

(2009) 02 DEL CK 0180

In the Delhi High Court

Case No : Writ Petition (C) No. 829 of 2007

Narender Kumar

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 20-02-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 11
Constitution of India, 1950 — Article 136, 14, 142, 145, 21
Criminal Law (Amendment) Act, 1952 — Section 7(2)
Delhi Lands (Restrictions on Transfer) Act, 1972 — Section 4
Land Acquisition Act, 1894 — Section 4, 4(1), 48, 5A, 6

Citation : (2009) 02 DEL CK 0180

Hon'ble Judges : Manmohan Singh, J;A.K. Sikri, J

Bench : Division Bench

Advocate : P.N. Lekhi and Sameer Bansal, for the Appellant; Sanjay Poddar and Gaurav Sareen, for the Respondent

Final Decision : Dismissed

Judgement

A.K. Sikri, J.—Land of the petitioner which falls in revenue estate of village Satbari was sought to be acquired along with large chunk of land, not only of that village but various other villages as well. For such large acquisition of land, notification u/s 4 was issued on 25.11.1980 and objections were invited u/s 5A of the Act. Thereafter, declaration u/s 6 was issued on 37.05.1985 covering the land of the petitioner. The petitioner had challenged the said acquisition by filing a writ petition in the year 1986. Somehow, may be his ill luck, he failed in his attempt as his writ petition was dismissed on 25.11.2004. Since the petitioner was not represented in the Court when this writ petition was dismissed, he sought review by filing the petition in April, 2005. To his dismay even this was dismissed on 13th January, 2006. He challenged those orders by filing SLP in the Supreme Court, which met the same fate as that was also dismissed on 12th May, 2006. He made one last attempt in those proceedings by seeking review of the dismissal orders passed in the SLP. This also could not turn the luck in his

favour as the same was dismissed on 27th June, 2006. Normally, with all these unsuccessful attempts challenging the acquisition of his land right upto the Apex Court, the matter needed quietus. However, it has not deterred the spirits of the petitioner.

2. The present writ petition is filed challenging the same notifications issued under Sections 4 & 6 of the Act including the Award which has been rendered in the interregnum. Certain subsequent events and judgments of this Court have emboldened the petitioner to take this step. Before we come to these events, it would be necessary to give some more details about the previous proceedings challenging these notifications in the Writ Petition No. 1228 of 1986. Culminating into dismissal of review petition by the Supreme Court vide order dated 27th June, 2006, notification u/s 4 of the L.A. Act was issued on 25.11.1980 for large scale acquisition of land in many Revenue Estates including Revenue estate of Village Satbari. Land of petitioner was included in this notification. On 24.12.1980, the petitioner filed objections u/s 5A of the L.A. Act in writing before the Collector within the prescribed period. However, the Government did not accede to any objection and proceeded to issue declaration u/s 6 of the L.A. Act on 27.05.1985. Aggrieved by the compulsory acquisition of his land, petitioner filed CWP No. 1228/1986 titled Narender Kumar v. Union of India before this Court impugning the notifications on various grounds. Interim order for status quo was granted and matter admitted for final hearing. Many other writ petitions were filed challenging same notification. 72 number of writ petitions were heard by a Division Bench of this Court with leading case known as Balak Ram Gupta v. Union of India 59 (1989) DLT 150. These writ petitions were allowed and compulsory acquisition arising out of the same notifications in respect of 72 land owners quashed on ground of non-compliance with mandate of Section 5A. Balak Ram Gupta's decision was upheld in Supreme Court in Delhi Development Authority Vs. Sudan Singh and Others, .

3. However, thereafter the Supreme Court had occasion to reconsider these decisions once again in Abhey Ram (dead) by LRs. and others Vs. Union of India and others, , and thereafter Delhi Administration Vs. Gurdip Singh Uban and Others etc., In these cases, the Supreme Court took the view that the benefit of the judgment of Balak Ram Gupta would be available only to the 72 petitioners whose cases were decided by that judgment. The Court laid down the principle that ratio of the said judgment can be availed of only by those who had filed objections u/s 5A of the Land Acquisition Act. Those who failed to file such objections were not competent to challenge the notification.

4. Many cases were thereafter decided by this Court. In those cases where objections u/s 5A were not filed, writ petitions were dismissed. In some writ petitions, the amendments in the writ petitions were sought raising the plea that objections u/s 5A were preferred, though this fact was not mentioned in the writ petition originally filed.

5. In few cases, amendment was allowed, allowing those petitioners to

incorporate the plea in the writ petitions. A large batch of such writ petitions were taken up for hearing from time to time. The petition filed by the petitioners, i.e., Civil Writ Petition No. 1228 of 1986 was listed for final disposal on 25.11.2004 along with certain other writ petitions. Nobody appeared on behalf of the petitioner. All these writ petitions were dismissed on the ground those petitioners had not taken any plea in respect of filing objections u/s 5A of the Act. A short order was passed to this effect reads as under:

Admittedly, in the present case, no objections have been filed by the petitioner u/s 5-A of the Act.

Consequently, the writ petition and application for interim relief are dismissed and interim order dated 28.05.1986 stands vacated.

6. After the petitioner come to know about the dismissal of his writ petition, he filed a review petition inter alia on the ground that the order in the writ petition was passed on an incorrect factual premise and that the petitioner had in fact filed objections u/s 5A of the Act. His prayer was that he should be meted out the same treatment as was given to the petitioners in Balak Ram Gupta's case. This review petition was dismissed on merits vide speaking order dated 13th January, 2006. The Court noted the contention of the petitioner that though objections u/s 5A of the Land Acquisition Act were taken, this fact was not mentioned by sheer inadvertence. However, rejecting this contention and dismissing the review petition, the Division Bench observed as under:

5. We have considered the submissions made during the course of hearing and also averments contained in the writ petition. The facts here are that the petitioner's land was notified u/s 4 on 25.11.1985. The petitioner urged ten grounds in support of his challenge to the acquisition; they all pertain to the acquisition being illegal on account of delay. It was alleged that the declaration was made beyond the period contemplated u/s 6(1) of the Act. The petitioner had never urged that he had preferred objections u/s 5-A of the Act.

6. The submission made at this stage that the petitioner had in fact preferred objection and its omission was on account of inadvertence and that this is a sufficient ground to review the order dismissing the petition is, in our opinion, not well founded. The writ proceedings were pending before this Court for well over 18 years. The petitioner neither alleged nor even placed the documents on record to suggest that his objections u/s 5-A were filed. The Court, therefore, proceeded on the basis of averments, in the absence of appearance on behalf of the petitioner when the matter was heard finally.

7. The petitioner assailed the aforesaid orders passed in writ petition as well as in review petition before the Supreme Court. This writ petition was filed along with application for condonation of delay and both SLP as well as condonation of delay applications were dismissed in the following manner:

We see no reasons to interference, on account of delay as also on merit.

8. The review of the aforesaid order was also sought by the petitioner which met with no success as vide order dated 27.07.2006 review petition was dismissed observing as under:

We have carefully gone through the review petition and the annexures thereto. We find no merit therein. Hence, the review petition is dismissed.

9. As mentioned above, the petitioner has filed instant petition again challenging the same notifications as well as the award which has been rendered by the LAC in the meantime. The petitioner contends that first round of litigation and failed attempt of the petitioner cannot be construed as *res judicata*. His submission is that there is no bar to filing the present petition. Before we state these submissions in detail, the legal developments which have occurred in similar cases in the meantime, and of which the petitioner heavily relies upon will have to be stated.

