

**(2001) 08 DEL CK 0017**

**In the Delhi High Court**

**Case No : Civil Writ Petition No. 923 of 1997**

Parshadi and Others

APPELLANT

Vs

Union of India and Others

RESPONDENT

**Date of Decision : 01-08-2001**

**Acts Referred:**

Constitution of India, 1950 — Article 133, 14, 15, 162, 166  
Contempt of Courts Act, 1971 — Section 2  
Criminal Procedure Code, 1973 (CrPC) — Section 165, 51, 96, 98  
Delhi Development Act, 1957 — Section 16, 22, 22(1)  
Delhi Land Revenue Rules, 1962 — Rule 110, 110(4)  
General Clauses Act, 1897 — Section 21  
Land Acquisition Act, 1894 — Section 10, 11, 3, 4, 48  
Transfer of Property Act, 1882 — Section 52

**Citation : (2001) 93 DLT 436**

**Hon'ble Judges : V.K. Jain, J**

**Bench : Single Bench**

**Advocate :** Mr. P.N. Lekhi, Mr. Subhash Mittal and Mr. R.C. Vats, for the Appellant; Mr. Harish Salve, Solicitor General, Mr. Mukul Rohtagi, A.S.G., Ms. Gita Mittal, Ms. Shobhna Takiar, Mr. Sanjay Poddar, Mr. Rakesh Kumar, Mr. Neeraj Kaul and Ms. Tamali Wad, for the Respondent

**Final Decision : Allowed**

## Judgement

Vijender Jain, J.—Rule.

2. Initially the petitioners have filed this writ petition seeking a direction to the respondents to decide the representations of the petitioners dated 4.11.1996, 6.12.1996 and 24.1.1997 for releasing from acquisition the lands situated in Village Kotla Maghigiran, Mehrauli either in terms of minutes recorded on 7.7.1995 as communicated on 28.7.1995 or issue fresh order and gazette it u/s 48(1) of the Land Acquisition Act. Further relief was sought directing the respondent to implement the National Hosing Policy, 1994 as adopted by both the Houses of Parliament.

3. During the pendency of the writ petition, on the representation of the petitioners the then Union Minister for Urban Development vide its order dated 13.4.1999 denotified the land of the petitioners as well as prepared a draft denotification notice. That decision was reversed by the succeeding Minister on 6.7.1999. The decision of reversal is under challenge before this Court.

4. It was the case of the petitioners that notification u/s 4 & 6 of the Land Acquisition Act was issued on 4.4.1964 and 7.12.1966. Thereafter nothing happened and only in 1981 and 1982 petitioners received notice under Sections 9 and 10 of the Land Acquisition Act. Thereafter the petitioners challenged the entire acquisition proceedings and notification of 1982 by petitioner no.3 to 5. Consequently, the High court dismissed the writ petition and Supreme Court also dismissed the writ petition and Therefore order of stay of dispossession was vacated finally on 1.11.1996.

5. It was contended by Mr.Lekhi, learned senior counsel for the petitioners that all along the possession of the land continued with the petitioners. Representation was made by the attorney of the petitioners on 21.5.1994 before respondent no.1 for withdrawal from acquisition and release of land u/s 48 of the Land Acquisition Act. A report was called from respondent no.5/DDA vide DO No.F-14(8) /95/CRC/DDA/220 dated 12.5.1995, wherein it was stated that out of 615 Bighas 03 bids was of land in Village Kotla Mahigiran, a part of notified land was willingly surrendered and acquired for construction of link Road No.13 (from Mathura Road to NOIDA). Thereafter the High Court vacated the interim order staying dispossession of that area of land which was 123 Bighas 01 Bighas. It was utilised for construction of Road No.13. In that letter, DDA further stated that possession of remaining land measuring 492 Bighas 02 bids was was not taken due to the order of the High Court of Delhi. Respondent no.1 issued a notification to denotify the lands from all acquisition proceedings and agreed to allow the land owners to utilise the same as per Master Plan of Delhi 2001. Later on 4.8.1995, the said communication was withdrawn by respondent no.1 on 4.8.1995.

6. Reliance was placed by counsel for the petitioner on Roshanara Begum Vs. Union of India, . Relevant paras are as under :

"We have carefully perused the aforesaid noting which has been approved by the Minister. We find that only a view has been expressed by the Minister that the old pending case in question can be closed and Minister had directed that the matter be taken up with the NCT Delhi for denitrifying and for release of the land immediately. It would mean that the Minister had not herself passed the order for releasing the land from acquisition. If the Minister wanted to pass such order the language of the aforesaid noting would have been different and it appears that Minister was perhaps taking the prima facie view that land should be released from acquisition and left the decision to be made in this respect with the Govt. of NCT Delhi.

.....

It appears that there has taken place some confusion in construing the order made in the file by the Minister and with the result the communication was sent to the petitioner terming it to be an order u/s 48 of the Act for withdrawing the land in question from acquisition. Such order being communicated on misreading of the order made in the file, in our view, would not mean that any legal order has been made by the Central Government u/s 48 of the Act for withdrawing from acquisition in the present case.

.....

We have come to the conclusion that if any withdrawal from land acquisition proceedings is to take place by taking resort u/s 48 of the Act then such an order must be published in the Official Gazette in order to be valid in the same manner as notifications u/s 4 and 6 are required to be published in the Official Gazette."

7. Mr.Lekhi has contended that decision is Murari and Others Vs. Union of India (UOI) and Others, as published in paragraphs 18, 19 and 20 helped the case of the petitioner, where Supreme Court was pleased to observed as under :

"It may be noticed that Sub-Section (1) of Section 48 of the Act contemplates that except in the case provided for in Section 36, the Government shall be at liberty to withdraw from the acquisition of any land of which possession has not been taken. This section thus confers power on the Government to withdraw any land from the acquisition but such power can be exercised only before taking the possession of the land sought to be acquired.

Assuming Therefore, that there was released of certain areas of land belonging to certain land owners, the entire notification could not be rendered invalid.

In this view of the matter even if we assume that there was an order for release of certain land from the acquisition the same could not be given effect to in the absence of a notification denitrifying the acquisition of land."

8. On the basis of the aforesaid observation. Mr.Lekhi has contended that release order was only in respect of land measuring 491 Bighas 18 Biswas, although notification u/s 4 and declaration u/s 6 was for 625 bighas 12 bids was and there was no impediment withdrawing acquisition proceedings in respect of the land while upholding notifications for acquisition. According to Mr.Lekhi that is the ratio of Murari's case. After the judgment was announced by the Supreme Court in Murari's case on 1.11.1996, the petitioners made a representation on 4.11.1996 before respondent no.1. In the representation it was specifically mentioned that in paragraph 18 of the judgment of Supreme Court in SLP No.305/96 Rampal Vs. Union of India on 1.11.1996 in respect of land in question, the Supreme Court observed as follows :

"In this view of the matter even if we assume that there was an order for release of certain land from the acquisition the same could not be given effect to in the

absence of a notification denitrifying the acquisition of land."

9. It was contended by Mr.Lekhi that as the first notification issued by the Government was withdrawn subsequently, the petitioners in terms of Murari's case as well as Rampal's case made another representation for denitrifying the land in question to the respondents.

10. Mr.Lekhi has contended that this had been contended by him in view of the stand taken by the respondents that the case of the petitioner is covered by Murari's case (supra) though his case is based upon the National Housing Policy adopted by both the Houses of Parliament. In August, 1994 pursuant to the direction issued by the Supreme Court in the year 1988. He has contended that the very purpose of the National Housing Policy would be borne out from introduction to the policy, which is reproduced below :

"1.1 Shelter and Development are mutually supportive Housing forms an important part of the strategy of The Government for the alleviation of poverty and employment generation, and is to be viewed as an integral part of overall improvement of human settlements and economic development. The Global Shelter Strategy adopted by the United Nations in November 1988 calls upon different Governments to take steps for the formulation of a National Housing Policy to achieve the goals of the strategy. The Government had tabled on both Houses of Parliament in May 1988 the Draft National Housing Policy (NHP) and it had been approved by the Rajya Sabha. In the light of the developments in the national and international scene after the presentation of the Draft NHP, and in the context of the formulation of the VII Plan, it has become imperative to elaborate and restate the National Housing policy.

1.2 Despite considerable investment and efforts over successive Plan periods, the housing problem continues to be daunting in terms of the large number of homeless households, rapid growth of slums and unauthorised colonies, spiralling prices and rents of land and houses, rampant speculation, deficient availability of water, sanitation and basic services to bulk of the population and the increasing struggle of the poor and vulnerable sections to secure affordable and adequate shelter. The housing shortage is estimated by the National Buildings Organisation in 1991 to be about 31 million units, composed of 20.6 million in rural areas, and 10.4 million in urban areas, with the bulk of the backlog consisting of kutcha unserviceable units. The rapid growth of the urban population and its concentration in 300 cities with a population exceeding one lakh has led to increasing congestion and overcrowding in small houses, steady growth of slums and informal settlements and severe pressure on civil services, in the context of the inadequate supply of affordable housing by public and private sector and acute shortage of funds for the development of settlements and extension of city level infrastructure. This has been aggravated by institutional deficiencies of housing agencies and local bodies, and insufficient attention to the shelter needs of the poor :

1.3 Over the Eighth Plan period, it has been projected that over and above the present backlog, the shelter requirement by way of up gradation and new construction would be 122.2 lakh units in rural areas and 95.5 lakh units in the urban areas. At the same time, bulk of the housing in the country is constructed by the people themselves with their own resources, and a major proportion of all housing in rural areas is based on biomass. The crucial role of government at different levels is not to seek to build houses itself but to make appropriate investment and create conditions where all women and men, especially the poor may gain and secure adequate housing, and to remove impediments to housing activity."

and to achieve the purpose of the policy, the following objectives have been laid down.

## "2. OBJECTIVES

The basic objectives of the policy are:

- to assist all people, and in particular the houseless, the inadequately housed and the vulnerable sections, to secure for themselves affordable shelter through access to developed land, building materials, finance and technology:
- to create an enabling environment for housing activity by various sections by eliminating constraints, and by developing an efficient and equitable system for the delivery of housing inputs:
- to expand the provision of infrastructure facilities in rural and urban areas in order to improve the environment of human settlements, increase the access of poorer households to basic services and to increase the supply of developed land for housing:
- to undertake, within the overall context of policies for poverty alleviation and employment, steps for improving the housing situation of the poorest sections and vulnerable groups by direct initiative and financial support of the state.
- to help mobilised the resources and facilitate the expansion of investment in housing in order to meet the needs of housing construction and upgradation and augmentation of infrastructure.
- to promote a more equal distribution of land and houses in urban and rural areas, and to curb speculation in land and housing in consonance with macro-economic policies for efficient and equitable growth.
- to promote vernacular architecture and to preserve the nation's rich heritage in the field of human settlements."

It was emphasised that the element of the National Housing Policy in terms of para 4.10 was the role of the Government as well as private sector and the Community Fiscal Policy. It also, under the heading Supply and Management of Land in para 4.4.2 (iii) at page 91 laid down as follows:

#### "4.4.2

(iii) simplifying the existing legal provisions and procedures relating to the acquisition of land, to enable taking over possession of land speedily with due regard to the payment of adequate and timely compensation to land owners on negotiated basis, or by schemes of participative development of infrastructure under the town planning law or otherwise;"

11. The policy also took in view the role of the private sector and paragraph 4.10.1 of the policy inter alias laid as follows :

"4.10.1 The magnitude of the housing task calls for the involvement of several agencies including the Government at different levels cooperatives, the community, and the private sector. The Government will devise and implement strategies which will enable the various agencies to complement the efforts of one another and to ensure the most efficient utilisation of resources consistent with National Environment Policy. It would be the endeavor of central and state governments :

- to act as the provider for the poorest and vulnerable sections and to facilitate the housing activity of lower and middle income groups; to control speculation and profiteering in land and housing;

- to modulate housing policy to the diverse needs and resource endowments of different regions in the country.

- to encourage, within the framework of housing policy and local planning, voluntary agencies in efforts to upgrade shelter, extend basic services, augment incomes and promote environmental conservation;

- to promote decentralised execution of housing schemes in urban and rural areas under the supervision of local bodies which would be suitably strengthened within the constitutional framework to respond to the diverse need of local population; sub para change to reorient the housing agencies at the Central, State and level to act more as promoters of housing activity rather than builders of houses and to concentrate increasingly on the supply of developed land and infrastructure, extension of appropriate technology, assisting people to take up construction and upgradation of houses, and disseminating information on housing schemes."

4.10.3. The private developers and the organized sector will be encouraged to invest in various forms of housing and land development by access to finance, speedier approval of schemes and other forms of support, removal of constraints to assembly and development of land, while they will be induced to devote a significant proportion of the investment in housing for lower and middle-income groups at affordable prices and conform to non-exploitative practices.

1.12.1(c) Making suitable amendments in the laws and procedure governing land acquisition in urban areas to ensure speedy assembly of compact lands with due

regard to the interest of landowners:"

12. Mr.Lekhi contended that pursuant to the representation made by the petitioner on 4.1.1997 the Deputy Secretary in the Ministry of Urban Affairs & Employment after the judgment in Murari's case though announced on 1.11.1996 asked for the comments of the DDA on the subject. That letter is dated 30.1.1997 which is at page 108 of the paper book. In reply to the said letter, the commission, Land Management on 7.2.1997 took the view that Supreme Court had left the matter at the discretion of the Government for withdrawal and release of the land from acquisition as provided u/s 48(1) of the Land Acquisition Act. This letter is important. The same is reproduced below :

"DO.No.F14(8)95/CRC/DDA/45 Feb. 7, 1997 Dear Shri Parihar,

Please refer to your D.O. No.J-13039/16/94-DDVA dated 31.1.1997 regarding release of land from acquisition proceedings and notification of village Kotla Mahigram Tehsil Mehrauli, new Delhi in favor of the land owners. In this connection our reply sent by Shri K.J. Alphones, the then Commissioner (Land and project) Vide D.O. letter No.F.14(8)95/CRC/DDA/220 dated 12.5.1995 may please be seen regarding status quo of land, a copy of the same is enclosed herewith for ready reference.

It is also mentioned here that the release order u/s 48(1) of Land Acquisition At was issued by the Central Govt. vide No.J-13039/16/94/DDVA dated 28.7.1995 and was subsequently withdrawn by the Government itself on 4.8.1995 for the reasons known to the Govt. All the 225 cases including present one have been decided by the Delhi High Court as well as by the Hon"ble Supreme Court of India. The court uphold the acquisition proceedings. However, the Hon"ble Supreme Court had left the matter at the discretion of the Government for withdrawal and release the land from acquisition s provided u/s 48(1) of the Land Acquisition Act.

It is further mentioned that the land of village Shahbad Daulatpur Delhi was acquired for Rohini Phase IV Residential Scheme under Planned Development of Delhi. However, on the representation received from the land owners an area measuring 176 Bigha 07 bids was was released and withdrawn by the Govt. of NCT Delhi u/s 48 of Land Acquisition Act vide notification No. F.11(17)91/L&B/13626 dated 6.9.1996, out of which said land measuring 65-17 bighas owners will get the plan approved and pay the development charges within one year from the date of issue of the notification and the land cannot be used by the land owners for any other purpose except as prescribed by D.D.A. which mentioned in the notification itself.

