

**(2013) 05 AHC CK 0340**

**In the Allahabad High Court**

**Case No :** Civil Miscellaneous Writ Petition No"s. 1598 of 2004 and 52456 of 1999

Meera Sahkari Avas Samiti Ltd.

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

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**Date of Decision :** 17-05-2013

**Acts Referred:**

Land Acquisition Act, 1894 — Section 11A, 17, 17(1), 17(4), 4

**Citation :** (2013) 5 ADJ 656 : (2013) 98 ALR 879 : (2014) 2 AWC 1271 : (2013) 3 UPLBEC 1844

**Hon'ble Judges :** Surya Prakash Kesarwani, J;Ashok Bhushan, J

**Bench :** Division Bench

**Advocate :** R.N. Singh, K.R. Sirohi, N.S. Chahar and Rajiv Gupta, for the Appellant; V.C. Mishra, D.S. Chauhan, Pradeep Kumar and Sunita Agarwal, for the Respondent

**Final Decision :** Allowed

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## **Judgement**

Ashok Bhushan, J.—These two writ petitions have been filed by the same petitioner i.e. Meera Sahkari Avas Samiti Ltd. which are connected with each other and have been heard together. Both the writ petitions are being decided by this common judgment. Brief facts giving rise to both the above writ petitions need to be noted first. The petitioner, which is a registered Housing Co-operative Society and possessed of land in two villages of district Mathura, namely, Azampur and Ranchi Bangar, submitted an application before the Mathura Vrindavan Development Authority (hereinafter referred to as the Authority) for passing lay out plan for developing a township. The Authority vide its order dated 21st April, 1982 sanctioned the lay out plan. In the year 1987 the petitioner executed sale/lease deed to its members allotting different plots. The Authority initiated proceedings for acquisition of land in the aforesaid two villages.

2. With regard to Village Azampur, a notification u/s 4 read with Section 17 of the Land Acquisition Act, 1894 (hereinafter referred to the Act) was issued in the

gazette dated 16th June, 1998 proposing to acquire 24 plots (total area 14.472 hectares). In the notification two of the plots claimed by the petitioner being Plot Nos. 166 and 167 were also included. Section 4 notification was also published in two daily news papers on 21st August, 1998 and 22nd August, 1998. On 27th September, 1999 declaration u/s 6 of the Act was published in the gazette. The purpose of acquisition was construction of housing colony under planned development scheme. On 10th November, 1999, the petitioner submitted a representation to the State Government through its President Shiv Charan Singh praying for releasing the land from acquisition. The State Government vide its letter dated 17th November, 1999 asked for report from the Authority giving justification for acquisition. The possession of the land was claimed to have been taken by the Authority on 11th February, 2000. Writ Petition No. 52456 of 1999 was filed by the petitioner on 13th December, 1999 praying for following relief:

(a) to issue a writ, order or direction in the nature of certiorari quashing the acquisition proceedings by virtue of the Notifications under Sections 4 and 6 dated 16.6.1998 and 27.9.1999 respectively in so far as it relate to Plot Nos. 166 and 167 of village Azampur (old plot No. 122) Tehsil and District Mathura.

(b) to issue a writ, order or direction in the nature of mandamus commanding the respondent-State Government to consider the representation of the petitioner dated 11.11.1999 on which comments have been called for by the State Government itself and to take a decision in accordance with law on the aforesaid representation so that justice be done.

(c) to issue a writ, order or direction in the nature of mandamus commanding the respondents not to dispossess or interfere with the possession of the petitioner and their allottees over plot Nos. 166 and 167 of village Azampur (Old Plot No. 112) Tehsil and District Mathura.

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3. The writ petition was dismissed in default on 29th January, 2004 which was subsequently restored on 17th February, 2006, however, no interim order was passed in the writ petition.