10. We have already mentioned that various writ petitioners were dismissed wherein plea regarding filing of objections u/s 5A of the Act was not taken and/or the objections were not preferred which included the case of the petitioner. However, the petitioner contends that several other similar cases came before this Court wherein amendment/addition of facts regarding filing of Section 5A objections was either allowed at the stage of final arguments or after reserving order or even at the stage of review after the writ petition was similarly dismissed on wrong factual grounds. Some such illustrative cases in respect of revenue estate of village Satbari itself are mentioned by the petitioner, details of which are as under:

(a) Bhupinder Kaur Kler v. Union of India W.P. (C) No. 1055/1986: Original writ dismissed vide order dated 14.12.2004 on ground of non-filing of Section 5A objections, but review petition seeking incorporation of fact of filing Section 5A objection allowed vide order dated 12.05.2006. The case was made subject to decision in Chatro Devi's case.

(b) R.D. Bhanot v. Union of India W.P. (C) No. 1151/1986: Original writ dismissed vide order 19.05.2005 on ground of non-filing of Section 5A objections, but application for recall/review allowed vide order dated 14.03.2008 thereby permitting petitioner to urge facts related to filing of Section 5A objections, and contend that he is covered by Chatro Devi's case. Copy of order is annexed to this note.

(c) Geeta Devi v. Union of India W.P. (C) No. 1115/1987: Application for amendment of the Writ petition to include the ground of filing of Section 5A objections was moved in 2004 after case was reserved for judgment. The application was allowed vide a detailed order dated 27.04.2005 by the same Bench that subsequently dismissed the petitioner's identical review petition. This writ petition has now been finally allowed and acquisition quashed vide order dated 11.05.2007. Copy of Order dated 11.05.2007 is annexed to this note.

(d) *Sarita Sarna v. Union of India* W.P. (C) No. 1152/1986: After case was reserved for final orders, an application for amendment to incorporate fact of filing of Section 5A objections was taken up on 06.04.2005, and matter thereafter made subject to final decision in *Chatro Devi's* case vide order dated 18.05.2005. The writ has now been allowed and acquisition quashed vide order dated 11.05.2007. Copy of order dated 11.05.2007 is annexed to this note.

11. It is also pointed out by the petitioner that the issue of filing of Section 5A objections arising out of the same notifications came up before another Division Bench comprising of Mr. Swatantra Kumar, J. and Mr. Madan B. Lokur, J. The two Judges held contrary view and, therefore, the matter was referred to the third Judge Mr. T.S. Thakur, J. (as he then was). The third Judge rendered his decision dated 20th December, 2006, agreeing with Mr. Madan B. Lokur, J. and quashing the notification. This judgment is reported *Smt. Chatro Devi and Others Vs. Union of India (UOI) and Others*, . It was also held that *Balak Ram Gupta* had never been overruled by the Supreme Court in any subsequent judgment and therefore, its finding that acquisition is to be quashed on the ground on invalid procedure followed in considering the objections Section 5A would ensue to the benefit of all land owners who had filed such objections u/s 5A of the Act. In Para 38 of the judgment given by Mr. T.S. Thakur, J., reliance is placed by the petitioner and therefore, we reproduce the same:

38. There was some debate before me as it was before the Division Bench whether the decision in *Balak Ram Gupta's* case (*supra*) has been overruled by the Supreme Court in the subsequent decisions rendered by Their Lordships. I have carefully gone through the decisions to which reference was made by Mr. Poddar in an attempt to show that his decision in *Balak Ram Gupta's* case no longer holds good but am unable to find any observation in any of those decisions, finding fault with or overruling the view taken by this Court that a personal hearing u/s 5A of the Act must be done by the very same officer who makes the report. There is in any case nothing to suggest in any of the subsequent decisions rendered by the Apex Court in which *Balak Ram Gupta's*-III case has been discussed to show that the observations made by this Court in the paragraph extracted above were found to be legally unsustainable. Reference may, at this stage, be made to another decision rendered by a Division Bench of this Court in *Hari Ram Kakkar v. Union of India and Ors.* (*supra*). This court had, in that case noted the decisions rendered in *Munnialal's* case, *Balak Ram Gupta's* I case, *Balak Ram Gupta's* II case and *Balak Ram Gupta's* III case in the light of subsequent pronouncements of Their Lordships of the Supreme Court in *Delhi Administration v. Gurdip Singh Uban* (*supra*), and *Abhey Ram v. Union of India* (*supra*), and held, on the basis of the record produced before it that there was a complete negation of the right conferred on the land owners u/s 5A of the Act. In relation to village *Satbari* the Court found that the Collector who had heard the land owners was not the one, who had eventually made the report to the Government. Since the successor in office of the outgoing Collector had not himself heard the objections, the requirement of Section 5A was, observed the

Court, violated. What is significant is that the decisions in Hari Ram Kakkar's case was rendered after taking note of the decision referred by the Supreme Court in Gurdip Singh Uban's case and in the case of Abhey Ram (supra). None of those decisions were taken as having overruled Balak Ram Gupta's case insofar as the said decision recognized that the Collector who hears the land owners alone can submit the report u/s 5A of the Act. The Court had, at any rate, taken an independent view on the same lines and quashed the proceedings on account of non-compliance with the provisions of Section 5A. A Bench of coordinate jurisdiction would have had no option but to fall in line with that reasoning unless it found something erroneous in the same in which event a reference to a Full Bench alone would provide a solution [See State of Tripura Vs. Tripura Bar Association and Others, Govt. of A.P. and Anr. v. B. Satyanarayana Rao (Dead) by LRs. (4) SCC 262; Govt. of Andhra Pradesh and Ors. v. A.P. Jaiswal and Ors. 2001 (1) SCC 748; State of Maharashtra and Ors. v. Abdul Javed Abdul Majid and Ors. jt 2002 (Supp.) 1 sc 151].

12. The petitioner, therefore, contends that all those who had filed objections u/s 5A of the Act are to be given benefit of Balak Ram Gupta case, which remains a good law covering the field even today. On this, following submissions are predicated:

A) Since there was factual error in the orders dated 25.11.2004 passed in the Writ Petition No. 1228 of 1986 stating that objections u/s 5A were not taken by the petitioner, the said order is illegal and per incurium. Therefore, the dismissal of the earlier writ petition and subsequent orders passed in those proceedings in review or appeal to the Supreme Court will have no adverse impact in the case of petitioner.

B) For this purpose, it is the submissions of the petitioner that principle of res judicata do not apply to the facts of this case.

C) According to the petitioner, if his case is examined on its merits, he is identically situated as Balak Ram Gupta, Chatro Devi and several other cases. Therefore, he is entitled to the same treatment on the principles of Judicial comity & discipline.

13. Detailed submissions were made on the aforesaid aspects by Mr. P.N. Lekhi learned senior counsel appearing for the petitioner. During the course of argument, the learned Counsel conceded that the central issue in the present case was that res judicata and outcome thereof would determine the result of this petition. He paraphrased this issue as follows:

Is the rule of res judicata an absolute bar to reopening even an illegal decision, or are there judicially recognized exceptions to this rule which would enable a constitutional Court to do complete justice when faced with an unsustainable previous decision.

Therefore, the entire focus of his submission was that res judicata would not

apply in this case inasmuch as previous order was rendered in ignorance of binding law and was, therefore, per incuriam; the Court was under a duty to correct its record and to do complete justice guided by the principle "Actus Curiae Neminem Gravabit", i.e. "An act of the Court shall prejudice no man".