So far as powers of withdrawal of notification from acquisition proceedings is concerned, the power vest with the Central Govt. or State Govt. as per Section 3(ee) of Land Acquisition Act, 1894. This power cannot be exercised by DDA. However, the Central Govt. has power to release the land from acquisition and withdraw the acquisition notifications and proceedings by issue of fresh orders

and can also restore its earlier order dated 28.7.95 issued u/s 18 of Land Acquisition Act.

With regards,

Yours sincerely,

sd/-

(M. RAVI KANTH)

Shri S.P.S. Parihar,

Dy. Secretary (DD)

M/o Urban Affairs & Employment,

Govt. of India,

New Delhi"

13. The aforesaid letter was written on 7.2.1997 and the present writ petition was filed on 1.3.1997, which came up for hearing on 3.3.1997, when it seems that a statement was made by the respondents that possession of the land in question has been taken by the DDA, the following order was made :-

"The possession, if any, taken by the respondents shall abide by the decision, in the application."

14. It was contended by Mr.Lekhi that the alleged possession by the DDA was taken on 5.3.1997, although during the hearing on 3.3.1997, an impression was given that the possession has already been taken and the same was to defeat the process of law as the possession was not taken and court was misled.

15. He contended that in the first counter affidavit filed by respondent no.5 in para 3.4 it has been stated that the possession of the land measuring 201 Bighas and 01 bids was taken on 5.3.1997.

16. It was vehemently contended by Mr.Lekhi that in the absence of any notification u/s 22(1) of the Delhi Development Act which has not yet been issued till date the possession of the land in question has not been taken by the respondent as yet. He has contended that executive authority has to exercise its power in the manner prescribed or law. Section 22(1) of Delhi Development Act is as under :

22. Nazul lands -- (1) The Central Government may, by notification in the Official Gazette and upon such terms and conditions as may be agreed upon between the Government and the Authority, place at the disposal of the Authority all or any developed and undeveloped lands in Delhi vested in the Union (known and hereinafter referred to as "Nazul land") for the purpose of development in accordance with the provisions of this Act."

17. Mr.Lekhi has contended that when the statute has provided a particular mode dealing with issuance of notification afortorrari no possession could be taken by the respondent if there is no notification u/s 22 of the Delhi Development Act by the Central Government placing the land in question at the disposal of the authority.

18. Petitioner contended that Article 300A of the Constitution provided that no person shall be deprived of his property saved by authority of law. Therefore, if no notification was issued which was mandatory for placement of the land at the disposal of the DDA, then even if it is assumed that possession was given, the land could not have been placed at the disposal of the DDA legally and the possession remained that of the petitioners. In support of his contention, learned counsel has relied upon Bishambhar Dayal Chandra Mohan and Others Vs. State of Uttar Pradesh and Others, where Supreme Court observed as follows:

"There still remains the question whether the seizure of wheat amounts to deprivation of property without the authority of law. Article 300-A provides that no person shall be deprived of his property save by authority of law. The State Government cannot while taking recourse to the executive power of the State under Article 162, deprive a person of his property. Such power can be exercised only by authority of law and not by a mere executive fiat or order. Article 162, as is clear from the opening words, is subject to other provisions of the Constitution. It is, Therefore, necessarily subject to Article 300-A. The word "law" in the context of Article 300-A must mean an Act of Parliament or of a State legislature, a rule, or a statutory order, having the force of law, that is positive or State-made law. The decisions is Wazir Chand Vs. The State of Himachal Pradesh, and Bishan Das and Others Vs. The State of Punjab and Others, are an authority for the proposition that an illegal seizure amounts to deprivation of property without the authority of law. In Wazir Chand case, the police in India seized goods in possession of the petitioner in India at the instance of the police of the State of Jammu & Kashmir. The seizure was admittedly not under the authority of law, inasmuch as it was not under the orders of any magistrate: nor was it under Sections 51, 96, 98 and 165 of the Code of Criminal Procedure, 1898, since no report to any offence committed by the petitioner was made to the police in India, and the Indian police were not authorised to make any investigation. In those circumstances, the Court held that the seizure was not with the authority of law and amounted to an infringement of the fundamental right under Article 31(1). The view was reaffirmed in Bishan Das case."

19. Mr.Lekhi contended that in terms of Section 16 of the Land Acquisition Act, the land has to vest in the Central Government. He contended that neither the notification u/s 22 of the Delhi Development Act nor the report of the collector that possession of the land was taken by the Central Government has been placed on record.

20. To buttress his arguments that in the absence of any notification to place the land at the disposal of the DDA, the land will not vest into DDA, counsel has cited

Delhi Development Authority Vs. Golcha Theatres and Others, , in which case the Court observed as under :

"It is the common case of the parties that till date, the Central Government has neither taken possession of the land nor has it been transferred to the Delhi Development Authority or any other local authority. It is not clear from the pleadings of the parties that after acquiring the property in dispute the intention of the Central Government was to hand it over to the DDA only, or to any other local authority including the Municipal Corporation of Delhi or to NDMC. So long as possession of the land is not delivered to the DDA, it cannot be said to have any control over the land. Merely because the DDA feels disappointed with the result of the writ petition, it cannot come within the definition of aggrieved person. The impugned order has neither caused to the DDA a legal injury nor has it wrongfully deprived it of any property. In fact the DDA does not come into the picture at all. No right or interest in the land has accrued in its favor."

21. It was contended that the respondent pursuant to the directions of the Supreme Court in Prabhakaran Nair and Others Vs. State of Tamil Nadu and Others, when Supreme Court observed that the country needed urgently a National Housing Policy to prevent a major breakdown of law and order and gradual disillusionment of people, the first National Housing Policy came in existence in August, 1994.

22. Mr.Lekhi has contended that the counter affidavit filed by respondent no.1/ Union of India in view of another letter received by respondent no.1 on 17.2.1997 whereby the DDA has completely ruled out the possibility of releasing the land from acquisition was totally inconsistent with the national housing policy. He has contended that this affidavit was false as respondent no.1 has taken different decision on the representation of the petitioner.

23. On 24.3.1999, the Private Secretary to the Minister of Urban Affairs & Employment recorded as follows:

"On a representation dated 20.3.99, the Minister has ordered to examine the report immediately the request to denotify the land under consideration. Report from the DDA is already available in our file. Therefore there is apparently no need to get a fresh report from the DDA. P1. put up by 1.4.99, in the light of our (sic) order dated 5.3.99.

Sd/-

(K.J.Alphons)

PS to Minister UAE"

24. Shri Ram Jathmalani, the then Minister for Urban Development ordered for denotification of petitioners' land and placed the Draft Notification also on 13.4.1999 in the note sheet as Annexure "7".

25. On the basis of the nothings contained in the order aforesaid, Mr.Lekhi

contended that it was to be seen from the material placed on record whether subsequent Minister before reversing the order had any material before him which necessitated the change of the view. As every actor is bound by rules there has to be strong reason based on policy to disagree with the view of previous Minister in a democratic set up in a parliamentary democracy governed by principle of collective responsibility which is absent in the order passed by the subsequent minister.

26. Mr. Lekhi has contended that once an order was passed by Mr. Ram Jethmalani on 13.4.1999 and a draft notification was also prepared, it was only to be published by a clerk in the Ministry and on that basis he has contended that it became a premise and the respondent cannot take shelter that document/noting was in the file of the Government which was neither known nor announced to anyone. In his support counsel for the petitioner has cited *Amrit Banaspati Co. Ltd. and another Vs. State of Punjab and another*, .

27. Mr. Lekhi has contended that in view of note of 5.4.1999 by the Under Secretary of the Union Government a conscious decision was taken. The note is reproduced below :

"The case on file relates to the request of Shri Moti Goel on behalf of villages/land owners of village Kotla Mahigiran, Tehsil Mehrauli, New Delhi for reacquisition of land. The case in brief is that one Shri Moti Goel on behalf of the villagers/land owners of village Kotla Mahigiran, Tehsil Mehrauli New Delhi Submitted a representation dated 21.5.94 to the then UDM requesting for the release of land from acquisition. Before taking a view on this request, a report was called for from DDA and GNCTD vide our letters at page 18/c. and page 54/c respectively. GNCTD intimated us that comments of DDA have been called in the matter. (Ps.73-74/c.) In its letter dated 1.5.95, DDA intimated the details of the case and also stated that the land in question formed part of DDA's Residential Scheme known as Sarita Vihar and Jasola. On receipt of this reply of DDA, the matter was examined and put up to the then UAEM who passed the following orders on 7.7.95.

"UAEM has observed that even though the DDA has mentioned that his land is a part of its residential scheme known as Sarita Vihar and Jasola, they do not appear to have made any effort to get possession of land for these schemes for nearly three decades. The DDA has also not clearly stated for what purpose they intend to use the land.

UAEM is, Therefore, of the view that this old pending case can be will be used by the owner so released will be used by the owner for the purpose earmarked in the Master Plan/Approved Layout Plan.

In view of the above UAEM has directed that the matter may be taken up with Govt. of NCT of Delhi for denitrifying and release of the land immediately u/s 48 of Land Acquisition Act.

2. Notes on pages 3-10 ante may kindly be seen in this regard. Pursuant to the above orders an order was issued on 28.7.95 denitrifying the land in question.

3. After the issue of orders dated 28.7.95, the matter was discussed by Secretary (L& B), GNCTD (Mrs. Suman Swarup) with the then Addl. Secretary (NPS) on 1.8.95. She had pointed out that the entire matter of acquisition of land in Delhi was sub judice in the High Court of Delhi and, Therefore, the Ministry's action in releasing land of village Kotla Mahigiran was not proper. The matter was again examined at the level of the then UAEM and as a result of this examination, the order dated 28.7.95 was withdrawn by order dated 4.8.95.

4. In the meantime, both the Courts i.e. High Court and Supreme Court uphold the acquisition proceedings.

5. Shri Goel again submitted a representation which was forwarded to DDA vide this Ministry's letter dated 31.1.97 for their comments. Shri Ravi Kant, Commissioner (LM) vide his DO dated 7.2.97 reported to this Ministry that the release order u/s 48(i) of Land Acquisition Act was issued by the Central Govt. vide No.J-13039/16/94/DDVA dated 28.7.95 and was subsequently withdrawn by the Government itself on 4.8.95 for the reasons known to the Govt. All the 225 cases including present one have been decided by the Delhi High Court as well as by the Hon"ble Supreme Court of India. The court uphold the acquisition proceedings. However, the Hon"ble Supreme Court had left the matter at the discretion of the Government for withdrawal and release the land from acquisition as provided u/s 48(i) of the Land Acquisition Act.

6. It has been further mentioned that the land of village Shahbad Daulatpur Deli was acquired for Rohini Phase IV Residential Scheme under Planned Development of Delhi. However, on the representation received from the land owners an area measuring 176 bigha 07 bids was released and withdrawn by the Govt. of NCT of Delhi u/s 48(i) of Land Acquisition Act vide notification No.F.11(17)91/L& B/LA13626 dated 6.9.96, out of which said land measuring 65.17 bighas was released on the condition that the land owners will get the plan approved the pay the development charges within one year from the date of issue of the notification and land can not be used by the land owners for any other purpose except as prescribed by DDA which mentioned in the notification itself.

7. So far as powers of withdrawal of notification from acquisition proceedings is concerned, the power vest with the Central Govt. or State Govt. as per section 3(ee) of land Acquisition Act, 1994. This power cannot be exercised by DDA. However, the Central Govt. has power to release the land from acquisition notifications and proceedings by issue of fresh order and can also restore its earlier order dated 28.7.95 issued u/s 48(i) of Land Acquisition Act.

8. Subsequently, VC, DDA vide his letter dated 17.2.97 informed that if we ought to release the land merely on the ground that the owners are going to develop it

as per rules and regulations then any acquisition will be necessary except for the public purposes and the development programmes of DDA will be affected.

9. The applicant has also filed a CWP No. 923 of 1997 Shri Parshadi Vs. Union of India & Others requesting for the release of their land, acquisition proceedings and notification. The matter is subjudice.

10. In the meantime, this Ministry vide its letter dated 5.3.99 has issued guidelines for involving the private agency/person/Company in assembly and development of land and construction of houses. As per the guidelines the private developers will henceforth be allowed to take up land assembly and development as a part of housing project and minimum area of 10 acres of contiguous land having legal ownership conforming land use as per MPD 2001. The detailed guidelines are placed at flag "Y" Para 3 of the said guidelines is reproduced below :

The prime Minister in his address at the National Housing Seminar organized from 28th to 30th November, 1998 had announced as follows :

"Chunks of precious land tied up in litigation benefiting no one, should be freed from the fetters and allowed to be utilised."

We should Therefore, denotify all such lands which have been tied up in litigation for a long time and allow the land to be used to boost housing in Delhi.

Since we are not going to permit land owners with a minimum of 10 acres of land to put to their own housing projects, we may denotify all those lands which have been notified under Land Acquisition Act, if it falls within the purview of para 2 (iii) above.

11. Minister (UA&E) has ordered vide note page 37 to examine the case on the basis of the information already available in the file and particularly in the light of our policy order dated 5.3.99. The case of the applicant is covered under above mentioned policy. However, the request of the party for release/denotification of the land u/s 48 of the Land Acquisition Act comes under the purview/consideration of UAEM.

Submitted for orders please.

Sd/-

(R.C. NAYAK)

USVA/5.4.99"

(Emphasis supplied)

28. Mr. Lekhi has contended that pursuant to the National Housing Policy on June, 1998, the Govt. of India wrote to the Lt. Governor of Delhi that more than 50% of the people of Delhi live in unauthorised colonies and slums. This has happened because of the shortage of dwelling units in Delhi. While the incremental

requirement of dwelling units of Delhi was over one lakh per annum, the actual supply was below 5,000. Therefore, it was necessary to allow private assembly and development of land for construction of houses so that the objectives laid down in the National Agenda for governance were achieved by involving private sector in a big way in the housing industry. The said letter is at page 303 of the paper-book, was written by Joint Secretary to the Government of India. Thereafter the Joint Secretary to the Govt. of India again vide his letter dated 5.3.1999 clarified the conditions for taking of project of housing in Delhi Mr.Lekhi relied upon following clauses of this letter in support of his arguments that the decision of the Minister taken on 13.4.1999 was in consonance with the policy and guide-lines of the Government.

"2.(iii) The private agency/person/company should have legal ownership and/or legal possession of the land or the right to develop the land with conforming land use as per MPD-2001. 10 acres could be in the name of one person, or in the name of a company or partly in the name of a person and partly in the name of a company. The 10 acres may comprise land partly owned and partly with development rights only.....

(viii) The builder will contribute to Housing for EWS Fund for providing shelter to slum dwellers. The contribution will be @ Rs.5 lakhs per acre for plotted development. In the case of Group Housing, Rs.25,000/- per (sic.) of size 1000 sq.ft. or more plinth area will be paid by developer.....

(xiv) The developer will hand over land free of cost to the local authority for such purposes as Police Station, milk booths, etc. as per the Master Plan/Zonal Plan requirements.....

(xvi) The developers will surrender free to the local authorities, the following categories of land after they have been properly developed:-

(a) Play ground

(b) Park

.....

.....

3. The Prime Minister in his address at the National Housing Seminar organized from 28th to 30th November, 1998 announced as follows:-

"Chunks of precious land tied up in litigation benefiting no one, should be freed from the fetters and allowed to be utilised."

