the Central Government. Learned counsel for the respondents also placed reliance on certain authorities, which, shall be discussed at the relevant places.

15. some of the admitted facts are that urgency provisions contained in Section 17 of the Act were invoked and Inquiry contemplated u/s 5A of the Act was dispensed with and the Notification was issued on 26.9.1984. Thereafter, a notice u/s 9 of the Act was Issued on 27.10.1984 and possession was taken on 16.11.1984. The contention of the respondents, however, is that it was only a paper transaction and only a symbolic possession was given to the respondent Corporation and it never got the actual possession. It has been submitted that for vesting of title on the State u/s 17(1) of the Act. actual possession was necessary to be taken. The contention of the petitioners, on the other hand, is that on 16.11.1984 actual possession was taken and thereafter respondent Corporation raised various construction and Installed equipments and the land in dispute was in actual possession of the respondent Corporation. Both sides have placed reliance on the case of Balwant Narayan Bhagde Vs. M.D. Bhagwat and Others, . The relevant extract of the judgment, for appreciating the correct legal position is being reproduced below :

"..... We think it is enough to state that when the Government proceeds to take possession of the land acquired by it under the Land Acquisition Act. 1894, it must take actual possession of the land since all interests in the land are sought to be acquired by it. There can be no question of taking any symbolical" possession in the sense understood by judicial decisions under the Code of Civil Procedure. Nor would possession merely on paper be enough. What the Act contemplates as a necessary condition of vesting of the land in the Government is the taking of actual possession of the land. How such possession may be taken would depend on the nature of the land. Such possession would have to be taken

as the nature of the land admits of. There can be no hard and fast rule laying down what act would be sufficient to constitute taking of possession of land. We should not, therefore, be taken as laying down an absolute and inviolable rule that merely going on the spot and making a declaration by beat of drum or otherwise would be sufficient to constitute taking of possession of land in every case. But here, in our opinion, since the land was lying fallow and there was no crop on it at the material time the act of the Tehsildar in going on . "the spot and inspecting the land for the purpose of determining what part was waste and arable and should, therefore, be taken possession of and determining its extent, was sufficient to constitute taking of possession. It appears that the appellant was not present when this was done by the Tehsildar, but the presence of the owner or the occupant of the land is not necessary to effectuate the taking of possession. It is also not strictly, necessary as a matter of legal requirement that notice should be given to the owner or the occupant of the land that possession would be taken at a particular time, though it may be desirable where possible, to give such notice before possession is taken by the authorities, as that would eliminate the possibility of any fraudulent or collusive transaction of taking of mere paper possession, without the occupant or the owner over coming to know of it."

16. B. N. Bhogde's case decided by Hon''ble Supreme Court in 1975 has been consistently followed in subsequent judgments of the Supreme Court. From the observation of Hon''ble Court in Bhagde's case, it is clear that there is no hard and fast rule laying down what act would be sufficient to constitute taking of possession of land. Whether the actual possession was taken has to be decided from the facts and circumstances and the material evidence produced by the parties. In the present case, it is undisputed that the possession of the entire land was taken on 16.11.1984 and same day it was handed over to respondent Corporation. The Corporation thereafter started activities on the land in dispute and raised extensive constructions as is clear from the photographs. It is admitted fact that on the basis of the transactions which took place on 16.11.1984, the Corporation is in actual possession over more than 10 acres of land. Thus, it is difficult to accept that on that date possession was taken only of 10 acres of land and possession over the remaining land was not taken. The document on which basis the right and possession has been exercised, is one document. There is no material on record to show that for taking possession over more than 10 acres of land, some other mode was adopted. Thus, the same document. I.e., the possession certificate filed as Annexure-3 to the writ petition, cannot be bifurcated for some part of the area denoting taking of actual possession and for the remaining area not taking possession or taking alleged symbolic possession. The land was open land. It is true that in the month of November, there may have been crops on the land but it appears that farmers would have been allowed to harvest their crops. In our opinion, this single circumstance of having actual possession on the basis of document dated 16.11.1984 is sufficient to establish that actual possession was taken.