He also submitted that if the Court is misled into making a factually and legally incorrect order due to withholding of important facts going to the root of the lis, then also the resultant judgment is vitiated by fraud and will be treated by subsequent Courts as a nullity, thereby negating any arguments based on res judicata.

In support of the aforesaid submissions, Mr. Lekhi referred to plethora of case law which can be noted at this stage:

Reference was made to the following observation of Mathura Prasad Bajoo Jaiswal and Others Vs. Dossibai N.B. Jeejeebhoy,

It is true that in determining the application of the rule of res judicata the Court is not concerned with the correctness or otherwise of the earlier judgment. The matter in issue, if it is one purely of fact, decided in the earlier proceeding by a competent court must in a subsequent litigation between the same parties be regarded as finally decided and cannot be reopened. A mixed question of law and fact determined in the earlier, proceeding between the same parties. But, where the decision is on a question of law, i.e., the interpretation of a statute, it will be res judicata in a subsequent proceeding between the same parties where the cause of action is the same, for the expression "the matter in issue" in Section 11, Code of Civil Procedure, means the right litigated between the parties, i.e., the facts on which the right is claimed or denied and the law applicable to the determination of that issue. Where, however, the question is one purely of law and it relates to the jurisdiction of the Court or a decision of the Court sanctioning something which is illegal, by resort to the rule of res judicata, for a rule of procedure cannot supersede the law of the land.

The learned Counsel argued that the principle that a decision of a Court cannot sanction an illegality which extinguishes the rights of a private citizen on account of application of principle of "Actus Curiae Neminem Gravabit", was firmly established by a 7 Judge Bench decision of the Hon'ble Supreme Court in A.R. Antulay Vs. R.S. Nayak and Another, As the judgment is the locus classicus on the point in issue in the present case, the relevant portions have been extracted in extensor to bring out their full meaning and effect: Per Mukharji, Oza & Natarajan, JJ.:

41. ... Judged by that view the singling out of the appellant in this case for a speedier trial by the High Court for an offence of which the High Court had no jurisdiction to try under the Act of 1952 was, in our opinion, unwarranted, unprecedented and the directions given by this Court for the said purpose, were not warranted. If that is the position, when that fact is brought to our notice we must remedy the situation. In rectifying the error, no procedural inhabitations

should debar this Court because no person should suffer by reason of any mistake of the Court. The Court, as is manifest, gave its directions on February 16, 1984. Here no rule of res judicata would apply to prevent this Court from entertaining the grievance and giving appropriate directions. In this connection, reference may be made to the decision of the Gujrat High Court in *Soni Vrajlal Jethalal v. Soni Jadavji Govindji* AIR 1972 Guj. 148 where Mr. D.A. Desai, J., speaking for the Gujrat High Court observed that no act of the Court or irregularity can come in the way of justice being done and one of the highest and the first duty of all Courts is to take care that the act of the Court does no injury to the suitors.

42. It appears that when this Court gave the aforesaid directions on February 16, 1984, for the disposal of the case against the appellant by the High Court, the directions were given oblivious of the relevant provisions or law and the decision in *Anwar Ali Sarkar* case. See *Halsburys Laws of England*, 4th Edn., Vol. 26, page 297, para 578 and page 300, the relevant notes 8, 11 and 15; *Dias on Jurisprudence*, 5th Edn, pages 128 and 130; *Young v. Bristol Aeroplane Co. Ltd.* (1944) 2 AII ER 293, 300. Also see the observations of Lord Goddard in *Moore v. Hewitt* (1947) 2 AII ER 270 and *Penny v. Nicholas* (1950) 2 AII ER 89, 92-A. Per incurium are those decisions given in ignorance or forgetfulness of some inconsistent statutory provision or of some authority binding on the Court concerned, so that in such cases some part of the decision or some step in the reasoning on which it is based, is found, on that account to be demonstrably wrong. See *Morelle v. Wakeling* (1955) 1 AII ER 708, 718-F. Also see *State of Orissa and Others Vs. Titaghur Paper Mills Company Limited and Another*, We are of the opinion that in view of the clear provisions of Section 7(2) of the Criminal Law Amendment Act, 1952 and Articles 14 and 21 of the Constitution, these directions were legally wrong.

47. In our opinion, we are not debarred from re-opening this question and giving proper directions and correcting the error in the present appeal, when the said directions on February 16, 1984, were violative of the limits of jurisdiction and the directions have resulted in deprivation of the fundamental rights of the appellant, guaranteed by Articles 14 and 21 of the Constitution. The appellant has been treated differently from other offenders, accused of a similar offence in view of the provisions of the Act of 1952 and the High Court was not a Court competent to try the offence..... It is a settled rule that if a decision has been given per incurium the Court can ignore it....

48. According to Shri Jethmalani, the doctrine of per incurium has no application in the same proceedings. We are unable to accept this contention. We are of the opinion that this Court is not powerless to correct its error which has the effect of depriving a citizen of his fundamental rights and more so, the right to life and liberty. It can do so in exercise of its inherent jurisdiction in any proceeding pending before it without insisting on the formalities of a review application. Powers of review can be exercised in a petition filed under Article 136 or Article

32 or under any other provision of the Constitution if the Court is satisfied that its directions have resulted in the deprivation of the fundamental rights of a citizen or any legal right of the petitioner. See the observations in Prem Chand Garg Vs. Excise Commissioner, U.P., Allahabad,

50. ... Furthermore, it violates Article 14 of the Constitution as being made applicable to a very special case among the special cases, without any guideline as to which cases required speedier justice. If that was so as in Prem Chand Garg case, that was a mistake of so great a magnitude that it deprives a man by being treated differently of his fundamental right for defending himself in a criminal trial in accordance with law. If that was so then when the attention of the Court is drawn the Court has always the power and the obligation to correct it *ex debito justitiae* and treat the second application by its inherent power as a power of review to correct the original mistake. No suitor should suffer for the wrong of the Court. This Court in Prem Chand Garg case struck down not only the administrative order enjoined by Rule 12 for deposit of security in a petition under Article 32 of the Constitution but also struck down the judicial order passed by the Court for non-deposit of such security in the subsequent stage of the same proceeding when attention of the Court to the infirmity of the rule was drawn.

57. ...See also the observations of Isaacs v. Robertson (1984) 3 AII ER 140 where it was reiterated by Privy Council that if an order is regular it can be set aside by an appellate Court; if the order is irregular it can be set aside by the Court that made it on the application being made to that Court either under the rules of that court dealing expressly with setting aside orders for irregularity or *ex debito justitiae* if the circumstances warranted, namely, violation of the rules of natural justice or fundamental rights.

62. ...It is also well settled that an elementary rule of justice is that no party should suffer by mistake of the Court. See Sastri Yagnapurushadji and Others Vs. Muldas Bhudardas Vaishya and Another, , Jang Singh Vs. Brijlal and Others, , Bhajahari Mondal Vs. The State of West Bengal, and Asgarali Nazarali Singaporawalla Vs. The State of Bombay,

74. If a discrimination is brought about by judicial perception and not by executive whim, if it is unauthorized by law, it will be in derogation of the right of the appellant as the special procedure in Anwar Ali Sarkar case curtailed the rights and privileges of the accused. Similarly, in this case by judicial direction the rights and privileges of the accused have been curtailed without any justification in law.