We should, Therefore, denotify all such lands which have been tied up in litigation for a long time and allow the land to be used to boost housing in Delhi.

Since we are now going to permit land owners with a minimum of 10 acres of land to put up their own housing projects, we may denotify all those lands which have been notified under Land Acquisition Act. If it falls within the purview of

para 2(iii) above.

29. Mr. Lekhi has contended that business of the Government is conducted pursuant to the power conferred by Clause (3) of Article 77 of the Constitution pursuant to the rule made by the President for the allocation of the business of the Government of India and the business of the Government is conducted pursuant to the order passed by the President in this regard under Government of India (Allocation of Business) Rules, 1961. The Ministry of Works and Housing is the Ministry for framing of the housing policy and has got the responsibility to act as a nodal agency for National Housing Policy, in terms of the government of India (Allocation of Business) Rules, 1961. Therefore, the decision taken by Shri Ram Jethmalani on 13.4.1999 was a decision of the government and not of an individual Minister.

30. Counsel for the petitioner contended that as the subsequent Minister happened to be a past Vice-Chairman of the Delhi Development Authority, he was biased in favor of the DDA and acted in total disregard to the Parliamentary norms and exhibited a bias in changing the decision which was consciously taken by his predecessor Minister in consonance with the policy. Mr. Lekhi contended that the Public Accounts Committee of the Parliament in its report as back as in 1981 has deprecated the functioning of the DDA. The same is reproduced below:

"528. The DDA was set up under the Delhi Development Act, 1957 with a view to "promote and secure the development of Delhi according to plan". For this purposes, the DDA was empowered, inter alia, to acquire, hold, manage and dispose of land and carry out other operations for purposes of such development. One of the objectives of setting up DDA in place of the Delhi Improvement Trust was the disposal of developed plots of land at a reasonable price. The Committee have, after examining the various aspects of the functioning of the DDA, come to the conclusion that the DDA has become mainly a profit making organisation and has contributed to the exorbitant rise in prices of land as well as of residential and commercial flats and buildings. It has also failed to provide accommodation to the needy persons. This was surely not the intention of the Government.

529. It is well-known fact that the DDA acquires land from the land owners at a very low rate and after development sells it at exorbitant rates, thereby earning huge profits. A glaring example of this is that in Kalkaji District Centre, the price paid by way of compensation to the land owners was Rs. 2.50 per sq. yards and average cost of development (both general and internal) of the entire area of 66.4 acres worked out to Rs. 80.15 per sq. yard. Against this, plots were sold at an average rate of Rs. 2704 per sq. yard, the highest rate being Rs. 17316 per sq. yard. This amounts to nothing short of "loot" Even where land is acquired for a public purpose, a reasonable compensation is paid. but in cases where land is acquired and later sold by auction or for commercial purposes, as has happened in most cases, the Committee feel that the land owners/farmers should not be compelled to part with their holdings at throw away prices. They Therefore, recommend that the land Acquisition Act may be suitably amended so that the

interests of the farmers are properly safeguarded."

31. Mr. Lekhi contended that even the respondent has issued the terms and conditions for regularisation of unauthorised colonies located on private land which was filed by respondent no. 1 with his counter affidavit in CWP No. 4771/93 entitled Common Cause Vs. Union of India & Ors. by same Dr. Nivedita Haran who has filed different affidavit in the present writ petition on behalf of the respondent/UOI. The same is reproduced below:

"Housing shortage - tackling of

iv) With a view to deal with the problem of acute housing shortage in the national capital and in view of the inability of the DDA to meet the demand fully, private builders/colonizers will be assigned a role in the development of housing colonies in addition to the public agencies like DDA.

v) Any land acquired by DDA should be utilised within a reasonable time-frame. Rest of the lands should be left for development by private builders/colonizers, cooperative group housing societies or the concerned land owners themselves. Proper safeguards would, however, be laid down by Government before permitting private developers to take up large scale constructions in the National Capital Territory, so that they fulfill their part of the social obligations like payment of a prescribed amount into a "shelter fund" and/or construction of a specified percentage of houses/flats for EWS and LIG categories, etc."

32. On the basis of the aforesaid affidavit, Mr. Lekhi has contended that the order passed by the Minister on 13.4.1999 in consonance with the policy which has been adopted as well as implemented by the respondent. Therefore, the decision to change the order by succeeding Minister was based on irrationality, arbitrariness and constitutional impropriety and amounts to fraud on power vested in the succeeding Minister. In support of his contention, he has relied upon Bakshi Sardari Lal (Dead) through Lrs and Others Vs. Union of India (UOI) and Another, , where Supreme Court observed as follows:

"The first aspect argued by mr. Nariman is on the basis of the reversal of the view expressed by this Court in B.K. Sardari Lal Vs. Union of India (UOI) and Others, by a later larger Bench judgment of this Court. The ratio in Sardari Lal's case came to be consider in Samsher Singh Vs. State of Punjab and Another, by a sever-judge Bench. Ray, CJ., who spoke for five members of the Bench and with whom by a separate judgment, the remaining two learned Judges agreed spoke thus (at p.2202 of AIR):-

.....

"The President as well as the Governor is the Constitutional or formal head. The President as well as the Governor exercises his powers and functions conferred on him by or under the Constitution on the aid and advice of his Council of Ministers, save in spheres where the Governor is required by or under the Constitution to exercise his functions in his discretion. Wherever the Constitution

requires the satisfaction of the President or the Governor for the exercise by the President or the Governor or any power or function, the satisfaction required by the Constitution is not the personal satisfaction of the President or the Governor but the satisfaction of the President or Governor in the constitutional sense in the cabinet system of Government, that is, satisfaction of his Council of Ministers on whose aid and advice the President or the Governor generally exercises all his powers and functions. The decision of any minister or officer exercises all his powers and functions. the decision of any minister or officer under rules of business made under any of these two Articles 77(3) and 166(3) is the decision of the President, or the Governor respectively. These Articles did not provide for any delegation. Therefore, the decision of minister or officer under the rules of business is the decision of the President or the Governor."

33. Mr. Lekhi contended that the order passed on 13.4.1999 runs with the land and the only thing which was to be done was that a notification was required to denotify the same, the draft of which was also prepared by the Minister himself and the same was only to be published. The order was in rem and was nt in personam. The order is conveyed to the world at large. In support of his contention, Mr. Lekhi has relied upon Ramesh Birch and Others Vs. Union of India (UOI) and Others, .

34. Counsel further contended that subsequent Minister may have his own perception about the functioning of the DDA but he cannot bring his perception to defeat the object of the National Housing Policy. Counsel for the petitioner has contended that there may be two view points. The subsequent Minister may have a view point that only an agency like DDA should be permitted to build and construct houses in Delhi but when the National Housing Policy adopted by the Parliament has envisaged the participation of the private builders and contractors, the subsequent Minister cannot stay the mandate of the National Housing Policy. In support of his contention, he has relied upon G.B. Mahajan & Ors. Vs. The Jalgaon Municipal Council & Ors. AIR 1991 SC 153, where Supreme Court observed as under:

"To stay experimentation in things social and economic is a grave responsibility. Denial of the right to experiment may be fraught with serious consequences to the Nation. it is one of the happy incidents of the federal system that a single courageous State may, if its citizens choose,serve as a laboratory: and try novel social and economic experiments without risk to the rest of the country. This Court has the power to prevent an experiment....."

".....But in the exercise of this high power, we must be ever on our guard, lest we erect our prejudices into legal principles...."

"The Courts are kept out of the lush field of administrative policy, except when policy is inconsistent with the express or implied provisos of a statute s=which creates the power to which the policy relates or when a decision made in purported exercises of a power is such that a repository of the power, acting

reasonably and in good faith, could not have made it....."

While the concern of public law is to discipline the public power by forging "legal techniques as both part of the way in which public power is made operational and part of the process through which it is attempted to render such public power legitimate and to think of issues of legal regulation of public power in a way that goes deeper than particular instances and seeks to elaborate issues of general principle". There is, however, as Professor Wade points out, ample room, within the legal boundaries for radical differences of opinion in which neither side is unreasonable. In *Tameside* case Lord Denning pointed out the error of confusing differences of opinion, however strong, with unreasonable on the part of one side or the other. Lord Diplock said that the very concept of administrative discretion involves a right to choose between more than one possible course of action upon which there is room for reasonable people to hold differing opinions as to which is to be preferred."

35. On the basis of the aforesaid authority, Mr. Lekhi has contended that the subsequent Minister has consciously violated the public power in an unconstitutional manner by bringing in his own bias which was totally inconsistent with the National Housing Policy.

36. While drawing the attention of this Court that issuance of notification u/s 48 was merely a formality, Mr. Lekhi has quoted Article 166 of the Constitution:

"166. Conduct of business of the Government of a State - (1) All executive action of the Government of a State shall be expressed to be taken in the name of the Governor.

(2) Order and other instruments made and executed in the name of the Governor shall be authenticated in such manner as may be specified in rules to be made by the Governor, and the validity of an order or instrument which is so authenticated shall not be called in question on the ground that it is not an order or instrument made or executed by the Governor.

(3) The Governor shall make rules for the more convenient transaction of the business of the Government of the State, and for the allocation among Ministers of the said business in so far as it is not business with respect to which the Governor is by or under this Constitution required to act in his discretion."

37. In support of his contention, learned senior counsel for the petitioner has cited *Dattatreya Moreshwar Pangarkar Vs. The State of Bombay and Others*, . The relevant portion is as follows:-

"I agree that every executive decision need not be formally expressed and this is particularly so when one superior officer directs his subordinate to act or forbear from acting in a particular way, but when the executive decision affects an outsider or is required to be officially notified or to be communicated it should normally be expressed in the form mentioned in Article 166, i.e. in the name of the Governor. Learned Attorney General then falls back upon the plea that an

omission to make and authenticate an executive decision in the form mentioned, in Article 166 does not make the decision itself illegal, for the provisions of that Article, like their counterpart in the Government of India Act, are merely directory and not mandatory....."

38. On the other hand, Mr. Salve, learned Solicitor General appearing for respondent no.1 has contended that the policy was only applicable in the case if the land which was already acquired and not at the stage of acquisition. This was contended by Mr. Salve in view of the argument of the counsel for the petitioner that the policy of the Government of India which was filed by the petitioner along with his additional affidavit, the aforesaid letter was dated June 19, 1998. Although, Mr. Salve has contended that denotification can be issued only by the Govt. of NCT and in this case also as no notification has been issued by the Govt. of NCT, Therefore, there was no order in favor of the petitioner.

39. Mr. Salve contended that policy dated 5.3.1999 is of no avail to the petitioner. He has contended that in terms of the said policy only such private agencies/person/companies were entitled to be considered who had legal ownership and/or legal possession of the land or the right to develop the land with conforming land use as per Master Plan for Delhi 2001. What has been contended by Mr. Salve was that the petitioner was only a General Power of Attorney-holder and, Therefore, he does not fall in any of the category and, Therefore, not entitled to invoke the policy dated 5th March, 1999. Mr. Salve has further contended that the prayer of the petitioner came to end in the year 1995 when the writ petition filed by the petitioner was dismissed by a Full Bench of this Court as well as by the Supreme Court. He has further contended that paragraph 3 of the Policy which, inter alia, included the address of the Prime Minister "Chunks of precious land tied up in litigation, benefiting no one, should be freed from the fetters and allowed to be utilised: has been deleted from the guidelines dated 22.7.1999. Mr. Salve has further contended that there was no pending litigation. Therefore, even otherwise, the said assurance of the Prime Minister was of no help to the case of the petitioner. He has further contended that in Murari's case (supra), Supreme Court while dismissing the appeal of the petitioners has upheld the legality of the acquisition and nothing remains after the said decision of the Supreme Court. Quoting from Murari's case (supra) it was contended that on the basis of a noting of the Minister for Urban Development (reference to previous order of denotification in 1995) that the land of the petitioner be denotified, a letter was issued to the petitioner. The same was withdrawn on 4.8.1995. Therefore, the petitioner had no right to pursue the matter any further. Supreme Court in Murari's case (supra) observed as under:-

"Shri P.N. Lekhi, Shri Rajiv Dhavan and various other counsel appearing for the appellants contended that the Government by its order dated August 4, 1995 had withdrawn sought to be acquired in exercise of its power to be acquired in exercise of its power u/s 48 of the Act and, Therefore, it was submitted that if one part of the land is released for the public purpose the whole land covered

under the notification will stand released as the Government cannot give a differential treatment which will be hit by the principles enunciated in Article 14 of the Constitutions. As against this the learned counsel for the respondents refuted the allegation with regard to the withdrawal of certain land from the acquisition for the planned development of the city of Delhi. Alternatively it was submitted that the withdrawal of certain land included in the notification u/s 4 could be effected only by denitrifying the release and since there is no such notification denitrifying the release it could not be regarded as a release within the meaning of Section 48 of the Act. In other words Section 48 of the Act. In other words Section 48 of the Act may be applied only when the release is published in the official gazette in the same manner as the notification u/s 4 and declaration u/s 6 of the Act are published in view of the provisions contained in Section 21 of the General Clauses Act and since no such notification was published in the official gazette mere information given with regard to the withdrawal from acquisition will be of no consequence. Various decisions were cited for and against by the parties at the Bar but we do not propose to burden this judgment by citing them all except those which are most relevant on the point in controversy."

40. Another point which was urged before me by Mr. Salve was that the petitioner cannot attach any finality on the basis of the noting of the Minister for Urban Development dated 13.4.1999. In support of his arguments, learned Solicitor General has cited Bachhittar Singh Vs. The State of Punjab, to the following effect:-

"The question, Therefore, is whether he did in, fact make such an order. Merely writing something on the file does not amount to an order. Before something amounts to an order of the State Government two things are necessary. The order has to be expressed in the name of the Governor as required by cl.(1) of Art. 166 and then it has to be communicated. As already indicated, no formal order modifying the decision of the Revenue Secretary was ever made. Until such an order is drawn up the State Government cannot, in our opinion, be regarded as bound by what was stated in the file. As long as the matter rested with him the Revenue Minister could well score out his remarks or minutes on the file and write fresh ones."

41. In his support he also cited State of Bihar and Others Vs. Kripalu Shankar and Others, where it was held:

"Viewed in this light, can it be said that what is contained in a notes field can ever be made the basis of an action either in contempt or in defamation. The nothings in a notes filed do not have behind them the sanction of law as an effective order. It is only an expression of a feeling by the concerned officer on the subject under review. To examine whether contempt is committed or not, what has to be looked into is the ultimate order. A mere expression of a view in notes filed cannot be the sole basis for action in contempt. Business of a State is not done by a single officer. It involves a complicated process. In a democratic

set up, it is conducted through the agency of a large number of officers. That being so, the noting by an officer, will not afford a valid ground to initiate action in contempt. We have thus no hesitation to hold that the expression of opinion in notes file at different levels by concerned officers will not constitute criminal contempt. It would not, in our view, constitute civil contempt either for the same reason as above since mere expression of a view or suggestion will not bring it within the vice of sub-section (c) of Section 2 of the Contempt of Courts Act, 1971, which defines civil contempt. Expression of a view is only a part of the thinking process preceding government action."

42. Learned Solicitor General also relied upon *Gulabrao Keshavrao Patil and Others Vs. State of Gujarat and Others*, , where it was observed:

"Article 166(1) and (2) of the Constitution state thus:

"166. Conduct of business of the Government of a state - (1) All executive action of the Government of a State shall be expressed to be taken in the name of the Governor.