4. With regard to village Ranchi Bangar at the instance of the Authority acquisition proceedings were initiated by issuance of notification u/s 4 read with Section 17 of the Act dated 2nd February, 1998. It was proposed to acquire 10 plots area 10.389 hectares. In the acquisition petitioner's Plot Nos. 18, 19 and 23 were also included. The declaration u/s 6 of the Act was issued on 16th March, 1999. The Authority claimed to have taken possession on 4th August, 1999. The petitioner submitted a representation dated 10th November, 1999 addressed to the Minister of Nagar Vikas. On the representation, vide letter dated 20th November, 1999, the State Government asked for report from the Authority giving justification for acquisition. The Authority vide letter dated 12th August, 2002 submitted report to the State Government that with regard to Plot Nos. 18, 19 and 23 of village Ranchi Bangar and with regard to Plot Nos. 166 and

167 of village Azampur relevant details regarding members of the society is being collected and the same be submitted. On 25th January, 2003, the Authority wrote to the State Government giving details of the aforesaid plots of two villages i.e. Azampur and Ranchi Bangar. It was mentioned that in Plot No. 166 name of society is recorded and in Plot No. 167 name of Pradeep Kumar son of Shiv Charan Singh is recorded. With regard to village Ranchi Bangar it was mentioned that on Plot Nos. 18 and 19 name of Prem Lata Singh wife of Shiv Charan Singh and on Plot No. 23 name of Pradeep Kumar son of Shiv Charan Singh has been recorded. It was mentioned that with regard to village Ranchi Bangar award has not yet been issued. The State Government vide letter dated 13th March, 2003 wrote to the Vice-Chairman of the Authority that acquisition be treated as lapsed u/s 11A of the Act and the petitioner be permitted to carry on development work in accordance with the approved lay out plan. The Vice-Chairman of the Authority vide its letter dated 7th April, 2003 wrote to Shiv Charan Singh, President of the Society to carry on development work in accordance with the sanctioned lay out plan (21.4.1982). The petitioner thereafter claimed to have proceeded to carry on various development work including construction of road etc. The Vice-Chairman of the Authority wrote letter dated 8th August, 2003 to the Special Secretary of the State Government in reference to earlier letter dated 13th March, 2003 releasing the land of aforesaid two villages in favour of the petitioner. It was communicated that U.P. Avas Evam Vikas Parishad in its board meeting dated 22nd July, 2003 took a decision that land of aforesaid two villages being of special use of the Board, the same is not desirable to be released. The State Government was requested to withdraw the permission to carry on the development work. The State Government vide letter dated 26th August, 2003 cancelled its letter dated 13th March, 2003. The State Government wrote to the Authority that since possession has been taken by the Authority u/s 17 of the Act, hence in the interest of the Board, it is decided that the land be adjusted in the lay out of the Authority after taking the development fee. The petitioner through its President again submitted representation dated 23rd October, 2003 praying for the State Government to reconsider its order dated 26th August, 2003. Writ Petition No. 1598 of 2004 was filed by the petitioner on 14th January, 2004 in this Court praying for following relief:

(I) to issue a writ, order or direction in the nature of CERTIORARI quashing the impugned order dated 26.8.2003 (annexure No. 14) passed by respondent No. 1/ State-and order dated 16.9.2003 (annexure No. 15) passed by respondent No. 3/ M.V.D.A.

(II) to issue a writ, order or direction in the nature of MANDAMUS commanding the respondents not to dispossess the petitioner-society from the plot Nos. 18, 19 and 23 of village Ranchi Bangar and plot Nos. 166 and 167 of village Azampur, Tehsil Sadar, District Mathura; in pursuance of the impugned order dated 26.8.2003 (Annexure 14) passed by respondent No. 1/ State and order dated 16.9.2003 (Annexure 15) passed by respondent No. 3/M.V.D.A.