75. Our attention was drawn to Article 145(e) and it was submitted that review can be made only where power is expressly conferred and the review is subject to the rules made under Article 145(e) by the Supreme Court. The principle of finality on which the article proceeds applies to both judgments and orders made by the Supreme Court. But directions given *per incuriam* and in violation of

certain constitutional limitations and in derogation of the principles of natural justice can always be remedied by the Court *ex debito justitiae*. Shri Jethmalani's submission was that *ex debito justitiae*, these directions could not be recalled. We are unable to agree with this submission.

81. ...By reason of giving the directions on February 16, 1984 this Court had also unintentionally caused the appellant the denial of rights under Article 14 of the Constitution by denying him the equal protection of law by being singled out for a special procedure not provided for by law. When these factors are brought to the notice of this Court, even if there are any technicalities this Court should not feel shackled and decline to rectify that injustice or otherwise the injustice noticed will remain forever a blot on justice. It has been said long time ago that *actus curiae Neminem gravabit* and act of the Court shall prejudice no man. This maxim is founded upon justice and good sense and affords a safe and certain guide for the administration of the law.

82. Lord Cairns in *Rodger v. Comptor Descompte De Paris* 17 ER 120 : (1869-71) LR 3 PC 465, 475 observed as under:

Now, Their Lordships are of opinion, that one of the first and highest duties of all Courts is to take care that the act of the Court does no injury to any of the suitors, and when the expression the act of the Court is used, it does not mean merely that act of the primary Court, or of any intermediate court of appeal, but the act of the Court as a whole, from the lowest Court which entertains jurisdiction over the matter up to the highest Court, which finally disposes of the case. It is the duty of the aggregate of those Tribunals, if I may use the expression, to take care that no act of the Court in the course of the whole of the proceedings does an injury to the suitors in the Court.

83. This passage was quoted in the Gujarat High Court by Mr. D.A. Desai, J., speaking for the Gujarat High Court in *Soni Vrajilal v. Soni Jadavji* AIR 1972 Guj. 148, as mentioned before. It appears that in giving directions on February 16, 1984, this Court acted *per incuriam* inasmuch as it did not bear in mind consciously the consequences and the provisions of Sections 6 and 7 of the 1952 Act and the binding nature of the larger Bench decision in *Anwar Ali Sarkar* case, which was not adverted to by this Court. The basic fundamentals of the administration of justice are simple. No man should suffer because of the mistake of the Court. No man should suffer a wrong by technical procedure of irregularities. Rules or procedures are the handmaids of justice and not the mistress of the justice. *Ex debito justitiae*, we must do justice to him. If a man has been wronged so long as it lies within the human machinery of administration of justice that wrong must be remedied. This is a peculiar fact of this case which requires emphasis.

Per Ranganath Mishra, J. (Concurring):

102. ...Once judicial satisfaction is reached that the direction was not open to be made and it is accepted as a mistake of the Court, it is not only appropriate but

also the duty of the Court to rectify the mistake by exercising inherent powers. Judicial opinion heavily leans in favour of this view that a mistake of the Court can be corrected by the Court itself without any fetters. This is on the principle as indicated in (Alexander) Rodger case 17 ER 120 : (1869-71) LR 3 PC 465, 475. I am of the view that in the present situation, the Courts inherent powers can be exercised to remedy the mistake. Mr. Mahajan., J., speaking for a Four Judge Bench in V Keshardeo Chamria Vs. Radha Kissen Chamria and Others, at Page 153 stated:

The Judge had jurisdiction to correct his own error without entering into a discussion of the grounds taken by the decree-holder or the objections raised by the judgment- debtors.

103. The Privy Council in Debi Bakhsh Singh v. Habib Shah, pointed out that an abuse of the process of the Court may be committed by the Court or by a party. Where a Court employed a procedure in doing something, which it never intended to do and there is an abuse of the process of the Court it can be corrected. Lord Shaw spoke for the Law Lords thus:

Quite apart from Section 151, any Court might have rightly considered itself to possess an inherent power to rectify the mistake, which had been inadvertently made.

It was pointed out by the Privy Council in the Bolivar that:

Where substantial injustice would otherwise result, the Court has, in Their Lordships opinion, an inherent power to set aside its own judgments of condemnation so as to let in bona fide claims by parties....

Indian authorities are in abundance to support the view that injustice done should be corrected by applying the principle *actus curiae Neminem gravabit* an act of the Court should prejudice no one.

104. To err is human, is the oft-quoted saying. Courts including the Apex one are no exception. To own up the mistake when judicial satisfaction is reached does not militate against its status or authority. Perhaps, it would enhance both.

In support of the argument that the principle of "*Actus Curiae Neminem Gravabit*" has been approved and applied by a Full Bench of this Court in Smt. Ram Rakhi Vs. Union of India (UOI) and Others, he relied upon the following observations therein (at P.467):

In the instant case, the right of the respondent to issue such a notification itself is in question. It is not a case where the petitioners are questioning an order passed by a competent Court in collateral proceeding although in a given situation it is permissible. The petitioners are entitled to question the notification issued by the State on the ground that the same could not have been passed relying on and on the basis of the order of the Court, wherein they were not parties. There cannot be any doubt whatsoever that the petitioners are not

bound by the orders of the Court as they were not parties thereto. In this view of the matter, we are of the opinion that the order dated 24th October, 2000 passed in Criminal Writ No. 604/00 was not binding upon the petitioners, as having been passed without jurisdiction, the same is a jollity. It is now a well settled principle of law that the Court itself and particularly a Larger Bench can review its earlier order. Having regard to the principle of *Actus curiae Neminem Gravabit* (the act of the Court shall prejudice no one) when the statutory/constitutional right of the petitioner has been infringed by an order of the Court, the Court will not hesitate to withdraw or review such order. In *A.R. Antulay Vs. R.S. Nayak and Another*, a Bench of Seven Judges of the Supreme Court held that the principle of *Actus curiae Neminem Gravabit* is founded upon justice and good sense and affords a safe and certain guide for the administration of law.

He further submitted that on similar lines is the Supreme Court judgment in *Karnataka Rare Earth and Another Vs. The Senior Geologist, Department of Mines and Geology and Another*,

10. In *South Eastern Coalfields Ltd.*, this Court dealt with the effect on the rights of the parties who have acted bona fide, protected by interim orders of the Court and incurred rights and obligations while the interim orders stood vacated or reversed at the end. The Court referred to the doctrine of *Actus curiae Neminem Gravabit* and held that the doctrine was not confined in its application only to such acts of the Court, which were erroneous; the doctrine is applicable to all such acts as to which it can be held that the Court would not have so acted had it been correctly apprised of the facts and the law.

According to the learned Counsel, in the instant case, it may be recalled that on 25.10.2004, the counsel for LAC had undertaken to apprise the Court of the correct facts regarding filing of Section 5-A Objections, and had the learned Counsel honoured this undertaking, the original CWP 1228/1986 would doubtless have been allowed in the same manner as the numerous cases already cited in the factual narration above. The principle of *Actus curiae Neminem Gravabit* is thus squarely attracted to the present case where the Court "would not have so acted had it been correctly apprised of the facts and the law."