(2) Orders and other instruments made and executed in the name of the Governor shall be authenticated in such manner as may be specified in rules to be made by the Governor, and the validity of an order of instrument which is not authenticated shall not be called in question on the ground that it is not an order or instrument made or executed by the Governor."

In other words, Article 166(1) and (2) expressly envisage authentication of all the executive actions and shall be expressed to be taken in the name of the Governor and shall be authenticated in such manner specified in the rules made by the Governor. Under Article 166(3), the Governor is authorised to make the rules for the more convenient transaction of the business of the Government of the State, and for the allocation among Ministers of the said business in so far as it is to business with respect to which the Governor is by or under the Constitution required to act in his discretion. In other words, except in cases when the Government in his individual discretion exercises his constitutional functions, the other business of the Government required to be conveniently transacted as per the Business Rules made by Article 166(3) of the Constitution. If the action of the Government and the order is duly authenticated as per Article 166(2) and the Business rule 12, it is conclusive and irrebuttable presumption arises that decision was duly taken according to Rules. The letter of the Section Officer is not in conformity with Rule 12 and Article 166(1) and (2), though under rule 13 he is one of the authorised officers to communicate the decision of the Government. In *Major E.G. Barsay Vs. The State of Bombay*, , this Court held that if an order is issued in the name of the President and is duly authenticated in the manner prescribed in Article 77(2), there is an irrebuttable presumption that the order is made by the President. Whereby the order does not comply with the provisions of Article 77(2), it is open to the party to question the validity of the order on the ground that it was not an order made by the President and to

prove that it was to be made by the Central Government. Where the evidence establishes that the Dy. Secretary on behalf of the Central Government made the order a delegate, the order cannot be questioned. Therefore, it is necessary to show whether decision of the Government is according to Business Rules."

43. In *Tagin Litin Vs. State of Arunachal Pradesh and another*, it was held:

"It is settled law that, in order to be effective, an order passed by the State or its functionaries must be communicated to the person who would be affected by that order and until the order is so communicated the said order is only provisional in character and it would be open to the authority concerned to reconsider the matter and alter or rescind the order. (See: *Bachhittar Singh Vs. State of Punjab*, SCR at p.721)"

44. Mr. Salve has further contended that there is a basic presumption in the correctness of the Government's decision that the decision taken by a subsequent Minister in the same Ministry was the decision taken by the Union of India and the same was not open to judicial review until and unless the same is found tainted with malice or certain specific reasons are given so that the decision making process can be assailed.

44. It was further contended by learned Solicitor General that power of judicial review cannot be invoked in the instant case as there is no deprivation of a citizen's rights. Mr. Salve has contended that a decision in the realm of denotification is purely a policy matter. He has contended that Section 48 of the Land Acquisition Act is not a substantive provision but an enabling provision and no right stems from it. What has been argued before me by the learned counsel for the Union of India is that no statutory right flows in favor of the petitioner so as to invoke the power of judicial review in the realm of policy making decisions.

45. It was contended that in the affidavit filed on 21.1.1998 on behalf of the Union of India it was specifically stated that the land cannot be denotified and same was reiterated in the second affidavit filed by Union of India on 23.2.1999.

46. Lastly it was contended by Mr. Salve that in the absence of pleadings regarding malice, extraneous consideration or arbitrariness by the petitioner it is not open for the petitioner to invoke the power of judicial review in this matter. It was further contended that in its application (CM 2676/99) filed on 22.3.1999 for status quo no particulars of mala fides have been given by the petitioner.

47. Mr. Salve has contended that the representation made by the petitioner was not in relation to the structure but was in relation to denotification of the land which was not a grey area left open by Supreme Court pursuant to the judgment in *Murari's case* (supra).

48. Mr. Mukul Rohtagi, learned Additional Solicitor General appearing for respondents 2 to 5 has contended that the averments made by the petitioner in the writ petition that they are owner and in possession of the land in question was wrong as large number of petitioners have sold their lands prior to filing of

the present writ petition either to Moti Goyal or to other companies concerning Moti Goyal and on this ground itself the petitioner be non-suited. It is further contended by Mr. Rohtagi that the land in question was sold in the year 1995 before the present writ petition was filed in this Court on 3.3.1997. he has pointed out that one such sale-deed is at pages 455-460 where it has been, inter alia, stated that 18 Bighas and 2 bids was of land in Village Jasola was sold on 30th August, 1995 pursuant to a sale-deed executed by Moti Goyal in favor of M/s Rekha Estates Private Ltd. He has further contended that M/s. Rekha Estates Pvt. Ltd. is also a concern of Moti Goyal and, Therefore, the petition is not entitled to any relief by invoking discretionary jurisdiction under Article 226 of the Constitution of India.

49. Mr. Rohtagi laid great stress in arguing that the possession of the land in question was taken over by DDA on 12.12.1996. he has controverted the arguments of the learned counsel for the petitioner that the documents showing handing over the possession on 12.12.1996 was fraudulent. he has contended that the possession of 276.05 Bighas of land was taken on 12.12.1996 after the judgment of Supreme Court was delivered in Murari's case (supra) on 1.11.1996. Learned Additional Solicitor General has contended that supportive affidavits by the officers of the Delhi Administration as well as Delhi Development Authority have been filed to demonstrate that the possession was taken over by DDA in relation to 276.05 Bighas of land from the Land Acquisition Collector. In this regard reliance was placed on the affidavits of Mr. Trilochan Singh, Naib Tehsildar (page 555 of the paper-book), the police diary (page 551), affidavit of Mr. Jai Narain, Naib Tehsildar (page 717) Mr. M.K. Jain, Junior Engineer of DDA (page 722) and Mr. M.P. Jain, Executive Engineer of DDA (page 724).

50. He has further contended that no reliance can be placed on the letter of Mr. M. Ravi Kanth, IAS, Commissioner (Land Management), DDA (which is at page 109) if the same does not mention about taking over the possession of the aforesaid 276.05 Bighas of land by the DDA on 12.12.1996. Mr. Rohtagi has further contended that this Court has only stayed the respondent/DDA from creating any third party interest on the interim application filed by the petitioner. he has further contended that the order passed on 3.3.1997 directed that the possession, if any, taken by the respondent shall abide by the decision in the application (CM 1715/97) and not up to the decision of the writ petition. What has been contended before me by learned Additional Solicitor General for the respondents is that as there was no order from this Court, the DDA has carried out developmental work and public fund has been utilised and larger public interest involved and by passage of time, even if a case is made out by the petitioner, this Court while exercising the discretionary jurisdiction under Article 226 of the Constitution, will decline to pass any order in favor of the petitioner. Lastly, it was contended by Mr. Rohtagi that all the arguments which have been hitherto advanced by learned counsel for the petitioners were raised before the Full Bench of this Court in Roshanara Begum's case (supra) as well as before Supreme Court in Murari's case (supra). Learned counsel for the respondent has

further contended that once possession has been taken over by the respondent the land cannot be denotified u/s 48 of the Land Acquisition Act.

51. Explanation the letter written by DDA to the Ministry of Urban Development on 7.2.1997 (which is at page 109 of the paper-book) it was contended before me by Mr. Rohtagi that the same was not written in the context of possession of land having been taken. Therefore, it does not find mention or any indication with regard to the date 12.12.1996 on which possession of the land in question was taken over by the DDA. Similarly, Mr. Rohtagi has contended that the letter dated 17.2.1997 written by the Vice-President of the DDA to the Ministry (which is at page 281 of the paper-book) does not find any mention that the possession of the land was taken on 12.12.1996. Mr. Rohtagi has tried to explain the tin the reply filed by the DDA in the present writ petition (at page 374 of the paper-book) that the possession of the land in question was taken on 5.3.1997 has crept in on account of clerical mistake. As a matter of fact, it ought to have been that the possession was taken by 5th march, 1997. Learned Additional Solicitor General has further contended that the Court will not issue mandamus to the Government to withdraw from acquisition. In this connection he has cited S.P. Subramanya Shetty and others Vs. Karnataka State of Road Transport Corporation and others, . It was further contended by Mr. Rohtagi that when the acquisition is to be withdrawn the beneficiary, i.e. DDA has to be heard and in support of his contention has cited M/s. Larsen and Toubro Ltd. Vs. State of Gujarat and Others, .

52. It was further contended by Mr. Rohtagi that money has been spent by the respondent/DDA and this Court while exercising its power, even if it comes to the conclusion that the acquisition is liable to be quashed, will not do so. In support of his contention he has cited Ram Chand and Others Vs. Union of India (UOI) and Others, and Gauri Shankar Gaur and Others, etc. Vs. State of U.P. and Others, . Rebutting the arguments advanced by Mr. Lekhi that there was no notification issued by the Central Government placing at the disposal of DDA the land in question after the same has been acquired by Central Government u/s 22 of the Delhi development Act, Mr. Rohtagi has contended that it is a matter between the Union of India and DDA and it is in the discretion of the Central Government after taking possession of the land in question to give it to anyone and it does not concern the petitioner whether any notification has been issued u/s 22 of the Act or not.

53. It was also contended before me by counsel for the respondent/DDA that there was no need to issue notification u/s 22 of the DDA Act placing the land at the disposal of DDA by the Central Government as contemplated u/s 22 o the DDA Act. It was contended that the case of the respondent would fall u/s 15 of the D Act as the land has already been acquired, the same can be straightaway put at the disposal of the DDA.

54. Argument advanced by Mr. Rohtagi, learned Additional Solicitor General that the land in question was not a Nazul, no material was placed by the respondents.

55. Rebutting the arguments of the counsel for the respondents, Mr. Lekhi contended that the scope of judicial review has undergone a sea change and it cannot be put down to the narrow confines of such action, as has been contended by learned Solicitor General. It was argued that in a case where even according to doctrine of proportionality as part of the concept of judicial review would ensure that even on an aspect which is otherwise within the exclusive province of the authority if the decision is an outrageous defiance of logic then said decision would not be immune from correction. It was argued that the decision of the respondent no.1, i.e. Ministry of Works & Housing was taken pursuant to the Transaction of Business Rules and the said decision was taken by a Minister in performance of his duties cast upon by the Constitution and that decision was a collective decision under the doctrine of collective responsibility of the Government. It was contended that Joint Secretary of the Government of India on June 19, 1998 has written a letter to Ltd. Governor of Delhi (which is at page 303 of the pager-book). The relevant portion of the letter is to the following effect:

"Ever since 1961 private assembly and development of land in Delhi was not being permitted. This has created acute shortage of housing in Delhi with the result that unauthorised colonies and slums have come up distorting the face of the city. As on date, it is believed that over 50% of the people of Delhi live in unauthorised colonies and slums. This has happened because of the shortage of dwelling units in Delhi. While the incremental requirement of dwelling units in Delhi is over one lakh per annum, the actual supply is below 5,000. Therefore, it is necessary to allow private assembly and development of land for construction of house so that the objectives laid down in the National Agenda for governance are achieved."

56. It was contended that the decision taken by subsequent Minister in July, 1999 was against the principle of collective responsibility and same was based on a bias of his working in DDA in different capacities and when an element of personal bias comes in the way of decision making process de hors of the National Housing Policy as well as other material the Court will exercise the power of judicial review. Mr. Lekhi has contended that the Minister was obsessed with his idea and hangover which are not permitted in the society which is progressive and dynamic. It was also contended that the decision on 13.4.1999 was taken by a Minister who was in law entitled to take the decision of denitrifying the land in question and merely because notification was not issued, that decision does not become a nullity and in support of his contention he has relied upon Dattatraya Moreshwar's case (supra) and Larsen & Toubro's case (supra).

57. Lot of stress was laid by the learned counsel for the petitioner that if the order passed by Shri Jagmohan, the subsequent Minister was to be upheld, this will be bidding goodbye to the principle of collective responsibility as the order passed on 13.4.1999 by Shri Ram Jethmalani was an order of the Government

on the principle of collective responsibility and as per transaction of business rules as well as policy of the Government.

58. Reliance was placed by learned counsel for the petitioner that nothing was required to be done after the order was passed by Shri Jethmalani on 13.4.1999 as a Government cannot be a hostage to a Government functionary if notification pursuant to that order was not published by a clerk.

59. It was also contended that it was not disputed by the respondents that Shri Jethmalani had no authority to make that order.

60. It was further contended before me that the land in question did not vest in the Central Government pursuant to Section 16 of the Act and, Therefore, the same could not have been placed at the disposal of the DDA and all banding over and taking over reports in this regard was manipulated and forged documents. It was further contended that but for the death of Mahak Singh, who was one of the persons who have alleged to have signed the possession report having died, the respondent could have fabricated the reports by taking his signature. As he was no more, the respondent could not fabricate the original and, Therefore, has not filed the original report on record.

61. It was contended before me by Mr. Lekhi that as no possession was taken over by the Collector, no files have been produced by the Collector of the Land Acquisition. He has further contended that as a matter of fact Collector was made a party in the writ petition. However, affidavit by the Collector was not filed initially. On the basis of these arguments Mr. Lekhi has contended that no possession was taken over by the respondents and Therefore, there was no question of handing over the possession to the DDA. In support of his contention, he has relied upon Tamil Nadu Housing Board Vs. A. Viswam (Dead) by Lrs., :-

"It is settled law by series of judgments of this Court that one of the accepted modes of taking possession of the acquired land is recording of a memorandum or Panchnama by the LAO in the presence of witnesses signed by him/them and that would constitute taking possession of the land as it would be impossible to take physical possession of the acquired land. It is common knowledge that in some cases the owner/interested person may not cooperate in taking possession of the land.

It is seen that in a letter written by the respondent himself, admitting the title of the Board to the land in the said survey number, he sought for allotment of an alternative site. In other words, unless possession is taken and he is divested of the title and the same is vested in the appellant, he cannot make request to the appellant for providing him alternative site. It is not his case that at that stage he was still continuing to have title to the land in dispute. The admission is inconsistent with and incongruous to his interest. He was also aware that award was made and the possession obviously should have been taken there under. It is true that normally possession is nine times the title. If that principle is extended to public acquisition by illegal squatting, erstwhile owner has

compensation encroachment upon his erstwhile land and claim that he remained in possession. Such construction would defeat the public purpose. As pointed out earlier, the LAO is the best person to speak to the factum of taking and giving delivery, to the appellant, of the along with other land but he was not impleaded as party defendant to the suit....."

It was further contended by Mr. Lekhi that there is no force in the arguments of the counsel for the Union of India that the DDA has spent some amount on the land in question. He has contended that in the absence of any notification as contemplated u/s 22 of the Delhi Development Act, the DDA does not come into picture at all and, Therefore, if the amount has been spent by the DDA, the same has been done illegally.

It was further contended that the respondent has miserably failed to establish that the possession being subject to the decision made by this Court, the respondent has taken the possession in accordance with the procedure established by law.

It was contended that as a matter of fact no possession was taken over on 3.3.1997 as would be borne out from the document filed by the respondent in this Court by themselves. According to the counter affidavit filed on behalf of the DDA on 7.11.1997 Karvahi Kabja was filed where it was mentioned that the possession was taken with regard to 201 bighas and 1 Biswa on 5.3.1997 it was contended that it was a manufactured document as would be borne out from the fact that it mentioned that there was no stay granted in the civil writ petition no.923/97. It was contended that in the affidavit filed by the DDA on 7.11.1997 not a whisper has been mentioned that possession of further land was taken by the DDA on 12.12.1996. It was also contended that the Court can issue directions to the Union to public the Gazette Notification as per direction issued by the Minister.