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5. An interim order was passed by a Division Bench of this Court on 30th January, 2004 in the said writ petition directing the parties to maintain status quo regarding possession. On 13th August, 2004 the interim order was vacated. On an application for amendment in the writ petition, the prayer for quashing the notifications issued under Sections 4 and 6 of the Act was permitted to be added by order of the Court dated 6th May, 2005. Following two relief were permitted to be added by this Court on 6th May, 2005:

to issue a writ, order or direction in the nature of mandamus directing the respondents to adjust/return the 60% developed land from the acquired land of the petitioner in pursuance of Government order, dated 2.6.1998 (SA-1).

to issue a writ order or direction in the nature of certiorari quashing the impugned notification u/s 6 /17 of L.A. Act dated 16.3.1999 and 27.9.1999 (annexure 3 and 4 to the writ petition) which were issued after more than a year of the issuance of the notification u/s 4 of the L.A. Act.

6. In both the writ petitions counter and rejoinder-affidavits have been exchanged. Pleadings being complete in both the writ petitions, with the consent of learned counsel for the parties, we have proceeded to decide the writ petitions finally.

7. We have heard Sri R.N. Singh, learned Senior Advocate assisted by Sri N.S. Chahar for the petitioner, Sri V.C. Mishra, learned Senior Advocate assisted by Sri D.S. Chauhan for the Authority and the learned Standing Counsel.

8. Learned counsel for the petitioner submitted that insofar as the acquisition by notification u/s 4 /17 and declaration u/s 6 of the Act dated 16th August, 1998 and 27th September, 1999 respectively regarding village Azampur is concerned, the declaration u/s 6 has already been quashed by a Division Bench of this Court in a writ petition filed by other tenure holders. Reference of Writ Petition No. 17373 of 2004 (Hari Om Nagar Sahkari Avas Samiti Limited v. State of U.P. and others) has been made in which writ petition by judgment and order dated 3rd September, 2004 the declaration dated 27th September, 1999 has been quashed on the ground that declaration u/s 6 was issued after more than one year from the date of publication of the notification u/s 4 of the Act. The review application filed in the said writ petition was also rejected on 1st December, 2010. It is further submitted that with regard to village Azampur the State Government on an application submitted by some tenure holders, namely, Ram Singh and 11 others, has released the land on 9th May, 2006 which order was recalled by the State Government subsequently on 25th April, 2008. A writ petition being Writ Petition No. 30201 of 2008 (Ram Singh and others v. State of U.P. and others) was filed in this Court challenging the notification u/s 4 dated 16th August, 1998 and declaration u/s 6 of the Act dated 27th September, 1998 and the order of the State Government dated 25th April, 2008. The said writ petition was allowed by this Court on 17th August, 2010 against which Special Leave to Appeal (Civil)

No. 21234 of 2011 has been dismissed by the Apex Court on 24th January, 2013 upholding the judgment of this Court. It is submitted that in so far as the land of village Azampur is concerned, the notifications have already been quashed.

9. Sri R.N. Singh learned Senior Advocate has further submitted that State Government having released the land in favour of the petitioner vide its letter dated 13th March, 2003 permitting the petitioner to carry on development work, cancellation of the said order by subsequent order dated 26th August, 2003 without giving any opportunity and without issuing any notice to the petitioner is illegal. It is submitted that the State Government having released the land in favour of the petitioner, the same could not have been recalled without giving opportunity to the petitioner. It is further submitted that the order of the State Government dated 26th August, 2003 is liable to be set-aside on this ground and the State Government if so chooses to pass any order, it has to issue notice to the petitioner before taking decision.