He also referred to *Jang Singh Vs. Brijlal and Others*, *Parkash Singh Badal and Another Vs. State of Punjab and Others*, *Gangabai and Others Vs. Ratan Kumar and Others*, and *State of Punjab and Another Vs. Devans Modern Breweries Ltd. and Another*, in support of the same principles. Pointing out that it was a duty of the counsel for LAC to apprise the Court as to whether the petitioner had filed the objections u/s 5A, or not in view of specific orders passed by the Division Bench when the earlier writ petition of the petitioner was taken up along with many other writ petitions on 25.10.2004, Mr. Lekhi went on to argue that non-giving of that information in the case of the petitioner, even in his absence, amounted to obtaining the order of dismissal by suppressing vital fact and it is to be viewed as fraud upon the Court. Such an order obtained by fraudulent means was not binding on any subsequent Court and could be challenged in other

proceedings, was his submission.

14. Placing heavy reliance on a Constitution Bench judgment of the Supreme Court in *Ghiao Mal v. State of Delhi* AIR 1959 SCC 65, his submission was that in a writ of certiorari, it was the bounden duty of the respondent to produce the record and had records been produced, truth would have revealed, namely, the petitioner had filed objections u/s 5A of the Act. Delving on the issue of fraud, the learned Counsel sought sustenance from the judgment of the Supreme Court in *A.V. Papayya Sastry and Others Vs. Government of A.P. and Others*, wherein principle was enunciated in the following terms:

21. Now, it is well-settled principle of law that if any judgment or order is obtained by fraud, it cannot be said to be a judgment or order in law. Before three centuries, Chief Justice Edward Coke proclaimed:

Fraud avoids all judicial acts, ecclesiastical or temporal.

22. It is thus settled proposition of law that a judgment, decree or order obtained by playing fraud on the Court, Tribunal or authority is a nullity and nonest in the eye of the law. Such a judgment, decree or order-by the first Court or by the final Court has to be treated as nullity by every Court, superior or inferior. It can be challenged in any Court, at any time, in appeal, revision, writ or even in collateral proceedings.

23. In the leading case of *Lazarus Estates Ltd. v. Beasley* 1956-1 AIIR 341, 345 C Lord Denning observed:

No judgment of a Court, no order of a Minister, can be allowed to stand if it has been obtained by fraud.

24. In *Duchess of Kingstone*, Smith's Leading Cases, 13th Edn., p. 644, explaining the nature of fraud, de Grey, C.J. stated that though a judgment would be *res judicata* and not impeachable from within, it might be impeachable from without. In other words, though it is not permissible to show that the court was "mistaken", it might be shown that it was "misled". There is an essential distinction between mistake and trickery. The clear implication of the distinction is that an action to set aside a judgment cannot be brought on the ground that it has been decided wrongly, namely, that on the merits, the decision was one which should not have been rendered, but it can be set aside, if the Court was imposed upon or tricked into giving the judgment.

25. It has been said: fraud and justice never dwell together (*fraud et jus nunquam cohabitant*); or fraud and deceit ought to benefit none (*fraud et dolus nemini patrocinari debent*).

26. Fraud may be defined as an act of deliberate deception with the design of securing some unfair or undeserved benefit by taking undue advantage of another. In fraud one gains at the loss of another. Even most solemn proceedings stand vitiated if they are actuated by fraud. Fraud is thus an extrinsic collateral

act which vitiates all judicial acts, whether in rem or in personam. The principle of "finality of litigation" cannot be stretched to the extent of an absurdity that it can be utilized as an engine of oppression by dishonest and fraudulent litigants.

He also referred to the judgment in the case of Hamza Haji Vs. State of Kerala and Another, wherein the Supreme Court had reversed the earlier decision, though it had attained the finality, when it was found that the earlier decision was obtained by fraudulent suppression of vital facts. He also submitted that the Apex Court had clearly held the view that the Court could or must rake up the whole matter for determining whether there had been fraud in the procurement of the decree. Following observations from the said judgment were specifically pressed into service by the learned Counsel:

22. According to Story's Equity Jurisprudence, 14th Edn., Vol. 1 para 263:

Fraud indeed, in the sense of a Court of Equity, properly includes all acts, omissions, and concealments which involve a breach of legal or equitable duty, trust, or confidence justly reposed, and are injurious to another, or by which an undue and unconscientious advantage is taken of another.

25. Thus, it appears to be clear that if the earlier order from the Forest Tribunal has been obtained by the appellant on perjured evidence, that by itself would not enable the Court in exercise of its power of certiorari or of review or under Article 215 of the Constitution of India, to set at naught the earlier order. But if the court finds that the appellant had founded his case before the Forest Tribunal on a false plea or on a claim which he knew to be false and suppressed documents or transactions which had relevance in deciding his claim, the same would amount to fraud.

It was not a case of the appellant merely putting forward a false claim or obtaining a judgment based on perjured evidence. This was a case where on fundamental fact of entitlement to relief, he had deliberately misled the Court by suppressing vital information and putting forward a false claim, false to his knowledge, and a claim which he knew had no basis either in fact or on law. It is therefore, clear that the order of the Forest Tribunal was procured by the appellant by playing a fraud and the said order is vitiated by fraud. The fact that the High Court on the earlier occasion declined to interfere either on the ground of delay in approaching it or on the ground that a second review was not maintainable, cannot deter a Court moved in that behalf from declaring the earlier order as vitiated by fraud.

15. He also submitted that once it is found that earlier order is based on wrong facts, the High Court was vested with plenary powers as a Court of record u/s 215 of the Constitution, to correct its record as laid down by the Supreme Court in M.M. Thomas Vs. State of Kerala and Another, . He summed up his argument by reiterating that:

(a) The present Writ Petition No. 829/2007 is not barred by res judicata.

(b) While finality of judgments is the general rule, there are several judicially recognized exceptions to this rule:

i. Principles of *Actus curiae Neminem Gravabit* & *per incuriam*, both of which mandate that if a decision sanctions an illegality, or is contrary to law or to some binding precedent, then the same cannot be allowed to operate to the detriment of a citizen's rights.

ii. Principle that a decision obtained by suppression of important facts or material is vitiated by fraud, and such a fraudulently obtained decision is a nullity in the eyes of law.

iii. Principle that under Article 215, the High Court, as a Court of Record, has not just the power but the duty to ensure that if it is faced with a judgment clearly erroneous on its face, then it must correct its record and not be hampered by procedural rules or technicalities.

(c) All of these exceptions apply in the instant case. The power of the Hon'ble High Court, sitting in writ jurisdiction, is as wide and expansive as the power of the Supreme Court under Article 142, as per the following observations of the Supreme Court in two cases:

B.C. Chaturvedi Vs. Union of India and others,

23. It deserves to be pointed out that the mere fact that there is no provision parallel to Article 142 relating to the High Courts, can be no ground to think that they have not to do complete justice, and if moulding of relief would do complete justice between the parties, the same cannot be ordered.

Madhya Pradesh Special Police Establishment Vs. State of Madhya Pradesh and Others, (Constitution Bench).

31. We have, on the premises aforementioned, no hesitation to hold that the decision of the Council of Ministers was *ex facie* irrational whereas the decision of the Governor was not. In a situation of this nature, the writ Court while exercising its jurisdiction under Article 226 of the Constitution as also this Court under Articles 136 and 142 of the Constitution can pass an appropriate order, which would do complete justice to the parties. The High Court unfortunately failed to consider this aspect of the matter.