17. It has been submitted, on the basis of the documents filed along with the counter-affidavit, that the landlords are in possession of the land, which is subject-matter of the impugned Notification. Khasra (field book or record of possession) has been filed as Annexure-3 to the counter-affidavit to show that crops were sown and grown by the landholders and this fact negatives the possession of respondent Corporation. Reliance has also been placed on the reports of Lekhpal, Additional Collector, Collector and Commissioner/Director of Land Acquisition, which were to the effect that the landholders are in possession. They have been cultivating the land and paying land revenue and mutation proceedings were never initiated. On the basis of the aforesaid facts, it has been attempted to show that actual possession remained with the landholders. Hon"ble Supreme Court in the case of Balmokand Khatri Educational and Industrial Trust, Amritsar Vs. State of Punjab and others, held that if after taking possession pursuant to Section 9 Notification, possession is retained by the landholder. It would be illegal and unlawful. Relevant para 4 of the judgment is being reproduced below :

"it is seen that the entire gamut of the acquisition proceedings stood completed by April 17, 1976, by which date possession of the land had been taken. No doubt, Shri Parekh has contended that the appellant still retained their possession. It is not well-settled legal position that it is difficult to take physical possession of the land under compulsory acquisition. The normal mode of taking possession is drafting the Panchnama in the presence of Ponchos and taking possession and giving delivery to the beneficiaries is the accepted mode of taking possession of the land. Subsequent thereto, the retention of possession would tantamount only to illegal or unlawful possession."

18. To the same effect are the observations of Hon"ble Supreme Court in the case of The Steel Authority of India and others Vs. New Marine Coal Co. (Pvt.) Ltd.,

19. Thus, even assuming that the landholders retained possession and cultivated the land, it would only be illegal and unlawful. The Government or the Corporation while acquiring larger area, are not expected to remain, present all the time on each part of the land. Taking advantage of their absence, the landholders continue to keep them under cultivation, but this illegal and unlawful action cannot divest the State or the beneficiaries of the right and possession which has already vested in them on taking possession.

20. So far as the mutation is concerned under the provisions of the U. P. Land Revenue Act. 1901. It was the duty of the Collector to maintain the record of rights and carry out the necessary changes. However, even if the name of the landholders continued in revenue papers. It could not in any way affect title of the State or the beneficiaries as after taking possession on 16.11.1984. the land vested in the State free from all encumbrances.

21. On behalf of the respondents, it was also submitted that the proceedings

initiated on 16.11.1984 for taking possession were not in accordance with law as there were no Panchas. the authorities did not visit the spot and it was behind the back of the landholders. In B. N. Bhadge's case. Hon''ble Supreme Court has already said that there can be no hard and fast rule with regard to mode of taking possession. For taking possession, mode has not been prescribed. It is true that the possession certificate has not been signed by Ponchos and landholders were not present, but the fact that on the basis of the possession taken on 16.11.1984. respondent Corporation came in actual possession of more than 10 acres of land out of 65 acres. Is indicative of the fact that actual possession was taken. It may be that respondents could not use the entire land immediately and taking advantage of that, the landholders continued to use the land for agricultural purposes, but that could not create any right in their favour or could it affect the acquisition and vesting of land in the State which stood completed on 16.11.1984 when possession was taken. It was open to the Corporation to use the remaining land also but for the reasons best known to respondents, they could not put under use the remaining land though it continued in their actual possession. Theory of symbolic possession has already been ruled out by Hon''ble Supreme Court in Bhadge's case and the case of respondents that they were only in symbolic possession cannot be accepted in the facts and circumstances of the present case.