Mr. Lekhi further relied upon V. Balasubramaniam and Others Vs. Tamil Nadu Housing Board and Others, :-

"By this letter the Board requested the State Government not to take any decision on the subject matter of the above correspondence till the appeals were disposed of. Till today the Government has not approved the resolution passed by the Board on January 20, 1972 relaxing the qualifications prescribed for promoting Junior Engineers to the cadre of Assistant Engineers. In the context in which the words 'subject to approval of the government' appear in Regulation 28(d) of the Regulations they have to be interpreted as meaning 'conditional upon the approval of the government', that is, that unless that approval is given by the government the relaxation would not be valid because the regulations themselves had been put into effect after obtaining the approval of the State Government earlier. The Words 'subject to' have been understood by this Court as meaning 'conditional upon' in K.R.C.S. Balakrishna Chetty & Sons & Co. v. State of Madras. Even if those words are understood as meaning that it was

possible to obtain ex post facto sanction of a decision already taken by the Boards, even then such an approval should have been given by the State Government within a reasonable time from the date on which the decision is taken by the Board. Since the approval has not been given at all till now it cannot be said that the power had been validly exercised under Regulation 28(d). Since the claim made by the Board that the relaxation of the qualification has been done in accordance with Regulation 28(d) is untenable in the aforesaid circumstances it would be wholly unjust to uphold the impugned promotions on the ground that there was a valid relaxation. It should not be forgotten that having once obtained the concurrence of the State Government to the Regulations made by it, the Board could not act contrary to the said Regulations ignoring the State Government altogether merely because the Regulations had not been published. Any such action would be arbitrary in character. The impugned promotions are, Therefore, liable to be set aside and it is necessary that the Board should be directed to pass fresh orders of promotion after considering the cases of all the Junior Engineers and the Supervisors as on the date on which the impugned promotions were made and to make promotions in accordance with the Regulations which had been acted upon by the Board with the approval of the State Government. In the circumstances mere non-publication of the Regulations in the official gazette was not fatal to the writ petitions. The judgment of the Division Bench is, Therefore, set aside and the judgment of the learned Single Judge is restored."

(emphasis supplied)

It was contended by Mr. Lekhi that non-publication of Annexure Z, i.e., the notification in the official gazette was not fatal to the case of the petitioner.

Mr. Lekhi has contended that Bachhittar Singh's case (supra) was a case of the departmental enquiry and the order was passed in personam. Therefore, the communication was necessary. In the instant case the order was to be in rem and same was not to be communicated to the petitioner.

On the basis of Supreme Court decision in Larsen & Toubro's case (supra), the learned counsel has contended that when Government decides to withdraw from acquisition u/s 48 of the Act, no communication to the person interested is necessary or required.

It is contended before me by Mr. Lekhi that State of Bihar Vs. Kripalu Shankar's case (supra) did not take note of Dattatraya Moreshwar's case (supra), which was a decision of the Constitutional Bench of the Supreme Court and it is the law laid down in Dattatraya's case which applies to these proceedings. Similarly it was contended that the authority of Rajasthan Housing Board and Others Vs. Shri Kishan and Others, deals with tentative decision whereas in the present case there is no question of tentative decision and possession taken. Here it was contended that there was no evidence that the possession of the land was at all taken and fabricated documents do not prove that possession was taken.

It was further contended by Mr.Lekhi that Mr.Salve undertook Moti Goyal as the petitioner, whereas Moti Goyal was not the petitioner, he was only a General Power of Attorney holder of the petitioners.Repelling the contention of counsel for Union of India that the land in question was not tied up in litigation since Supreme Court had already decided the case, Mr.Lekhi has contended that the matter was pending decision in this case. Section 52 of the Transfer of Property Act is fully applicable even when proceedings have been filed under Article 226 of the Constitution. In view of the orders passed by this Court on 3.3.1997 and 26.12.1997, it `cannot be said that, proceedings were not pending regarding the land in question and land was not tied up in litigation so as to come under the policy.Reliance was placed by Mr.Lekhi on Goudappa Appaya Patil Vs. Shivari Bhimappa Pattar and another, . The relevant portion is as under:

"In S.A.L. Narayan Row and Another Vs. Ishwarlal Bhagwandas and Another, , the expression "Civil Proceeding" occurring in Art. 133 of the Constitution is considered. The Supreme Court held as follows at page (1820):

xxxxx

xxxxx

"On a careful review of the provisions of the Constitution, we are of the opinion that there is not ground for restricting the expression "civil proceeding" only to those proceedings which arise out of civil suits or proceedings which are tried as civil suits, nor is there any rational basis for excluding from its purview proceedings instituted and tried in the High Court in exercise of its jurisdiction under Article 226, where the aggrieved party seeks relief against infringement of civil rights by authorities purporting to act in exercise of the powers conferred upon them by revenue statutes. The preliminary objection raised by counsel for the assessed must Therefore fail."

Therefore, it is clear that a proceedings instituted under Art 226. and 227 of the Constitution which is not collusive and in directly and specifically in question, is a proceeding for the purpose of S.52 of the Transfer of Property Act.

.....Thus taking into consideration all the aspects, we are of the view that a proceeding instituted under Arts.226 and 227 of the Constitution which is not collusive and in which any right to immovable property is directly and specifically in question will be a proceeding attracting Sec.52 of the Transfer of Property Act and as such the property concerned in the proceeding cannot be transferred or otherwise dealt with by any party to the proceeding so as to effect the right of any other party thereto under an order which may be passed therein, except under the authority of the High Court and on such terms as it may impose.Point No.1 is answered accordingly."

It was further contended that if possession of the land has not been taken by following the procedure established by law, same has to be returned to the petitioner. In support of hid contention, he has relied upon Nutakki

Sesharatanam Vs. Sub-Collector, Land Acquisition, Vijayawada and others, :-

"In the result, the appeal succeeds and Rule is the writ petition is made absolute. It is declared that the acquisition of the aforesaid land of the appellant is bad in law. If the possession has been taken, the same must be returned to the appellant."

He has also relied upon Manohar Lal Atree Vs. Union of India and Others, :-

".....Following the said decision we issue a writ of mandamus directing the respondent to give back to the petitioner the physical possession of the land in question within one week of their receiving from the petitioner the amount of compensation received by the petitioner plus interest @ 12% calculated from the day the petitioner has received the compensation till the date the cheque or draft is tendered by the petitioner pursuant to this order....."

He further relied upon Balbir Singh Vs. Union of India and Others, . The relevant portion is as follows:

".....Consequently, we direct that the possession of the petitioners will not be disturbed except in cases where the compensation has been received by the land owners or alternate plots have been allotted until the compensation amount and the alternate plot is surrendered. Counsel for the petitioners agree that the land owners who have received compensation or have been allotted alternative plots would surrender the same as indicated above within two months from today. All other land owners who have neither received commendation nor any alternative plot are free to deal with their lands the way they like and their possession will not be disturbed by the respondents. Delhi Administration will see to it that the Revenue records are amended accordingly. The proper authority i.e. the Land Acquisition Collector will receive the refund of compensation with 12 per cent interest per annum well as the surrender of the alternate plots when and if offered. The writ petitions are disposed of in these terms."

Repelling the arguments advanced by Mr. Mukul Rohtagi appearing for respondents 2 to 5 that the petitioners were subsequent purchasers, Mr. Lekhi has contended that the policy dated 5.3.1999 (which is at page 405) of the paper-book) which came into operation after the Supreme Court judgment in Murari's case (supra) was to the following effect:

"The private agency/person/company should have legal ownership and/or legal possession of the land or the right to develop the land with conforming land use as per MPD-2001. 10 acres could be in the name of a company or partly in the name of a person and partly in the name of a person and partly in the name of a company. The 10 acres may comprise land partly owned and partly with development rights only."

The said policy was issued under the authentication of Mr. S. Banerjee, Joint Secretary to the Govt. of India. The petitioners made representations pursuant to said policy on 4.11.1996, 6.12.1996 and 24.1.1997.

It was contended that another application of the petitioner dated 20.3.1999 was made pursuant to that policy and the request in the application was for release and denotification under said policy. The policy contemplated multiple use of 10 acres of land sought to be developed according to that policy. On the basis of the aforesaid policy decision of the respondent the learned counsel for the petitioner contended that the petitioner was a power of attorney holder of the land-owners which included power to sell. It was contended by Mr. Lekhi that the minister who succeeded the previous minister holding the same portfolio in the absence of any fraud or illegality could not reverse the decision simpliciter as that would amount to violation of the Govt. of India Transaction of Business) Rules 1961, made by President under Article 77 sub-clause (3) of the Constitution. Mr. Lekhi has contended that this Court had powers to issue mandamus directing the respondents to denotify the land as nothing as required to be done and only a notification was to be issued and in his support has cited D.C.M. Ltd. Vs. LL. governor, Delhi & Ors. 1989 (1) DL 225.

It was further contended that the arguments advanced by Mr. Rohtagi that full amount of compensation assessed stood deposited, is totally contrary to the guide-lines of Land Management issued by the DDA itself as it would be seen that for acquisition of land a Revolving Fund has been placed at the disposal of Delhi Administration out of which the cost of acquisition is met. It was contended before me by Mr. Lekhi that there is no specific compensation which has been deposited in the Evolving Fund which according to the guide-lines of the DDA itself is general in nature. It was also contended that the arguments advanced by the respondents that the order of Minister dated 13.4.1999 has not been communicated to the petitioners is of no avail as when the respondent had decided to issue notification u/s 48 of the Land Acquisition Act, no notice was necessary to the petitioner. In support of his submission, learned counsel for the petitioner has cited Special Land Acquisition Officer, Bombay and Others Vs. Godrej and Boyce, .

Mr. Lekhi has contended that right from the time when the writ petitioners was filed till 25th September, 2000, the stand of the Land Acquisition Collector was that they were tracing the file. Only on 25.9.2000, it was stated by Mr. Rohtagi, learned Additional Solicitor General appearing for respondents 2 to 5 that original records were lost.

Mr. Lekhi has lastly contended that interim orders were passed in favor of the petitioner on 3.3.1997 and 21.12.1997 in the presence of counsel for the DDA and the same were also intimated in writing by the counsel for the petitioner by his letter dated 21.9.1998 which was duly received by Vice Chairman, DDA. Therefore, there is no force in the arguments of the learned Additional Solicitor General that DDA has started development on the aforesaid land in question through contractors. As no third party interest could have been according after passing of the said orders it was contended by Mr. Lekhi that in this regard an application (CM No.2676/99) was filed by the petitioner to which respondent filed

a reply and in paras 5 and 6 of the said reply the respondent no.5-DDA clearly stated that no third party interest has been created after the stay orders have been made. Therefore, if any amount has been spent by the DDA, the same is misuse of public funds and without authority of law.

Although long arguments were advanced by counsel for all the parties, the question for determinations broadly speaking are:

Whether any notification was issued by the Central Government in terms of Section 22 of the Delhi Development Act placing the land at the disposal of the DDA?

Without issuance of a notification u/s 22 of the Delhi Development Act, could DDA obtained the possession of the land as was contended by learned counsel appearing for the DDA in pursuance to Section 15 and 16 of the DD Act?

Whether the respondents have placed on record relevant documents, inter alia, showing that the possession of the land was obtained by the DDA on 26.12.1996 and 5.3.1997?

If the possession has not been taken over by the DDA or the same could not have been handed over in the absence of a notification u/s 22, the decision of the subsequent Minister overruling the decision of the previous Minister dated 13.4.1999 was legal?

Whether after the decision in Murari's case, the " present writ petition was maintainable?

Whether this Court is empowered to exercise its power of judicial review in these circumstances under Article 226 of the Constitution of India?

The whole controversy seems to revolve around the Housing Policy of the Central Government. After 4 & 1/2 decades" experience culminating in the housing policy being adopted by Parliament which involves the participation of private entrepreneurs in the field of house construction activities. Even as per the affidavit filed by the Union of India (which is at page 298 of the paper-book) it is inter alia, stated that Government of India constituted high level committee on 1.11.1996 with Secretary-Urban Development, Chief Secretary-Govt. of NCT, Vice Chairman-DDA, Principal Secretary-Urban development, Govt. of CT, Joint Secretary-urban Development, Minister of Urban Affairs & Improvement, Commissioner-MCD, Chairperson-NDMC, General Manager-DESU and Additional Commissioner-Water Supply, MCD as Members. The aforesaid Committee was constituted to submit its report and suggestion to the Lt. Governor of Delhi and the Committee recommended as under:

"Housing shortage - tackling of:

v) With a view to deal with the problem of acute housing shortage in the national capital and in view of the inability of the DDA to meet the demand fully, involvement of private builders/colonizers in the development of housing colonies

merits attention. This may require amendments to ULCAR Act and other relevant laws, which shall taken up.

vi) The DDA should acquire only that much of land which it can easily develop within a reasonable time frame and leave the remaining land for which zonal plans have been prepared to be left for development by private builders/colonizers, cooperative group housing societies or the concerned land owners themselves. Proper safeguards would, however, be laid down by Government before permitting private developers to take up large scale constructions in the National Capital Territory, so that they fulfill their part of the society obligations like payment of a prescribed amount into a "Shelter Fund" under the ULCAR Act and/or construction of a specified percentage of house/flats for EWS and LIG categories etc."

From the aforesaid affidavit, it is clear that in order to solve the acute housing shortage in the National Capital Territory of Delhi and, in view of inability of the DDA to meet the demand fully, involvement of private builders/colonizers in the development of housing was envisaged.

To place the land at the disposal of DDA, a notification has to be issued in terms of Section 22 of the Delhi Development Act and once such notification is issued u/s 22 of the Delhi Development Act, a copy of the same has to be sent to the Halka Patwari. The respondents have failed to produced from the record of the Patwari that any such notification was issued by the respondent no. 1 in this regard.

In any event of the matter it was admitted by the respondents that no notification u/s 22 of the Delhi Development Act has been published.

When a statute has provided a particular mode on placement of land at the disposal of any authority for the purpose of development in terms of Section 22 of the Delhi Development Act, the same cannot be placed in the absence of a notification to that effect as no rule can either restrict or enlarge the operation of law. Section 16 of the Land Acquisition Act prescribes the method and manner as to how the possession of the land can be taken u/s 16 of the said Act. Section 16 is reproduced below:

"Power to take possession - when the collector has made an award u/s 11, shall thereupon possession of the land, which shall thereupon vest absolutely in the Government, free from all encumbrances."

When pursuant to Section 16 of the Land Acquisition Act the Collector has made an award u/s 11, he has to take possession of the land and after such possession has been taken, the same shall vest in the Central Government. Rule 110(4) of the Delhi Land Revenue Rules, inter alia, states that the Patwari shall keep one diary for his Halka in which the occurrences mentioned shall be entered day by day.

On 5.11.1999 this Court passed the following order :

"Mr. Lekhi says that the original file which has been ordered by this Court to be produced in Court from the Land Acquisition Collector has not yet been produced in spite of various opportunities granted to the Land Acquisition Collector. Mr. Lekhi says that Mr. Mahak Singh, Kanungo, Land Acquisition Collector, who was one of the signatories in the carbon copy, is no more available as he is dead and, Therefore, the original could not be produced by the Land Acquisition Collector as no such handing over and taking over took place. On the other hand, counsel for the Land Acquisition Collector says that they are still trying to trace the file. Land Acquisition Collector is present in court. Mr. Phoolka says that the file from the Prime Minister's office is also awaited and some more time may be granted to him."