16. Passion of Mr. Lekhi was matched stoutly by Mr. Sanjay Poddar and Mr. Gaurav Sarin, Advocates who appeared for Land & Building Department and DDA respectively. Mr. Poddar sought to strike at the root of the present writ petition and submitted that it should be thrown out at the threshold as not maintainable. According to him, it was because of the following two reasons:

i) Affidavit in support of the writ petition was filed by an unauthorized person. He pointed out that writ petitioner was Mr. Narendra Kumar whereas verification to this writ petition was signed by Ms. Priya Austin Goldin. Affidavit was also of the same person. Though in the verification as well in the supporting affidavit, she

had stated that she was the attorney holder of the petitioner, no such power of attorney was produced. Such a petition was incompetent, argued the learned Counsel.

ii) Second submission which flows from first was that in the absence of general power attorney produced by the petitioner in spite of specific objections taken in the counter affidavit, it could be reasonably inferred that the person who had sworn the affidavit was a subsequent purchaser. It was argued that a subsequent purchaser had no right to challenge the acquisition proceedings a well settled position in law. Moreover, it can also be reasonably presumed that title in the land in question had been transferred subsequent to the issuance of notification u/s 4(1) of the Act, which was clear from the fact that as per the petitioner, he had filed objections u/s 5A of the Act. Therefore, as on that date when the notification u/s 4 was issued, the land was in his ownership. Submission was that such a transfer after issuance of notification u/s 4 of the Act was contrary to the provisions of Section 4 of the Delhi Lands (Restriction on Transfer) Act, 1972. On this ground also transferee could not maintain the petition.

Mr. Poddar argued that the petitioner was caught in his own cobweb. In this behalf, he contended that the aforesaid attempt on the part of the transferee who filed the petition in the name of petitioner itself amounted to fraud and thus it is the petitioner who was playing fraud with the Court and not the respondent and therefore, such a petition should be dismissed as held in Union of India (UOI) and Others Vs. Parshadi and Others,). He submitted that the petitioner's attempt to seek review of order dated 25th November, 2004 on the same ground had failed. He also argued that these very grounds were taken by the petitioner even in the SLP and review petition seeking review of the dismissal of the SLP. Therefore, the orders passed in the earlier proceedings between the same parties challenging the same notifications would operate as res judicata. For this purpose, he relied upon a Division Bench's judgment in Baij Nath Aggarwal Dharamarth Trust Society Regd. and Another Vs. Lt. Governor of Delhi and Another, He also referred to the judgment of the Supreme Court in The Direct Recruit Class-II Engineering Officers' Association and others Vs. State of Maharashtra and others, . His further submission was that there was no fraud played by the respondents in the earlier proceedings and the entire case of fraud was based on incorrect factual premise. In this behalf, he submitted that the orders dated 25th October, 2004 were passed in certain writ petitions directing the respondents to give the details of Section 5A objections. Those orders were duly complied with by filing a chart in those batch matters with lead case of Chatro Devi. However, before in the case of Chatro Devi along with other writ petitions could be decided, the case of the petitioner was listed. As there was no plea u/s 5A objections taken by the petitioner, his writ petition was dismissed. It was also argued that primary responsibility was on the petitioner to take a specific plea in the writ petition regarding filing of Section 5A objections. This plea having not been taken in the writ petition, the Court went by that consideration in dismissing his writ petition vide orders dated 25.11.2004. This

order was thus based on the pleadings on record. Many other writ petitions where such a plea was not taken were also dismissed by the Division Bench.

He also argued that it was not even open to the petitioner to raise the plea of fraud as there was no averment or pleading in this behalf setting up the case of fraud. His entire case was based on Chatro Devi's case as the petitioner wanted benefit of that judgment.

Mr. Sarin added to the aforesaid submission by submitting that it is only when the Court is misled on factual aspect that plea of fraud. There was no such situation whereas in the review petition he had stated all such facts including filing of his objections u/s 5A of the Act and they were duly considered. Still the review petition and further challenges in the form of SLP ect. Failed.

17. We have given utmost considerations to all these submissions. The submissions of the petitioner seem to be attractive in the first blush, but their entire sheen is lost when we consider them taking stock of the previous rounds of litigation, in totality.

18. Let us discuss them step by step. It is not in dispute that in the earlier writ petition filed by the petitioner, no specific averment was taken regarding filing of objections u/s 5A of the Act. It is also a matter of record that though this writ petition was filed in the year 1986, and remained pending till 25.11.2004, no application was filed for amending the writ and the petitioner did not even seek incorporation of plea that the petitioner had filed objection u/s 5A of the Act. When the writ petition came up for hearing on 25.11.2004, nobody appeared on behalf of the petitioner. The Court passed the order dismissing the writ petition on the basis of averments contained therein as the Court found that no plea qua u/s 5A of the Act was taken.

19. It is the endeavour of the petitioner to argue that even in his absence, duty was cast upon by the counsel for the LAC to bring to the notice of the Court about filing the objections u/s 5A of the Act inasmuch as on a previous occasion i.e. 25.11.2004, orders were passed directing the counsel for the LAC to inform the Court whether or not the various petitioners had filed objections u/s 5A of the Act and this order passed in the batch of writ petition included the petition of the petitioner as well. However, we find that such a list was filed in the lead case, namely, Chatro Devi (supra). It so happened that the case of the petitioner came up for hearing on 25.11.2004 along with other petitions and in the batch of Chatro Devi cases in which list was filed after 25.11.2004. Moreover, in view of Gurdip Singh Uban and Abhey Ram cases, it was the duty of the petitioner to take up specific plea regarding filing of the objections u/s 5A of the Act by amendment of the writ petition or otherwise. As pointed out above, this was not done.

20. The petitioner filed the review petition seeking recall of the aforesaid order. Significantly, in the review petition preferred by him against orders dated 25.11.2004, specifically took up the plea of filing objections u/s 5A of the Act.

Precisely on that basis he pleaded for review of the order dated 25.11.2004. Thus, the submission which is sought to be advanced now in this writ petition was taken in the review petition preferred by the petitioner. It was his misfortune that the said review petition was also dismissed. SLP there against was filed again raising identical issues, which met the same fate. To his dismay, even review petition of the dismissal of the SLP was also rejected. These developments of dismissal of review petition against orders dated 25.11.2004 by this Court and thereafter affirmation of those orders of the Supreme Court have sealed the fate of the petitioner. The petitioner under these circumstances cannot cling to the orders dated 25.11.2004 and on that basis argued that those orders were passed on the basis of wrong facts and, therefore, per incurium. He made specific attempt to bring to the notice of the Court's those very facts which were the "correct" facts according to him and argued on that basis that order dated 25.11.2004 should not have been passed. After failing in his those attempts, would it be still permissible for him to reopen the issue on the same ground and question the validity of the orders dated 25.11.2004? Answer has to be in the negative.

21. We have to keep in mind that we are not examining as to whether order dated 25.11.2004 or for that matter subsequent orders in the review petition as well as by the Supreme Court, were "correct" in law or not. We are not sitting as Appellate Authority. Limited issue with which we are concerned is the applicability of principles of res judicata. This plea is predicated on "fraud" viz. the Court was not informed about correct factual aspects. It is too late in the day to contend that there was factual error in orders dated 25.11.2004 when the attempt of the petitioner to seek "correction" of the so-called error, failed in the review petition filed by him. Therefore, the plea of said order being illegal and per incurium would not be available to the petitioner.

22. For the same reason, it will not be permissible for the petitioner to argue that the order dated 25.11.2004 was passed in ignorance of binding law. In fact, as per the petitioner's own submission, the fall out of Abhey Ram and Gurdip Singh Uban cases was that benefit of Balak Ram Gupta case could be given only to those cases where the objections u/s 5A of the Act were preferred. It is a matter of record that the writ petitions, where no plea of filing the objections u/s 5A of the Act was raised, were dismissed by this Court and these orders were even upheld by the Apex Court as well. Further, it needs to be reminded, at the cost of repetition, that the petitioner did make an attempt to show that he had filed objections u/s 5A of the Act in his review petition and on this very ground sought review of the orders of dismissal of the writ petition. But he failed, through and through, till Apex Court and in all possible steps he could take.