10. Sri V.C. Mishra, learned Senior Advocate appearing for the Authority, refuting the submissions of the learned counsel for the petitioner, contended that insofar as writ petition relating to village Azampur is concerned being Writ Petition No. 52456 of 1999, the petitioner is recorded owner of only one plot i.e. Plot No. 167, hence it has no right to maintain writ petition for Plot No. 166. It is submitted that judgment of the Apex Court dated 14th January, 2013 in Mathura Vrindavan Development Authority's case (supra) may at best apply with regard to Plot No. 167 only. Sri. Mishra advancing the submission in Writ Petition No. 1598 of 2004 pertaining to plots of village Ranchi Bangar, has submitted that writ petition is to be dismissed on the ground of misjoinder of cause of action. He submits that petitioner has claimed relief with regard to plots of both the villages i.e. Ranchi Bangar and Azampur in one writ petition which was not permissible. He submitted that petitioner ought to have filed two writ petitions separately. He further submits that the order passed by the State Government dated 13th March, 2003 releasing the land referring to Section 11A of the Act was a void order and for recalling such void order there was no necessity of issuing any notice to the petitioner. It is submitted that in the land acquisition proceedings pertaining to both the villages Section 17(4) of the Act was invoked and the possession was taken, hence Section 11A of the Act has no application. It is submitted that State Government has committed error in treating the acquisition as lapsed u/s 11A of the Act. Sri Mishra further submits that the State Government has rightly passed the order dated 26th August, 2003 cancelling the earlier order dated 13th March, 2003.

11. We having noted the facts and respective submissions pertaining to acquisition proceedings of both the villages i.e. Azampur and Ranchi Bangar, we proceed to consider the case of both the above villages separately.

Village Azampur:

12. The notification u/s 4 read with Section 17 was issued on 16th June, 1998

which was published in the newspapers "Dainik Rajpath and "Dainik Braj Garima" on 22nd August, 1998 and 21st August, 1998 respectively. The Authority further claimed that publication in the locality was made on 28th October, 1998. The declaration u/s 6 was issued on 27th September, 1999. A Division Bench of this Court in Writ Petition No. 17373 of 2004 (Hari Om Nagar Sahkari Avas Samiti Limited v. State of U.P. and others) had quashed the declaration u/s 6 dated 27th September, 1999 vide its judgment and order dated 3rd September, 2004. The Division Bench quashed the notification on the ground that declaration u/s 6 was issued after expiry of one year from the date of publication of the notification u/s 4. A review application was filed to review the judgment and order dated 3rd September, 2004 which was also dismissed on 1st December, 2010.

13. Alongwith the supplementary affidavit filed by the petitioner in Writ Petition No. 1598 of 2004, the judgment of the Apex Court dated 24th January, 2013 (Mathura Vrindavan Development Authority v. Ram Singh and others) has been brought on the record. The judgment of the Apex Court relates to the same declaration dated 27th September, 1999 of village Azampur. It is necessary to note the facts of the case of Mathura Vrindavan Development Authority v. Ram Singh and others (supra) in some detail. The land of the respondents Ram Singh and others was acquired by same declaration dated 27th September, 1999 relating to village Azampur in which notification plots of the petitioner being Plot Nos. 166 and 167 were also there. After notification u/s 27.9.1999 was quashed by the Division Bench of this Court in Writ Petition No. 17373 of 2004 (Hari Om Nagar Sahkari Avas Samiti Limited v. State of U.P. and others), the State Government released the land of Ram Singh and others by notification dated 9th May, 2006. The Authority filed a writ petition being Writ Petition No. 32537 of 2006 challenging the notification dated 9th May, 2006 releasing the land in favour of Ram Singh and others. During pendency of the said writ petition, the State Government passed an order dated 25th April, 2008 cancelling its earlier notification dated 9th May, 2006. A writ petition being Writ Petition No. 30201 of 2008 was filed by Ram Singh and others-challenging the order of the State Government dated 25th April, 2008. In Writ Petition No. 30201 of 2006, the petitioners had also prayed for quashing the notification dated 16th June, 1998 issued u/s 4 and the declaration dated 27th September, 1999 issued u/s 6 of the Act and also the order of the State Government dated 25th April, 2008. The Writ Petition No. 30201 of 2008 was allowed by a Division Bench of this Court on 17th August, 2010 against which judgment Special Leave to Appeal (Civil) No. 21234 of 2011 was filed by the Authority. The Apex Court vide its judgment and order dated 24th January, 2013 dismissed the appeal. The Apex Court has upheld the Division Bench judgment of this Court quashing the declaration u/s 6 of the Act dated 27th September, 1998. The Apex Court has observed that publication of notice in the locality dated 28th October, 1998 as claimed by the Authority could not be proved. The Apex Court has held that declaration u/s 6 of the Act having been issued after one year of the publication of Section 4 notification, the notification has rightly been quashed by the High Court. The Apex Court after

considering the respective submissions of learned counsel for the parties with regard to village Azampur, laid down following:

Shri Mahabir Singh, learned senior counsel appearing for the petitioner, argued that even though the acquisition proceedings were quashed qua the lands belonging to Hari Om Nagar Samiti and Dr. M.K. Goswami and others, this Court should set aside the impugned order because it is totally devoid of reasons and the High Court did not decide the all important question whether the State Government could have exercised power u/s 48(1) even though possession of the acquired land had already been handed over to the representative of the petitioner. Learned senior counsel pointed out that the notification issued u/s 4(1) was published in the locality on 28.10.1998 and argued that the High Court committed serious error by quashing the acquisition of land belonging to Hari Om Nagar Samiti and Dr. M.K. Goswami and others on the premise that there was violation of the time limit prescribed under first proviso to Section 6(1). He, however, conceded that the orders passed by the High Court in the two cases were not challenged by the petitioner by filing special leave petitions and the same have become final.

Sri M.L. Varma, learned senior counsel for respondent Nos. 1 to 12 argued that this Court may not interfere with the impugned order merely because it does not contain elaborate reasons for quashing notification dated 25.4.2008. Shri Varma further argued that the State Government was justified in invoking Section 48(1) because possession of the acquired land was never taken from respondent Nos. 1 to 12 and in the cases of Hari Om Nagar Samiti and Dr. M.K. Goswami and others, the High Court had already annulled the declaration issued u/s 6(1). Learned counsel invited the Court's attention to Map (Annexure CA-2) to show the position of the land belonging to various tenure holders and argued that in the absence of challenge to the orders passed by the High Court in the two cases, the petitioner cannot implement the residential scheme for which the land was acquired. Shri Varma then argued that the averments contained in the affidavits filed before this Court about the publication of notification issued u/s 4(1) are misleading and the record appears to have been fabricated, else the same would have been produced before the Division Bench of the High Court in Writ Petition Nos. 17373/2004 and 46157/2004. Learned counsel also referred to the Special Land Acquisition Officer's response to the applications filed under the RTI Act and submitted that in the absence of record relating to Munadi having been done on 28.10.1998, the plea put forward by the petitioner before this Court should not be entertained. He lastly argued that the entire acquisition was vitiated because there was no justification to invoke the urgency provisions contained in Section 17(1) and (4) and to dispense with the application of Section 5-A.

In our opinion, there is no merit in the argument/submissions of the learned counsel for the petitioner and the SLP is liable to be dismissed. In the first place, it is to be noted that in the affidavits filed before the High Court in Writ Petition

Nos. 17373/2004 and 46157/2004, the petitioner had not controverted the assertion of the writ petitioners that the declaration u/s 6(1) was issued after more than one year of the publication of notification issued u/s 4(1). Therefore, the High Court had rightly quashed the acquisition proceedings in the cases of Hari Om Nagar Samiti and Dr. M.K. Goswami and others. The petitioner's assertion that the notice was falsified from the original record produced before the High Court in Civil Review Application No. 16437/2004 and replies given by the Special Land Acquisition Officer under the RTI Act.

14. From the above, it is clear that the judgments of the two Division Benches of this Court delivered in Writ Petition No. 17373 of 2004 (Hari Om Nagar Sahkari Avas Samiti Limited v. State of U.P. and others), dated 3rd September, 2004 and Writ Petition No. 30201 of 2008 (Ram Singh and others v. State of U.P. and others), dated 17th August, 2010 quashing the declaration u/s 6 dated 27th September, 1998 with regard to land of village Azampur having been upheld by the Apex Court vide its judgment dated 24th January, 2003 in Mathura Vrindavan Development Authority v. Ram Singh and others (supra), the prayer of the petitioner to quash the declaration dated 27th September, 1998 has to be accepted.