The arguments advanced by counsel for the respondent/DDA that in the instant case the land has been placed at the disposal of the DDA not u/s 22 of the DD Act, but u/s 16 of the Land Acquisition Act and thereafter same has been transferred to the DDA. This argument does not hold any ground as the guidelines on Land Management issued by the respondent/DDA itself in its Volume-I, takes into consideration all lands in Delhi as Nazul lands in terms of scope of the Land Management of the DDA. The stand of the DDA lacks conviction as the lands dealt by DDA can be broadly categorised under the following heads:-

#### Nazul-I Lands

##### (a) Old Nazul lands

The Govt. of India placed various Nazul Estates at the disposal of the erstwhile Delhi Improvement Trust with effect from 1.4.1937 through the Nazul Agreement of March, 1937. These Nazul lands, popularly known as Old Nazul Estates, are not under the management of Delhi Development Authority as a successor body to Delhi Improvement Trust. These lands are managed as per provisions of the Nazul Agreement 1937 and Punjab Land Revenue Act, 1887. The receipts and expenditure relating to these Nazul Estates are being booked under a separate section of Accounts called "Nazul Account-I".

##### (b) Lands transferred from the Land & Development Office

The Govt. of India, Ministry of Works and Housing transferred from the control of the Land & Development Office to DDA certain Nazul lands for management u/s 22(1) of the Delhi Development Act subject to the condition that the Authority shall not make or cause or permit to be made any construction on the said land and shall, when required by the Central Govt. so to do, replace the said lands or any portion thereof, as may so required, at the disposal of the Central Govt. These lands are treated as Nazul lands and the receipts and expenditure relating to these land is book under "Nazul Account-I".

##### (c) Lands of urbanised villages earlier vested in gaon-sabha :

The Govt. of India, Ministry of Works & Housing transferred to the Authority u/s 22(1) of the Delhi Development Act, 1957 certain lands vested in Central Govt.

on urbanisation of specified villages for the purpose of development and maintenance as green subject to the condition that the DDA shall not make or cause or permit to be made any construction on these lands and shall when required by the Central Govt. so to do, replace the said lands on any portion thereof, as may be so required, at the disposal of the Central Govt. These lands are treated as Nazul lands and the receipts and expenditure relating to these lands is booked under "Nazul Account-I".

#### Nazul-II Lands

These lands are acquired by Delhi Administration (Land & Bldg. Deptt.) through the Land Acquisition Collectors Delhi under the scheme of the large Scale Acquisition, Development and Disposal of Land in Delhi framed by the Govt. of India, Ministry of House Affairs, New Delhi in 1961. For this purpose, a Revolving Fund has been placed at the disposal of Delhi Admn. (Land & Bldg. Deptt.) out of which the cost of acquisition is met. The lands so acquired, amongst others, are placed at the disposal of the Delhi Development Authority u/s 22(1) of Delhi Development Act, 1957 for development and disposal. These lands are managed as per provisions of D.D. Act, 1957 and Delhi Development Authority (Disposal of Developed Nazul Land) Rules, 1981. The receipt and expenditure on account of these lands are booked under a separate section and accounts called "Nazul Account-".

#### Nazul Account-III Lands

These lands are placed at the disposal of the DDA by the Central Govt. for implementation of the Jhuggi Jhopri Removal Scheme being executed by the Authority on behalf of the Central Govt. The receipts and expenditure on account of these lands are booked under a separate section of accounts called "Nazul Account-III". These lands vest in the President and are given out only in his name on lease hold basis.

From the perusal of the aforesaid description of Nazul land as defined by the respondent/DDA itself, land has to be dealt in the manner prescribed above. Even if possession of the land was taken by the respondent pursuant to Section 16 of the Land Acquisition Act, the records were not maintained nor filed to show that the possession was taken by the Central Government in terms of the Act and the rules which is discussed in the later part of this judgment.

In General Council of Medical Education and Registration of the United Kingdom Vs. Spackman 1943(2) All ELR 337 at page 341 it was held:-

"Convenience and justice are often not on speaking terms."

Although, it was argued on behalf of respondents 2 to 5 that possession was taken over by respondent no. 5 on 12.12.1996, for the reasons best known to respondent no. 5 the first affidavit which was filed by the DDA by Mr. Shamim Ahmed, Director (Land Management) on 7.11.1997 nowhere it has been averred that possession of 276.05 Bighas of land was taken by the DDA on 12.12.1996.

Though specifically it was mentioned in para 3.4 of the said affidavit that the physical possession of the land measuring 201 Bighas 01 bids was obtained on 5.3.1997 and the same was handed over to Delhi Development Authority i.e. after the petition was filed on 3.3.1997 and order on the Misc. application was granted by this Court in favor of the petitioner, on the same date. Reply has been filed by the same Director (Land Management) Mr. Shamim Ahmed on 7.4.1999 to CM 2676/99, wherein a plea has been taken in paragraph 3 of the reply of respondent no. 5 that the possession of the remaining land measuring 492 Bighas 02 bids was has been handed over to Delhi Development Authority on 5.3.1997, except the area of 15 Bighas 7 bids was which was found to be built up and under stay order in other cases.

Even in the second affidavit filed on 13.7.1998 by the DDA, it has not been mentioned that the possession of some land was taken by DDA on 12.12.1996.

As far as its reply to the application filed by the petitioner on 7.4.1999 is concerned, reply has been filed taking a specific plea at page 371 of the paper-book, to the following terms:

".....Pursuant to the dismissal of the writ petition and the SLP the orders of status quo stood vacated and the possession of the land was handed over to the Delhi Development on 5th March, 1997. The Possession Report has already been filed by the answering respondent as Annexure-R1 to the counter affidavit...."

At page 374 of the same affidavit in paragraph 3, the DDA has stated as under :

"....The possession of the remaining land measuring 492 Bighas 02 bids was has been handed over to the Delhi Development Authority n 05.03.1997 except the area of 15 Bighas 7 bids was which was found to be built up and under stay order in other cases."

Affidavit in support of this reply was filed again by Mr. Shamim Ahmed, Director (Land & Management) DDA who has filed affidavit prior to the counter affidavits filed by him earlier. He has only stated about possession of the remaining land measuring 492 Bighas 02 bids was being taken over by the DDA on 5.3.1997 but has not alleged that possession of the land measuring 276.05 Bighas was taken on 12.12.1996 which case a doubt about the authenticity of the possession report of 12.12.1996.

Respondent has not taken the plea in the said reply that the possession of the land, of which possession was taken on 12.12.1996, has been handed over to DDA on 5.3.1997 when according to their own revised stand the possession of the land was taken over on 12.12.1996. It was only when arguments was raised that photo-copy of the report of handing over and taking over filed by the respondent was not the true copy, an application was filed by the respondent/DDA to place certain documents on record to show that possession of 276.05 Bighas of land was handed over to the DDA on 12.12.1996. The letter written by Commissioner (Land Management) of respondent no. 2 was dated 7.2.1997 (at

page 109 of the paper-book), i.e. much after the alleged handing over and taking over of 276.05 Bighas of land. The Commissioner (Land Management) did not mention in the letter that the said land pertaining 276.05 Bighas possession was taken over by the DDA as it would be pertinent to quote from the letter :

".....It is further mentioned that the land of village Shahbad Daulatpur Delhi was acquired for Rohini Phase IV Residential Scheme under Planned Development of Delhi. However, on the representation received from the land owners an area measuring 176 bigha 07 bids was released and withdrawn by the Govt. of NCT Delhi u/s 48(1) of Land Acquisition Act Vide notification No. F.11(17)91/L&B/13626 dated 6.9.1996, out of which said land measuring 65-17 bighas was released on the condition that the land owner will gets plan approved and pay the development charges within one year from the date of issue of the notification and the land cannot be used by land owners for any other purpose except as prescribed by D.D.A. which mentioned in the notification itself.

So far as powers of withdrawal of notification from acquisition proceedings is concerned, the power vest with the Central Govt. or State Govt. as per Section 3(ee) of Land Acquisition Act, 1894. This power cannot be exercised by DDA. However, the Central Govt. has power to release the land from acquisition and withdraw the acquisition notifications and proceedings by issue of fresh order and can also restore its earlier order dated 28.7.95 issued u/s 48 of Land Acquisition Act."

The stand of the DDA in its reply to the application (CM 2676/99) is different. Paragraph 4 of the reply which was filed by the DDA with the affidavit of Mr. Shamim Ahmed, Director (Land Management), Delhi Development Authority on 7.4.1999 is to the following effect:

"That the contents of para 4 of the application are relate to records and Therefore need no reply. The replying respondent shall refer to the record to determine its true scope and contention. Suffice it will be to state that the Hon"ble Court did not make any order restraining the respondent from taking possession of the land in question. It was only directed that the possession, if any, taken by the respondent shall abide by the decision in the application.

As already submitted the possession of the land was taken over by the Land & Building Department and handed over to the Delhi Development Authority on 5.3.1997 and on such taking over of the possession and handing over of the same to the Delhi Development Authority the title of the land vests in favor of the Government of India. If at all land can be released only by Central Government and not by DDA. Admittedly no such order has been made so far."

Now let me come to the question whether the DDA could have obtained possession of the land in the absence of a notification under Sections 15, 16 and 22 of the Delhi Development Act.

Non-issuance of a notification u/s 22 of the Delhi Development Act, 1957 by the

Central Government to place at the disposal of the DDA for the purpose of development of 276.05 Bighas of land possession of which was alleged to have been taken on 12.12.1996 vitiates the possession if any taken as no possession was taken pursuant to the mandate of the statute.

The stand of the respondent in view of the hostile discrimination alleged in the matter of denotification of land of others and not doing in the case of petitioner and the manner in which the denotification has not been made does raise suspicion in the legitimacy of the order passed by the respondents.

On 1.9.1999 an affidavit was filed on behalf of respondents 2 and 3 by one Mr. U.P. Singh, Officer on Special Duty, Land & Building Department, Govt. of NCT. In paragraph 1 of the said affidavit it has been clearly stated that he has gone through the official records pertaining to the case. In para 6 of the said affidavit in relation to Village Mahigiran he has given the details of the relevant possession records along with their English translations. The same is as follows :

"a. Possessing of land measuring 52.17 Bighas was taken on 4.12.1986 after the stay order was vacated by this Hon"ble Court.

b. Possession of land measuring 7.19 Bighas was taken on 20.6.1988 after the stay order was vacated by this Hon"ble Court.

c. Possession of land measuring 57.03 Bighas was taken on 17.7.1987 after the stay order was vacated by this Hon"ble Court.

d. Possession of land measuring 5.02 Bighas was taken on 19.10.1989 after the stay order was vacated by this Hon"ble Court.

e. Possession of land measuring 276.05 Bighas was taken on 12.12.1996 after the dismissal of the writ petition and the SLP by the Hon"ble Court. It is submitted that this piece of land was vacant and the possession was taken without any objection from any side.

f. Possession of land measuring 201.01 Bighas was taken on 5.3.1997 after the dismissal of the writ petition and the SLP by the Hon"ble Court. It is submitted that the possession of this piece of land was taken peacefully in the presence of the Local Police."

I have reproduced the aforesaid paragraphs to show the inconsistent stand taken by the respondents. This affidavit was verified by Mr. U.P. Singh on the basis of knowledge derived from official records. An affidavit was later on filed by Land Acquisition Collector, Mr. A. Nedunchezhiyan on 9.9.1999 (which is at page 448) also stating that he has gone through the official records. He has also verified the affidavit on the basis of the official records. What is surprising is that in relation to land at Seriall no. (c), the possession of land measuring 5.02 Bighas was taken and on the possession slip (at page 715) there are signatures on the carbon copy of the officers who were present. Whereas what was alleged to be the proceedings of the possession for 12.12.1996 on the carbon copy no

signatures of any of the persons who participated in taking of the possession is appended under their respective names, although signatures of Ramesh Yadav and Trilochan Singh are on the carbon copy pursuant to the purported possession delivered to DDA. If it was the copy of the original document pursuant to which the possession of the land in question under the provision of the Land Acquisition Act and Rule 110 of Delhi Land Reforms Rules obtained on the carbon copy, the signatures of all other officers ought to have been there. In relation to possession of land measuring 5.02 Bighas which is at point (d) above, a notification was issued on 6.2.1990 which is to the following effect:

"No. F.9(2)/78-L&B/3281. -- In pursuance of the provisions of sub-section (i) of section 22 of the Delhi Development Act, 1957 and by virtue of the powers of the Central Government delegated to him by the President of India vide Government of India, Ministry of Works and Housing's Notification No.K-11011/71-UDI dated the 5th February, 1972 the Lt. Governor of Delhi is pleased to place at the disposal of the Delhi Development Authority for the purpose of Development in accordance with the provisions of the said Act, the Nazul land prescribed in the schedule below on the terms and conditions agreed by the said Authority in its Resolution No.114 dated the 10th May, 1961.

#### SCHEDULE

|             |            |      |       |            |       |       |      |                 |          |
|-------------|------------|------|-------|------------|-------|-------|------|-----------------|----------|
| Name of the | Total area | Kb,  | Nos.  | Area (Rig. | Bis.) | (Big, | Bis) | Kotla Mahigiran | 5-02     |
| 264/1       | min        | 1-12 | 304/1 | min        | 1-08  | 309/1 | min  | 1-10            | 310/1    |
|             |            |      |       |            |       |       |      |                 | min 0-12 |
|             |            |      |       |            |       |       |      |                 | -----    |
| Total       | 5-02       |      |       |            |       |       |      |                 | -----    |

By order

V. RAMNATH, Spl. Secy, (L&R)"

Interestingly an application (CM No. 13279/99 was filed by respondent No.4 inter alias stating in para 2.2 that some of the petitioners have received compensation, the names of such petitioners were also given in the application. Thereafter para 2.3 lakhs about the different stages of possession of the land of Village Mahigiran having been given. Reply to this was filed by the petitioner. The same is to the following effect:

"In reply to para 2.2 it is submitted that Respondent No.4 is trying to mislead this Hon"ble Court and is trying to confuse the whole issue. The compensation taken by petitioners is in respect of 123 bighas 01 biswa of land which has been utilised for construction of Road No.13-A of which possession has been taken prior to filing of the present writ petition. The dates mentioned by Respondent No.4 of the compensation vouchers may kindly be looked into. The vouchers of compensation as detailed by the Respondent Ni.4 are dated 23.12.1993, 5.5.1989, 27.4.1989, 7.1.1992, 9.1.1990, 23.12.1993, 16.3.1992, 13.08.1994, 9.1.1990 and 1.4.1992 all prior to filing to the present writ petition and relates to 123 bighas and 01 biswa of land. The Respondent No.4 has intentionally and deliberately not mentioned khasra Nos. for which the above compensation has been taken by the petitioners. The total compensation as stated by Respondent No.4 in the application and Affidavit comes to Rs.6,37,508.28 which is for part of

land measuring 123 Bighas 01 biswa which has been acquired and utilized for Road No.13-A. This 123 bigha and 01 biswa of land is neither subject matter of present writ petition nor has any bearing on the present writ petition. The petitioners have not paid or taken a single paise of compensation in respect of the land which is subject matter of present writ petition."