22. Shri Dinesh Dwivedi. learned counsel for the respondent, also submitted that the Notification issued u/s 48(1) of the Act is legislative in nature and it contained a determination of pre-condition that the State Government had not taken possession of 88 bigha, 15 biswa and 19 biswansi land which should be accepted to be correct and cannot be questioned. For this submission, reliance has been placed in case of AIR 1981 1127 (SC) . In the above case before Hon''ble Supreme Court, the question for consideration was about the consequences of publication of a Notification u/s 5 of the Maharashtra Agricultural Produce Marketing (Regulations) Act, 1963. without inviting objections and affording opportunity of hearing. Hon''ble Supreme Court held that on making of a declaration by notification of the Government that a certain place shall be a principal market yard for a market area, upon which declaration certain statutory provisions at once spring into action and certain consequences prescribed by statute follow forthwith ; the making of the declaration, in the context. is certainly an act legislative in character and does not oblige the observance of the rules of natural justice.

23. In the present case, no statutory provisions spring into action except that the landlords became entitled for compensation u/s 48(2) of the Act and for determining that, provisions of Part III of the Act may be applicable. These are natural consequences once the State Government decides to withdraw it self from the acquisition of the land. But. where the possession has already been taken and the land is vested in the State free from all encumbrances, this could not be undone by saying in the notification Section 48(1) of the Act that possession was not taken. The notification u/s 48(1) cannot be termed legislative

in nature as commonly understood. The case cited by the learned counsel is clearly distinguishable.

24. At the end, learned counsel also submitted that in the present proceedings under Article 226 of the Constitution of India, highly disputed question of fact as to whether possession was taken or not cannot be decided. However, we are not impressed by this submission too for more than one reason.

25. The first reason is that on admitted facts, it is proved that the possession was taken on 16.11.1984 and on the basis of that transaction, respondent Corporation has put the land under use and raised extensive constructions. Thus, the transaction of taking possession has to be believed for this part of the land on the basis of admission. Once the transaction has been acted upon, it is difficult to disbelieve the same transaction for remaining part of the land. The case of petitioners that actual possession was taken thus stands proved on the basis of admitted facts and no appreciation of evidence is required.

26. The second reason is that High Court has jurisdiction to try all questions of fact and law. Hon''ble Supreme Court in case of Smt. Gunwant Kaur and Others Vs. Municipal Committee, Bhatinda and Others, in para 14. held as under:

"The High Court observed that they will not determine disputed question of fact in a writ petition. But what facts were in dispute and what were admitted could only be determined after an affidavit in reply was filed by the State. The High Court, however, proceeded to dismiss the petition in limine. The High Court is not deprived of its jurisdiction to entertain a petition under Article 226 merely because in considering the petitioner's right to relief, questions of fact may fall to be determined. In a petition under Act. 226. the High Court has jurisdiction to try issues both of fact and law. Exercise of jurisdiction is, It is true. discretionary but the discretion must be exercised on sound judicial principles."

27. The aforesaid view was reiterated by Hon''ble Supreme Court in case of Babubhai Muljibhai Patel Vs. Nandlal Khodidas Barot and Others, .

28. Thus, this Court can try even issues of fact for giving relief to petitioner, if necessary. As already seen. In the present case, the question involved, though of fact, can be well determined on the basis of admitted position and the documents on record.

29. The third reason is that Hon''ble Supreme Court in the order dated 23.2.1999 has observed that question whether possession has been taken by the Government pursuant to the land acquisition notification is one of the important Issues between the parties. The question has to be decided in the writ petitions pending in the High Court. The Hon''ble Supreme Court postponed the consideration of the SLP with the observation that High Court shall decide the question of possession and dispose, of the writ petitions and appeals as early as possible. In order to respect the observations of Hon''ble Supreme Court also, the question has to be determined by this Court.

30. In the circumstances, we do not find any merit in this last contention of the learned counsel for respondents.

31. For the reasons stated above. In our opinion, the actual possession of the entire land in dispute was already taken by the Government on 16.11.1984 and it was handed over to the respondent Corporation. Thus, as the possession was already delivered, the State Government could not withdraw it self from the acquisition and the impugned notification dated 11.11.1994 is illegal and without authority and is liable to be quashed.

32. Both the writ petitions are consequently allowed. The impugned notification dated 11.11.1994 is quashed. However, in the facts and circumstances of the case, there be no order as to costs.