15. Sri V.C. Mishra, learned Senior Advocate, during his argument, has submitted that judgment of the Apex Court cannot be held to be applicable with regard to Plot No. 167 which was not recorded in the name of the society. He has submitted that, in fact, the society has filed an original suit being Suit No. 344 of 2004 in the Civil Court for declaration of title over Plot No. 167, hence the petitioner has no authority to file writ petition with regard to Plot No. 167.

16. According to the report of the Authority dated 25th January, 2003 (Annexure-8 to the Writ Petition No. 1598 of 2004), Plot No. 167 is recorded in the name of Pradeep Kumar son of Shiv Charan Singh. Shiv Charan Singh is the President of the Society. Shiv Charan Singh, as a President of the registered society, purchased the plots in his name, in the name of his wife and son and the lay out of the plots was submitted which was passed by the Authority on 21st April, 1982. The Society being in possession of the said plots and having allotted the plots to its members, has every right to challenge the acquisition with regard to Plot No. 167 also. The mere fact that suit for declaration of Plot No. 167 is pending does not mean that petitioner's society has no interest in Plot No. 167. The Society claims it to be owner of Plot No. 167 and on that basis has filed the suit. The society having allotted the plots in the year 1982 itself from both the plots i.e. Plot Nos. 166 and 167, it has right to challenge the acquisition of land of village Azampur. Thus the submission of Mr. Mishra that writ petition is not maintainable with regard to Plot No. 167 cannot be accepted.

Ranchi Bangar:

17. The land of village Ranchi Bangar area 10.389 hectares including Plot Nos. 18, 19 and 23 was acquired by the declaration dated 16th March, 1999 issued u/

s 6 prior to which notification u/s 4 /17 was issued on 2nd February, 1998. The possession of the land was claimed to be taken by the Authority on 4th August, 1999. The notification u/s 4 /17 and declaration u/s 6 were never challenged by the petitioner within the reasonable time. The award with regard to land of village Ranchi Bangar was also declared on 10th February, 2004. It is relevant to note that when Writ Petition No. 1598 of 2004 was filed by the petitioner, the prayers made in the writ petition was to quash the order dated 26th August, 2003 by which it recalled its earlier order dated 13th March, 2003 and even on 14th January, 2004 when writ petition was filed notifications under Sections 4 and 6 of the Act were not challenged. The petitioner by an amendment on 6th May, 2005, has challenged the notifications dated 16th March, 1999 and 27th September, 1999. Thus the declaration u/s 6 was sought to be challenged after more than five years. The petitioner was well aware of every land acquisition proceedings since it has submitted representation to release the land on 10th November, 1999 which representation has been brought on the record as Annexure-5 to Writ Petition No. 1598 of 2004. From the above it is clear that petitioner never intended to challenge the notification of village Ranchi Bangar. The challenge of notification after more than 5 years cannot be accepted.

18. Sri R.N. Singh, Senior Advocate, appearing for the petitioner in support of Writ Petition No. 1598 of 2004 has confined his submission only to challenge the order dated 26th August, 2003 by which the State Government has recalled its earlier order releasing the land. Sri R.N. Singh has emphasised that land having already been released by the State Government on 16th March, 1999, the said order could not have been recalled without opportunity.

19. Sri V.C. Mishra in reply to the said submission, contended that the order dated 13th March, 1999 was a void order, hence the same could have been ignored. He further submitted that possession u/s 17 of the Act having been taken by the Authority, Section 11A was not applicable, hence the State Government committed error in passing the order dated 13th March, 1999.