In spite of various opportunities granted to the respondents no rejoinder has been filed. At the time of arguing the case it was argued by the respondent as if the petitioners has taken compensation in relation to the land in question which is not correct from the reading of reply filed by the petitioner. Petitioners have taken compensation of their land in relation to 182 Bighas and 01 Biswa of land, which was required for making a road by the respondents and that too under the orders of the Court and much prior to the filing of the writ petition as would be borne out from the dates given in the reply to the application filed by the petitioner to this application filed by respondent no. 4.

At page 541 of the paper-book another affidavit has been filed by Mr. A. Nedunchezhiyan on behalf of the respondent no. 4 wherein he has taken the stand that he took the charge of Land Acquisition Collector only on 28.8.1999 and has filed the earlier affidavit as well as this affidavit on the basis of the records available with him in the office. If the file was lost how these affidavits were sworn by Mr.Nedunchezhiyan, also puts a question mark on the theory of possession having been taken over by the respondents. All these documents have been filed after September, 1999. Writ petition was filed in the year 1997. Counter affidavit has been filed by the respondent/DDA itself and prior to 1999 the stand has not been taken specifically by the respondent/DDA or by the Land Acquisition Collector that the possession of the land was taken on 12.12.1996. That also creates doubt about possession having been taken by the Land Acquisition Collector added to this doubt is non-issuance of a notification u/s 22 of the Delhi Development Act. If the possession was not taken by the Land Acquisition Collector in terms of law and no notification was issued in terms of the Delhi Development Act, the DDA cannot claim to have taken possession of the land in question, which is the sole basis of the order passed by the succeeding minister to set aside the order dated 12.4.1999 of the previous minister.

Counsel for the petitioner concluded his arguments on 16.11.1999. The affidavit was filed by respondents 2 to 4 on 19.11.1999 in CM 13279/99. For the first time in para 1.4 of the affidavit it was mentioned by the respondent-Land Acquisition Collector that the original possession record dated 12.12.1996 was not available and the same was detected on 4.3.1997 by the predecessor of the deponent. Whereas learned counsel appearing for Land Acquisition Collector for the first time stated on 25.9.2000 that the record was lost. If record was not available from 4.3.1997 as per the affidavit filed by the Land Acquisition Collector on 9.11.1999 and it was in the knowledge of the Land Acquisition Collector that the records were not available since 4th March, 1997 why this fact was not

mentioned in the earlier affidavits filed on 1.9.1999 or 11.9.1999 by the respondent-Land Acquisition Collector.

The manner and the method in which certain papers have been inserted by the respondent is not a happy augury for a responsible Government department to keep the record. In para 3 of the aforesaid affidavit dated 19.11.1999 it has been further stated that inquiry about the loss of file was still in progress and during inquiry it came to the light that on 7.1.1997 the litigation clerk of the Department Naresh Kumar had taken the file to a Government Advocate to be produced in the Court. But unfortunately the name of the government Advocate has not been mentioned by him and the copy of the noting made in the receipt register which is maintained in the regular course of business in the department is filed as Annexure R 4/3, that makes the situation worse for the respondent. At page 550 of the paper-book is the photo-copy of the so called receipt register. This receipt register has first entry with regard to some payment certificates dated 7.1.1997. Thereafter there is no mention of Serial no. s. 2, 3, 4, 5, 6 and 7 because the next number which is visible from the photo-copy is number 8. As to why on this receipt register a receipt purported to be signed by Naresh Kumar regarding file of Village Kotla Mahigiran has been pasted, leaves so many questions unanswered. More so, according to the affidavit of the respondent Naresh Kumar is no more. As I have observed earlier, another important person Mahak Singh was present on the spot according to the averment made by the respondent is also no more.

Supreme Court in *Ghaio Mall and Sons Vs. The State of Delhi and Others*, as observed as follows:

"..... It is needless to say that the adoption of such dubious devices is not calculated to produce a favorable impression on the mind of the court as to the good faith of the authorities concerned in the matter. We must also point out that when a superior court issues a rule on an application for certiorari it is incumbent on the inferior court or the quasi-judicial body, to whom the rule is addressed, to produce the entire records before the court along with its return. The whole object of a writ of certiorari is to bring up the records of the inferior court or other quasi-judicial body for examination by the Superior Court so that the latter may be satisfied that the inferior court or the quasi-judicial body has not gone beyond its jurisdiction and has exercised its jurisdiction within the limits fixed by the law. Non-production of the records completely defeats the purpose for which such writs are issued, as it did in the present case before the High Court. We strongly deprecate this attempt on the part of the official respondents to bypass the court. We are bound to observe that the facts appearing on the records before us disclose a state of affairs which does not reflect any credit on the administration of the erstwhile State of Delhi....."

I have discussed above along with the affidavit dated 19.11.1999, reply was filed by the petitioner. No rejoinder has been filed, although on 8.12.1999 this court directed the respondent to file the rejoinder. Another report in favor of taking

possession of the Land in question has been filed by the respondent along with this affidavit. A photocopy of the Daily Diary maintained by the Police Station, Badarpur has been filed. The English Translation is totally contrary to the report in Hindi as recorded in Daily Diary. The DD entry No.41 (Annexure R 4/4) shows that SDM, Kalkaji informed on telephone on 1.50 PM on 12.12.1996 as under:

"KI UNHAI DDA DI DISI LAND KA POSSESSION DILANA HAI."

Whereas in the English Translation as submitted along with, the affidavit at page 552 of the paper-book, it has been mentioned:-

".....today at about 1.50 pm SDM (Kalkaji) through telephone informed that to day he has to hand over possession of some land to DDA."

In the said DD even the name of Village Kotla Mahigiran has not been mentioned. English translation is totally misleading. Rule 110 of Delhi Land Revenue Rules provides as under:

"Contents in Dairy -- The patwari shall keep one diary for his Halka in which the occurrences mentioned in the following list shall be entered day by day, but if there are one or more assistant patwaries in the Halka, each of them will keep a separate diary.

The patwari shall note the names of all pensioners residing in his Halka on the first page of his diary on the basis of information communicated to him by the office kanungo."

No entry in the report of Rojnamcha of Halka Patwari of Village Mahigiran regarding possession proceedings dated 12.12.1996 have been filed. The same has been filed by the petitioner. Copy of the alleged possession proceedings dated 12.12.1996 was never sent to Halka Patwari for recording the same in the report of Rojnamcha. Even though it was so stated in Annexure R 3/2 (at page 444 of the paper-book) which ought to have been recorded in the report Rojnamcha of Halka Patwari of Village Kotla Mahigiran, which is maintained by him in regular course of his business in official duty. Certified copy of the report of Rojnamcha of Halka Patwari has been filed as Annexure P-33 (which is at page 761 to 784 of the paper-book). At page 762 under the column Date no such proceeding regarding taking over or handing over of the possession of the land in Village Kotla Mahigiran has been recorded.

In view of overwhelming discrepancies, I am of the opinion that possession of the land was not taken by the respondent-Union of India and even if it is assumed that possession was taken, the same was not in accordance with law.

Now dealing with the question as to whether the possession was taken by the DDA or not, the affidavits filed by DDA and sworn in by Mr. Shamim Ahmed, Director (Land Management) are important. A letter dated 7.2.1997 written by Mr. M. Ravi Kanth, IAS, Commissioner (Land Management), DDA (which is at page 109) is important in this regard. The relevant portion is as under:

"Please refer to your D.O. No.J-13039/16/94-DDVA dated 31.1.1997 regarding release of land from acquisition proceedings and notification of village Kotla Mahigram Tehsil Mehrauli, New Delhi in favor of the land owners. In this connection our reply sent by Shri K.J. Alphons, the then Commissioner (Land and Project) vide D.O. letter No.F.14(8) 95/CRC/DDA/220 dated 12.5.1995 may please be seen regarding status quo of land, a copy of the same is enclosed herewith for ready reference."

The aforesaid letter deals with the situation as it existed on 7.2.1997 and was same as it existed on 12.5.1995. Letter dated 12.5.1995 from Mr.K.J. Alphons is at page 53 of the paper-book. The relevant portion is as under:

".....However, the possession of the remaining land measuring 492 Bighas and due to stay orders granted by the Hon"ble High Court of Delhi. This land have not been utilised or developed by the Delhi Development Authority so far due to said stay orders....."

If possession of the land was taken on 12.12.1996, reiteration by Mr.Ravi Kanth on 7.2.1997 quoting the letter dated 12.5.1995 regarding the status of the land is a very important factor, which could not be explained by the respondents.

Coming to the arguments that no notice was required to be given to the petitioner when the order dated 13.4.1999 was set aside by the subsequent Minister as that order was only on the file and not communicated to the petitioner. I am afraid the authority of Larsen & Toubro Ltd. (supra) cited by Mr. Rohtagi, Additional Solicitor General for respondents 2 to 4 does not help the case of the respondents as in that case the Supreme Court observed that although the owner of the land in question can take recourse to the provisions pertaining to compensation etc. but the beneficiary which was Larsen & Toubro in that case the objection filed by the said company ought to have been heard.

As a matter of fact, the ratio of the aforesaid authority supports the argument of the petitioner that in the matter of land acquisition or is release the owner need not be given any notice of the intention of the State Government to withdraw from the acquisition and the State Government is a liberty to do so as the right of the owners are protected by sub-section (2) of Section 48 of the Act as he could be compensated and, Therefore, when the then Minister passed an order of denotification on 13.4.1999, that was an order in rem and not in personam.

In Roshanara Begum"s case (supra) the Full Bench of this Court in para 149 has observed:

".....no order has been made by the Minister concerned which amounts to withdrawing from acquisition, mere communication of the misconstrued order by the officials would not have the effect of an order of the Government withdrawing from the acquisition."

It was further held in para 150 of the above judgment as follows:

".....Section 48 gives an opportunity to the State Government to withdraw from the acquisition at any stage before possession is taken and such power can be exercised the owner of the land should be given an opportunity of being heard and the State Government cannot also be compelled to give any cogent reasons for a decision not to go ahead with its proposal to acquire a piece of land."

The ratio of Roshanara Begum's case (supra) hold the field today s the same was approved by the Supreme Court.

No notice was to be given of the order passed by the Minister to the petitioner that the Land of Village Kotla Mahigiran was not required of the purposes of acquisition. The Minister specifically ordered for denotification of the land and also drafted the notification for denotification. It was simply to be published in the official gazette.

Arguments were advanced by Mr.Salve as well as counsel appearing for other respondents that in view of Murari's case (supra), the writ petition was not maintainable.

In Murari's case, the prayer of the petitioner was rejected for issuance of a notification u/s 48 of the Land Acquisition Act as the Govt. of NCT not agreed to the order of denotification passed in favor of petitioner. This is how the Supreme Court held in Murari's case.

"It may be noticed that sub-section (1) of Section 48 of the Act contemplates that except in the case provided for in Section 36, the Government shall be at liberty to withdraw from the acquisition of any land of which possession has not been taken. This section thus confers power on the Government to withdraw any land from the acquisition but such power can be exercised only before taking possession of the land sought to be acquired. In this connection before we proceed to examine the relevant decisions it would be appropriate to refer to the observations made by the Full Bench of the High Court in the impugned judgment with regard to this controversy. The original record in which the Minister concerned is said to have passed the order for withdrawal was produced before the High Court and after the perusal of the Full Bench. The photostat copies of the nothings were also placed on record of the High Court and after the perusal of the original record the Full Bench found that in fact no order has been made by the Minister concerned which may be said to be an order for withdrawal of acquisition. The High Court observed that mere communication of the misconstrued orders by the officials would not have the effect of an order of the Government withdrawing from acquisition. The High Court on a careful perusal of the original file and the noting contained therein and approved by the Minister came to the definite conclusion that the Minister had directed that the matter be taken up with the NCT Delhi for denitrifying and for release of the land immediately which was indicative of the fact that the Minister had not himself passed the order for releasing the land from acquisition and the release from acquisition was left to the decision of NCT, Delhi and since NCT Delhi did not give

its consent the release of the said land was not denotified. The High Court, Therefore, took the view that the communication sent to the appellants concerned purporting to be an order u/s 48 of the Act is invalid and the land acquisition proceedings cannot be quashed on the basis of such invalid communication. In our opinion the view taken by the High Court cannot be said to be erroneous calling for any interference by this Court.

..... The same view was expressed by this Court in yet another decision in the case of U.P. Jal Nigam v. Kalra Properties (P) Ltd. In this view of the matter even if we assume certain land from acquisition the same could not be given effect to in the absence of a notification denitrifying the acquisition of land."

As a matter of fact from the careful reading of the aforementioned paragraphs respondent itself interpreted the order to the effect that there was no bar for Central Government to consider afresh the representation of the petitioner for denotification of the land and issuance of the notification thereafter. That is why the petitioners after coming to know about the judgment on 1.11.1996 in Murari's case made representation on 4.11.1996, 6.12.1996 and 24.1.1997, inter alia, requesting the respondents to release the land from compulsory acquisition by publishing the gazette notification. These representations were made even before the modalities in terms of housing policy was announced in the year 1998 with regard to land assembly in Delhi.

The petitioner during the pendency of the writ petition made another representation on 20.3.1999 in view of the modified policy of the respondents with regard to participation of private persons for augmentation and making available more dwelling houses in Delhi. Apart from the fact which I have stated above this Court fails to understand as to why representation made by the petitioner was entertained, discussed and decision taken, it would also how that even the respondent has understood that as far as the denotification is concerned, the Central Government was free to take its own independent decision in this regard whether to denotify the land or not and that is why the order for denotification was passed by the then Minister for Urban Development on 13.4.1999.

In relation to other lands which were subject matter in Murari's case Central Government issued subsequent denotification orders.

While arguing the matter, the learned Solicitor General appearing for respondent no. 1 contended that no denotification order was passed by the respondent after the noting of the succeeding minister on 6.7.1999. During the course of the arguments it was brought to the notice of the Court that respondent no. 2-Lt. Governor of Delhi on 19.4.1999, 9.12.1999 and 22.3.2000 has denotified lands which were covered according to the stand of the respondent in Murari's case. In the rejoinder filed on behalf of respondent no.1 to the reply of petitioner in CM 13168/99, duly supported by the affidavit of Shri R.C. Nayak, Under Secretary in paras 3-4 it has been stated :

".....Further no denotification order was published by respondent no. 1 after the noting of the Minister as referred to, and no legal right has arisen or accrued in favor of the petitioner....."

This affidavit is dated 7.12.1999. Prior to filing of the affidavit and even thereafter gazette for denitrifying the land has been issued on 9.12.1999 and 22.3.2000. Why a false affidavit has been filed by respondent no.1? In Delhi the land vests in Central Government. Delhi Government is only a delegatee of the Central Government to issue denotification. It is strange that an affidavit has been filed on 7.12.1999 and notification has been issued by respondent no. 2 for denotification of the land on 9.12.1999 and 22.3.2000.