23. The petitioner at least cannot take up the plea that orders of dismissal of review in High Court or in the petitions filed in Supreme Court were obtained by suppressing the vital facts. Conscious of this position, entire emphasis of the counsel for the petitioner is to question the validity of the orders dated

25.11.2004. It seems that the petitioner is stuck in the time zone and intends to ignore the subsequent developments. But we cannot gloss over those large proceedings which take away the entire sharpness of the argument and make it a blunt object incapable of causing any impact.

24. Once we put factual position in the correct perspective as above, most of the arguments of the petitioner automatically stand answered. Neither it is permissible for the petitioner to confine himself to orders dated 25.11.2004 (ignoring subsequent orders passed in review petition as well as in the SLP, etc.) nor the argument of per incurium which predicates on purported "factual error" would be available. Equally, the argument the order dated 25.11.2004 was rendered in ignorance of binding law and the Court was under a duty to correct its record is untenable in the light of the fact that this very attempt failed in the subsequent judicial steps taken by the petitioner. The argument of fraud also is of no avail. For same reasons, judgments cited by the learned Counsel for the petitioner, when considered in the aforesaid factual premise, would have no applicability to this case.

25. In this backdrop, it is not even necessary to go into the question as to whether orders passed by the Supreme Court dismissing the SLP and thereafter review petition were on merit and operate as res judicata or not.

26. What is relevant for us is that review petition filed by the petitioner before the Division Bench of this Court seeking review of orders dated 25.11.2004 failed and petitioner was also unsuccessful in challenging those orders before the Supreme Court. Once review petition is dismissed by this Court maintaining the orders dated 25.11.2004, the petitioner cannot be allowed to file the present petition, taking the plea that earlier orders do not operate as res judicata. More importantly, when the petitioner had highlighted these very facts in the said review petition which are sought to be advanced now. A Co-ordinate Bench of this Court has decided the same issue on same facts, legal plea in the review petition filed by the petitioner. Such a decision of the Co-ordinate Bench between the same parties in respect of same subject matter would be binding on another Bench and preclude the petitioner to file second petition on the same cause of action. In *Baij Nath Aggarwal Dharmarth Trust Society Regd. and Anr. (supra)*, this Court had highlighted this principle, in almost identical, in the following manner:

9. Appearing for the petitioner, Mr. Parekh strenuously argued that since the validity of the acquisition proceedings had not been examined by this Court in the earlier rounds of litigation, it was legally open to the petitioner to maintain the present writ petition and have the legality of the proceedings tested. He submitted that an action for acquisition of land in exercise of powers of eminent domain could not be said to have been given up without examining the legality of such action for otherwise it would amount to approving any legal usurpation of the property owned by an individual. He further contended that an act of a Court could never leave a person without a remedy and that a writ Court could prevent

miscarriage of justice by invoking its inherent powers. The challenge was not according to Mr. Parekh barred even by the principles of res judicata or waiver or any such analogous principle in the present case as the challenge to the validity of the acquisition proceedings has not been examined or determined on merits in the earlier round of litigation.

10. On behalf of the respondents, it was per contra argued by Mr. Poddar that the present writ petition was wholly misconceived inasmuch as a second petition on the very same subject matter was not legally maintainable. He submitted that the challenge to the acquisition proceedings having failed in the earlier round of litigation and the order of dismissal passed by this Court having been upheld by the Apex Court, there was no justification for the petitioner to re-agitate the saem question on a fresh ground. Relying upon the decisions of the Supreme Court in *Vikramjit Singh Vs. State of Madhya Pradesh*, and *Harjeet Singh @ Seeta Vs. State of Punjab and Another*, , he argued that this Court could neither sit in judgment nor find fault with the view taken by a Bench of coordinate jurisdiction and that judicial discipline required adherence to the doctrine of finality of decisions.

11. We have given our careful consideration to the submissions made at the Bar. The notification impugned in the present petition was admittedly challenged even in WP (C) No. 6384/2000. That challenge had eventually failed and the petition dismissed. The Court had taken the view that filing of a petition for de-notification of land u/s 48 of the Land Acquisition Act tantamounted to giving up the challenge to the validity of the notification although the petitioner could question the decision of the Government whereby it had declined to denotify the land. The petitioner, it is noteworthy had not found fault with that reasoning. It accepted the view that filing of a petition for de-notification tantamounted to accepting the validity of the acquisition proceedings. It had, therefore, challenged the refusal of the Government to denotify the land in WP (C) No. 13653-54/06. Unfortunately for it, the said petition also failed. The petitioner then went back to the Court that had dismissed the earlier writ petition in a bid to persuade it to review the order of dismissal and look into the validity of the acquisition proceedings. That petition was also dismissed thereby leaving no option for the petitioner to challenge the validity of the dismissal order in the Supreme Court. Even that attempt proved abortive for the petitioner. The dismissal of the Special Leave Petitions against all the three orders passed by this Court gave a quietus to the controversy. It shut out the challenge to the acquisition proceedings as also the refusal of the Government to denotify the land. Such being the position, there is no legal principle on which the petitioner can file a second petition to re-agitate the very same controversy. It is trite that the matters that have been finally settled cannot be reopened in a subsequent proceeding for there can be no finality to judicial adjudications if legal proceedings could be instituted consecutively one after the other on the same subject matter and cause of action. The legal position in this regard is so well settled that we need not refer to decisions to support the same. Reference to

State of U.P. and another Vs. Labh Chand, should in our view suffice where the Court observed the principles of finality of decisions and the doctrine of res judicata apart. Judicial discipline requires the Court to respect the decision delivered by a Court of coordinate jurisdiction. We need only add that this Court is not in the present proceedings sitting in appeal over the view taken by another Bench of coordinate jurisdiction. It would, therefore, be legally impermissible and indeed judicially improper to comment on the view taken by the Bench hearing WP (C) No. 6384/2000 that the filing of an application for de-notification of the land u/s 48 has the legal effect of giving up the challenge to the validity of the acquisition proceedings. The following passage from the decision of the Supreme Court in Vikrajit Singh's case (supra) on the jurisdiction of a Bench of a coordinate jurisdiction to make observations regarding decision delivered by another Bench, is instructive:

No Bench can comment on the functioning of a co-ordinate Bench of the same Court, much less sit in judgment as an appellate Court over its decision. That which could not be done directly could also not be done indirectly. Otherwise, a party aggrieved by an order passed by one Bench of the High Court would be tempted to attempt to get the matter reopened before another Bench, and there would not be any end to such attempts. Besides, it was not consistent with the judicial discipline which must be maintained by Courts both in the interest of administration of justice by assuring the binding nature of an order which becomes final, and the faith of the people in the judiciary.