20. The order dated 13th March, 1999 was issued in reference to the application submitted by the petitioner for releasing the land. As noted above, the petitioner submitted his representation on 10th November, 1999 (Annexure-5 to Writ Petition No. 1598 of 2004) praying for releasing the land from the acquisition. The State Government vide its letter dated 20th November, 1999 (Annexure-6 to the writ petition) asked the Authority to give report regarding justification of acquisition. The Authority submitted detail report dated 15th January, 2003 (Annexure-8 to the writ petition) to the State Government and the order dated 13th March, 2003 was issued in reference to report dated 25th January, 2003 of the Authority. The subject of the letter dated 13th March, 2003 is clearly release of land of Plot Nos. 18, 19 and 23 of village Ranchi Bangar and land of Plot Nos. 166 and 167 of village Azampur. The said order indicates that prior to the acquisition proceeding lay out plan was sanctioned in favour of the society by the Authority. The award has not been issued till date and further on the basis of

approved lay out, the land has already been developed. It is true that that the State Government has also referred to Section 11A of the Act and has observed that acquisition has to be treated as lapsed, but the letter dated 13th March, 2003 cannot be treated to be an order only taking into consideration Section 11A, rather other factors have also been considered by the State Government. In any view of the matter, by the said order the State Government directed the Authority to permit the petitioner to carry on development work. The Vice-Chairman thereafter granted permission to the petitioner to carry on development work.

21. The petitioner's case in the writ petition is that after the permission of the Vice-Chairman, the petitioner started development work in the land and spent lacs of rupees in carving out Nali, Roads, Electricity poles, water pipe lines and other development works as has been clearly stated in paragraph 18 of the writ petition. The State Government passed the impugned order dated 26th August, 2003 in reference to the request made by the Authority dated 8th August, 2003 by which Authority represented to the State Government that release of the land is not justified. When the State Government proceeded to act on the letter of the Authority for recalling the order dated 13th March, 2003, the petitioner was entitled for an opportunity since the order dated 26th August, 2003 adversely effected its right as the petitioner in pursuance of the order dated 13th March, 2003 has proceeded to carry on development work.

22. The submission of Sri V.C. Mishra that order dated 13th March, 2003 was a void order cannot be accepted. We are of the view that the State Government was clearly obliged to give a notice to the petitioner before cancelling the order dated 13th March, 2003 which was in its favour. The Apex Court in Mathura Vrindavan Development Authority v. Ram Singh and others case (supra) has clearly laid down that State Government before withdrawing an order to release the land was required to give opportunity to the tenure holder. In the aforesaid case, as noted above, the State Government has released the land on 9th May, 2006 and by subsequent order dated 25th April, 2008 the earlier order dated 9th May, 2006 was recalled. The Apex Court held the order dated 25th April, 2008 had been passed in brazen violation of the rule of audi alteram partem. Following are the observations made by the Apex Court in that regard:

In the premise aforesaid, we hold that the State Government did not commit any error by invoking Section 48(1) of the Act for ordering release of the land belonging to respondent Nos. 1 to 12 and notification dated 25.4.2008 was vitiated due to brazen violation of the rule of audi alteram partem. Indeed, it is neither the pleaded case of the petitioner and the official respondents, nor any document has been produced by them to show that before cancelling notification dated 9.5.2006, the competent authority had issued action oriented notice to respondent Nos. 1 to 12 or their representative and given them opportunity of showing cause against the proposed cancellation of notification dated 9.5.2006.

23. In view of the foregoing discussions, we are of the view that the order dated

26th August, 2003 was passed in violation of the principles of natural justice and deserves to be set-aside. In result, both the writ petitions are allowed to the following extent:

(i) Writ Petition No. 52456 of 1999 is allowed. The notification issued u/s 4 /17 of the Act dated 16th June, 1998 and declaration u/s 6 of the Act dated 27th September, 1999 are quashed in so far as they relate to Plot Nos. 166 and 167.

(ii) Writ Petition No. 1598 of 2004 is allowed to the extent of quashing the order dated 26th August, 2003 (Annexure-14 to the writ petition) and the consequential order dated 16th September, 2003 (Annexure-15 to the writ petition). However, it shall be open for the State Government to pass fresh order after giving due notice and opportunity to the petitioner.

Parties shall bear their own costs.