Likewise in Direct Recruit case (supra), the Supreme Court highlighted the principles of res judicata in the following terms:

Writ petition No. 1327 of 1982 was argued by J.H. Bhatia, the petitioner, in person. He was directly recruited as Deputy Engineer Class II in July 1959 and has challenged the constitutional validity of the 1978 Rules. Mr. Singhvi, the learned Counsel for the respondents, took a preliminary objection to the maintainability of the writ application on the ground that his claim stands barred by principles of res judicata. Admittedly, he was represented in W.P. No. 672 of 1981, filed before the Bombay High Court which was dismissed on September 7, 1981, upholding 1978 Rules. An application under Article 136 of the Constitution being numbered as SLP No. 8064 of 1981 was filed from this judgment in representative capacity and was dismissed by this Court on December 29, 1981. These facts were not denied by the petitioner before, us, and it was therefore, contended on behalf of the respondents that so far the validity of the 1978 Rules is concerned, it must be held to be binding on the petitioner in respect of identical relief now pressed by him in the present writ case. The objection appears to be well founded. It is well established that the principles of res judicata are applicable to writ petitions. The relief prayed for on behalf of the petitioner in the present case is the same as he could have, in the event of his success, obtained in the earlier writ petition before the High Court. The petitioner in reply contended that since the SLP before this Court was dismissed in limine

without giving any reason, the order cannot be relied upon for a plea of res judicata. The answer is that it is not the order of this Court dismissing the SLP which is being relied upon; the plea of res judicata has been pressed on the basis of the High Court's judgment which become final after the dismissal of the special leave petition. In similar situation a Constitution Bench of this Court in *Daryao and Others Vs. The State of U.P. and Others*, held that where the High Court dismisses a writ petition under Article 226 of the Constitution after hearing the matter on the merits, a subsequent petition in the Supreme Court under Article 32 on the same facts and for the same reliefs filed by the same parties will be barred by the general principle of res judicata. The binding character of judgments of courts of competent jurisdiction is in essence a part of the rule of law on which the administration of justice, so much emphasized by the Constitution, is founded and a judgment of the High Court under Article 226 passed after a hearing on the merits must bind the parties till set aside in appeal as provided by the Constitution and cannot be permitted to be circumvented by a petition under Article 32. An attempted change in the form of the petition or the grounds cannot be allowed to defeat the plea as was observed as SCR p. 595 of the reported judgment, thus: (SCR p. 595):

We are satisfied that a change in the form of attack against the impugned statute would make no difference to the true legal position that the writ petition in the High Court and the present writ petition are directed against the same statute and the grounds raised by the petitioner in that behalf are substantially the same.

The decision in *Forward Construction Co. and Others Vs. Prabhat Mandal (Regd.), Andheri and Others*, further clarified the position by holding that an adjudication is conclusive and final not only as to the actual matter determined but as to every other matter which the parties might and ought to have litigated and have had decided as incidental to or essentially connected with subject matter of the litigation and every matter coming into the legitimate purview of the original action both in respect of the matters of claim and defence. Thus, the principle of constructive res judicata underlying Explanation IV of Section 11 of the CPC was applied to writ case. We, accordingly hold that the writ case is fit to be dismissed on the ground of res judicata.

Even if we presume on the basis that the view taken by the Division Bench of this Court, dismissing the first writ petition of the petitioner and thereafter review petition of the petitioner was wrong, that would not be a ground to challenge the same acquisition by filing fresh writ petition. It is trite law that even an erroneous decision operates as res judicata between parties to it. The correctness of decision has no bearing upon question whether it operates as res judicata. This principle was laid down by the Apex Court way back in the year 1953 in the case of *Mohanlal Goenka v. Benoy Kishan Mukherjee* AIR 1953 SC 62. The Court made following observations in that case: "There is ample authority for the proposition that even an erroneous decision on a question of law operates as "res judicata" between the parties to it. The correctness or

otherwise of a judicial decision has no bearing upon the question whether or not it operates as "res judicata". A decision in the previous execution case between the parties that the matter was not within the competence of the executing court even though erroneous is binding on the parties; see *Abhoy Kanta Gohain Vs. Gopinath Deb Goswami and Others*,

Likewise in *Satyadhyan Ghoshal v. Deoranjana Debi* AIR 14960 SC 941, the Apex Court held that the original Court as well as any higher court must in any further litigation proceed on the basis that the previous decision was correct. Further, in *Swamy Atmananda and Others Vs. Sri Ramakrishna Tapovanam and Others*, 1, it was held that res judicata applies to a Court of concurrent jurisdiction, creates a bar between parties, in another matter in another Court, where plea sought to be raised. More importantly, another principle touching upon the doctrine of res judicata, which is recorded to be stated is that Res judicata debars a Court from exercising its jurisdiction to determine the lis if it has attained finality between the parties. If such an issue is decided against him, he would be stopped from raising the same in the latter proceeding. In this behalf, following observations from the judgment of Supreme Court in the case of *State of Karnataka and Another Vs. All India Manufacturers Organisation and Others*, are a worth quote:

32. Res judicata is a doctrine based on the larger public interest and is founded on two grounds: one being the maxim *nemo debet bis vexari pro una et eadem causa* (no one ought to be twice vexed for one and the same cause, P. Ramanath Aiyer : *Advanced Law Lexicon*, (Vol. 3, 3rd Edn., 2005) at p. 170) and second, public policy that there ought to be an end to the same litigation, Mulla: *Code of Civil Procedure*, (Vol. 1, 15th Edn., 1995) at p.94. It is well settled that Section 11 of the Civil Procedure Code, 1908 (hereinafter "CPC") is not the foundation of the principle of res judicata, but merely statutory recognition thereof and hence, the section is not to be considered exhaustive of the general principle of law, See AIR 1930 22 (Privy Council) The main purpose of the doctrine is that once a matter has been determined in a former proceeding, it should not be open to parties to reagitate the matter again and again. Section 11 CPC recognizes this principle and forbids a court from trying any suit or issue, which is res judicata, recognizing both "cause of action estoppels" and "issue estoppels". There are two issues that we need to consider, one, whether the doctrine of res judicata, as a matter of principle, can be applied to public interest litigations and second, whether the issues and findings in *Somashekar Reddy*, (Ibid., at KLD p. 517, para 29, per Ashok Bhan, J.) constitute res judicata for the present litigation.

xxx. ... 48. The principle and philosophy behind Explanation IV, namely, to prevent "the abuse of the process of the court" (as stated in *Greenhalgh*, (1947) 2 AII ER 255 (CA) through reagitation of settled issues, provides yet another ground to reject the appellants' contentions. For instance, the High Court specifically records (vide para 29) of the impugned judgment that:

It is common case of the parties that the validity of the FWA had earlier been challenged in *Somashekar Reddy Case* on all conceivable grounds including the

one that land in excess of what is required for the Project had been acquired by the State Government.

See also Supreme Court Supreme Court Employees" Welfare Association and Others Vs. Union of India (UOI) and Another,

27. That apart, we also find some justification in the arguments of the learned Counsel for the respondent that present petition though filed in the name of the petitioner Shri Narender Kuma, has not been properly filed. It is filed through Ms. Priya Austin Goldin and in respect of specific objection taken by the respondents in the counter affidavit, no power of attorney is placed on record which could show that Mr. Narender Kumar has authorized Ms. Priya Austin Goldin to file such a petition. In the absence of such authority, it is also possible that the property has changed hands after the issuance of notification. However, since we are dismissing the writ petition as barred by the principles of res judicata, it is not necessary to delve upon these preliminary objections any further.

28. Judicial discipline, thus, mandates us not to go into the correctness otherwise of orders dated 25.11.2004 passed in the earlier writ petition filed by the petitioner and orders dated 13.01.2006 dismissing the review petition of the petitioner. It is thus held that the writ petition is barred by principles of res judicata. Accordingly, we dismiss this writ petition with costs quantified at Rs. 15,000/-.