The argument of Mr.Salve that where an authority exercising discretion which is vested in him judicial review is not available. Whether successor Minister could overrule the decision which was competently and legally arrived at by his predecessor. To my mind a successor in office of the Minister may exercise his discretion to act contrary to what a previous minister has ordered. But if the discretion exercised by the previous minister circumscribed by law under the Govt. of India (Transaction of Business) Rules, pursuant to the National Housing Policy adopted by both Houses of Parliament can be set at naught by a succeeding minister without having any fresh material or without taking recourse to prevalent courtesies in a parliamentary democracy governed by principle of collective responsibility there will be administrative anarchy as no policy of the Parliament can be implemented, no policy of the Government can achieve the desired result. Individual minister will be free to act de hors the principle of collective responsibility. There is a serious doubt to the proposition advanced by the learned Solicitor General.

I find no force in the argument of Mr.Salve that the predecessor Minister exercised power without any legal authority to act. Firstly there is not pleading in this regard, secondly the argument that the Central Government could not exercise power under any provision of Land Acquisition Act in view of the powers having been delegated to the Lt. Governor.

The appropriate Government as defined in Section 3(ee) of the Land Acquisition is as follows:

"(ee) the expression "appropriate Government" means in relation to acquisition of land for the purposes of the Union, the Central Government, and, in relation to acquisition of land for any other purpose, the State Government;

In view of the definition of appropriate government in relation to Delhi in relation to the acquisition of land the appropriate authority is Central Government. Therefore, the power to denotify the same also vests in the Central Government. The State Government can also exercise the power as a delegatee.

The Govt. of India (Transaction of Business) Rules read with the provision of Land Acquisition Act gave the minister power as the notification dated 14.8.1989

which was shown to the Court where the power to notify was also given to the LL. Governor, "The powers and functions of the appropriate Government shall also be exercised and discharged by". As a matter of fact, the Minister for Urban Development and Improvement in its minutes dated 19.12.1998 wrote, "In all cases where decision taken to denotify land by this Ministry, any denotification orders may be issued by this Ministry itself by publishing in the gazette." Therefore, the argument of learned Solicitor General that it was only Lt. Governor who could denotify the land and not the Minister, is not correct.

Reliance place by Mr.Slave on Gulabrao Keshavrao Patil & Ors."s case (supra), helps the contention of the petitioner as in that case the decision of the Revenue Minister on 6.7.1993 was not final because the Urban Development Department did not accept or agree to the decision taken by the Minister for Revenue. The Court while considering this question held :

"In *Bachhittar Singh v. State of Punjab* a Constitution Bench of this Court was to consider whether the order of the Revenue Minister could not be reviewed and set aside by the Chief Minister. In that context it was held that the order must be expressed in the name of the Governor as required by clause (1) of Article 166 and then it has to be communicated. Until such an order is drawn up by the State Government in accordance with Article 166(1), the State Government cannot be regarded as bound by what was stated in the file. The business of State is a complicated one and has necessarily to be conducted through the agency of large number of officials and authorities. The action must be taken by the authority concerned in the name of the Raj Pramukh. The Minister is no more than an Adviser and as the head of the State the Governor or the Raj Pramukh has to act with the aid and advice of the Council of Ministers. Until the advice is accepted by the Governor, whatever the Minister or the Council of Ministers may say with regard to a particular matter, does not become the action of the State until the advice of the Council of Ministers is accepted by the head of the State. Until order is drawn up in the manner indicated by Article 166(1) and communicated to the person who would be affected by the order it would be open to the Council of Ministers to consider the matter over and over again and, Therefore, till its communication, the order cannot be regarded as anything more than provisional in character. Even if the rule does not contemplate that the Chief Minister would be entitled to pass an order but when the rule envisages that he is entitled to call for the file for issue of order, it clearly implies that he has the right to interfere and make such order as he may deem appropriate. The Chief Minister may call any file and deal with it himself. The order passed by the Chief Minister even though it is a matter pertaining to the portfolio of the Revenue Minister will be deemed to be an order of Council of Ministers. So deemed, its contents would be the Chief Minister's advice to the Governor for which the Council of Ministers would be collectively responsible. This view was reiterated by a larger Bench of seven Judges of this Court in *State of Karnataka v. Union of India*. In para 46 this Court held that the object of collective responsibility is to make the whole body of persons holding ministerial office collectively or if one

may so put it, vicariously responsible for such acts or the other as are referable to their collective volition so that even if an individual may not be responsible for it he will be deemed to share the responsibility with those who may have actually committed the wrongful act. In para 48 the Court observed that responsibility to Parliament only means that the Minister may be compelled by convention to resign. Out of this responsibility arose the principle of collective responsibility. The Government has to be carried on as a unity rather than by a number of advisers of the Sovereign acting separately."

Initially the petitioners have filed the present writ petition seeking direction to the respondent to decide the representations of the petitioners dated 4.11.1996, 6.12.1996 and 24.1.1997 for releasing from acquisition their lands situated in Village Kotla Mahigiran, Mehrauli and for a direction to the respondent for issuance of a fresh order in the gazette notification u/s 48(1) of the Land Acquisition Act and with further direction to the respondent to implement the National Housing Policy as adopted by both House of Parliament.

This case has got a chequered history. Earlier also the land of the petitioner was denotified in 1995. Later on 4.8.1995, the said communication was withdrawn. The withdrawal of the communication was challenged by the petitioner and in Roshnara Begum's case the Full Bench of this Court held that if any withdrawal from land acquisition proceedings is to take place u/s 48 of the Act, such an order must be published in the official gazette.

In Murari's case, the Supreme Court held that even if it is assumed that there was release of certain areas of land belonging to certain land owners, the entire notification acquiring the land could not be rendered invalid. After the judgment in Murari's case was delivered by the Supreme Court on 1.11.1996, the petitioners made aforesaid representations before respondent no. 1. During the pendency of the writ petition, the then Minister for Urban Development ordered for denotification of the lands of the petitioners on 13.4.1999 and also issued draft order for gazette notification. On account of change in the portfolio Shri Jagmohan succeeded Shri Ram Jethmalani and Union Minister for Urban Development and cancelled the order passed by the previous Minister in July, 1999.

This Court normally in such matters should not interfere in the discretion to decide the matters one way or the other. However, in a catena of cases Supreme Court has held that the power of judicial review is exercised to check the unbridled executive function and when the decision making process has been affected on account of irrationality, unreasonableness or procedural impropriety.

The Supreme Court in catena of cases has defined the limitations of the Court while exercising the power of judicial review.

In Tata Cellular Vs. Union of India, , the Supreme Court held:

"Judicial quest in administrative matters has been to find the right balance

between the administrative discretion to decide matters whether contractual or political in nature or issues of social policy; thus they are not essentially justiciable and the need to remedy any unfairness. Such an unfairness is set right by judicial review.

The judicial power of review is exercised to rein in any unbridled executive functioning. The restraint has two contemporary manifestations. One is the ambit of judicial intervention; the other covers the scope of the court's ability to quash an administrative decision on its merits. These restraints bear the hallmarks of judicial control over administrative action. Conscious of the fact that judicial review is concerned with reviewing not the merit of the decision in support of which the application for judicial review is made but the decision making process itself."

In *Tata Cellular's* case (supra) the Court further held thus:

"The duty of the court is to confine itself to the question of legality. Its concern should be:

1. Whether a decision-making authority exceeded its power?
2. committed an error of law,
3. committed a breach of the rules of natural justice,
4. reached a decision which no reasonable tribunal would have reached, or,
5. abused its powers.

Therefore, it is not for the court to determine whether a particular policy or particular decision taken in the fulfillment of that policy is fair. It is only concerned with the manner in which those decisions have been taken. The extent of the duty to act fairly will vary from case to case. Shortly put, the grounds upon which an administrative action is subject to control by judicial review can be classified as under:

(i) **Illegality:** This means the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it.

(ii) **Irrationality, namely, Wednesbury unreasonableness.**

(iii) **Procedural impropriety."**

In enunciating the Wednesbury Principle in *Associated Provincial Picture Houses Ltd. Vs. Wednesbury Corporation* (1948) 1 KB 233; (1947) 2 All ER 680 it was held by the Court:

"A decision of public authority will be liable to be quashed or otherwise dealt with by an appropriate order in judicial review proceedings where the court concludes that the decision is such that no authority properly directing itself on the relevant law and action reasonably could have reached it."

In G.B. Mahajan and others Vs. The Jalgaon Municipal Council and others, it was held:

"The doctrine that powers must be exercised reasonably has to be reconciled with the no less important doctrine that the court must not usurp the discretion of the public authority which Parliament appointed to take the decision. Within the bounds of legal reasonableness is the area in which the deciding authority has genuinely free discretion. If it passes those bounds, it acts ultra vires. The court must Therefore resist the temptation to draw the bounds too tightly, merely according to its own opinion. It must strive to apply an objective standard which leaves to the deciding authority the full range of choices which the legislature is presumed to have intended. Decisions which are extravagant or capricious cannot be legitimate. But if the decision is within the confines of reasonableness, it is no part of the court's function to look further into its merits. "With the question whether a particular policy is wise or foolish the court is not concerned: it can only interfere if to pursue it is beyond the powers of the authority....."

In the above circumstances, the Court is obliged the interfere on the ground of arbitrariness and violation of principle of natural justice confining to the doctrine of judicial review by the Wednesbury principle to set right the decision making process.

Principle of judicial review could be invoked only to struck down actions if there are mala fides, bias or based on arbitrariness or on such unreasonableness as no reasonable man would contemplate. the untrammelled judicial review is neither desirable nor required. There has to be self-imposed discipline but no generalisation can be made in that regard.

In S.R. Bommai and others Vs. Union of India and others etc. etc., it was observed:

"Many of the parameters of judicial review developed in the field of administrative law are not antithetical to the field of constitutional law, and they can equally apply to the domain covered by the constitutional law. That is also true of the doctrine of proportionality. The contention that while in the field of administrative law, the Court's power extends to legal control of public authorities in exercise of their statutory power and Therefore not only to preventing excess and abuse of power but also to irregular exercise of power, the scope of judicial review in the constitutional law extends only to preventing actions which are unconstitutional or ultra virus the Constitution. That the areas where the judicial power, Therefore, can operate are limited and pertain to the domain where the actions of the Executive or the legislation enacted infringe the scheme of the division of power between the Executive, the Legislature and judiciary or the distribution of powers between the States and the Centre and where, there is a Bill of Rights as under our Constitution, the areas also cover the infringements of the fundamental rights. That the judicial power has no scope in

constitutional law beyond examining the said infringements and that the doctrine of proportionality or unreasonableness has no play in constitutional law and the executive action and legislation cannot be examined and interfered with on the anvil of the said doctrine is too broad to be accepted.

In *S.R. Bommai* (supra) where the Court was considering the validity of Presidential proclamation under Article 356, the Court held that Court will no doubt start with presumption that it was validly issued but will not hesitate to interfere if the invalidity or unconstitutionality of the proclamation is clearly made out. Refusal to interfere in such a case would amount to abdication of the duty cast upon the Court-Supreme Court-High Court by the Constitution. Therefore the Court affirmed that even proclamation under Article 356(1) is not immune from judicial review though the parameter thereof may vary from an ordinary case of subjective satisfaction.

In *S.R. Bommai* (supra) the Court further observed as follows:

"We recognise that judicial process has certain inherent limitations. It is suited more for adjudication of disputes rather than for administering the country. The task of governance is the job of the Executive. The Executive is supposed to know to administer the country, while the function of the judiciary is limited to ensure that the government is carried on in accordance with the Constitution and the Laws. Judiciary accords, as it should due weight to the opinion of the Executive in such matters but that is not to say, it defers to the opinion of Executive altogether. What ultimately determines the scope of judicial review is the facts and circumstances of the given case. A case may be a clear one like *Meghalaya* and *Karnataka* case-where the court can find unhesitatingly that the proclamation is bad. There may also be case like those relating to *Madhya Pradesh*, *Rajasthan* and *Himachal Pradesh* where the situation is so complex, full of imponderables and a fast evolving one that the court finds it not a matter which admits of judicial prognosis, that it is a matter which should be left to the judgment of and to be handled by the Executive and may be in the ultimate analysis by the people themselves. The best way of demonstrating what we say is by dealing with the concrete cases before us."

In the ever increasing tempo of urban life and the merging stresses and strains of planning, policy decision are taken by the State. After independence it was thought by the founding fathers of our republic that it was by adopting socialist policies where the land should remain the domain of the State, the fruits of liberty could be delivered to the larger masses of our people living in Delhi as well as in whole of India. After the experiment of more than four and a half decades, it was decided by the policy makers that the land could not only be developed by the State agencies but be developed by involving the private sector. There were bound to be two opinions one for land to remain in the exclusive domain of the State to be developed by the State agencies and the other to involve the participation of private sector. Once the later point of view culminated in a policy decision by the Parliament in the form of National Housing

policy whether that policy could be tinkered with by a subsequent Minister who might have believed, had a conviction that the development could only be done by the agencies or authority of the State. It is in this context I have to analyses on the basis of material placed before me and after perusing the correspondence which ensued between the former Minister who believed that his decision was based on the policy of the Government and the decision to over rule the said decision by subsequent Minister who believed that that it was in the domain of the DDA to deal with land. Therefore, the order of the then Minister passed on 13.4.1999 and the orders passed by subsequent Minister are relevant. Both are reproduced below:

"In the light of the Department's note at pages 38-40/N this is a fit case for denotification. A decision was taken as far back as 1995 to denotify the above land (see page 10/N). Our new policy of involvement of private sector, as laid down in our policy letter of 5th march, 1999, focuses on private participation to over come the huge backlog of housing in Delhi. As a result of DDA's monopoly in the housing sector, property prices and rentals have shot up to such levels where nobody with white money could afford to buy a property in Delhi. That is the reason why half of Delhi lives in unauthorised colonies and slums which has destroyed the capital. Against an incremental requirement of 100,000 house a year , DDA has constructed less than 4,000 houses last year. The Estimate Committee of the Parliament, in its third report of the current year, has come to the conclusion that DDA has been a "complete failure" A copy of Times of India report on this dated 16.3.99 is kept in the file. Still DDA is trying to sabotage our new housing policy regarding involvement of private sector. Most of urbanized and urbanizable Delhi has been notified for acquisition at various points of time. DDA has not taken possession of vast tracts of land in various parts of Delhi for which even award has been passed. Unless we denotify lands tied up in litigation, as desired by the Hon''ble Prime Minister in his inaugural speech at the National Housing Seminar, we would not achieve positive results. In Delhi, where land is directly under our control, we have not been able to produce one extra house in spite of the declaration of various policies. This is shameful.

I do not want to denotify all the land which DDA has notified for acquisition; but I propose to denotify at least 500 acres of land this year so that private sector can at least start construction on a modest level.

The land of Village Kotla Mahigran, under consideration may be denotified immediately. As decided by me in another file, this Ministry will issue the denotification order through an extra-ordinary gazette by 16.4.99. Draft denotification order is also kept in the file at flag "Z"

Sd/-

(RAM JETHMALANT)

UDM

13.04.99";

Following is the order of Shri Jagmohan reversing the order of Shir Ram Jethmalani:

"The file of Sita Ram Bhandar Trust has since been received back from the PMO and PM's instructions not to denotify the land have been noted.

2) On the Trust's file, I have recorded my observations. These observations apply on this case as well. There is no justification for denitrifying land, particularly when 600 bighas have already been acquired and taken over.

Jagmohan

6/7/99";

From the perusal of the aforesaid note the consideration on the basis of which the earlier order has been reversed is not what has been canvassed before me at the time of arguments by learned counsel for the respondents. The decision of the earlier Minister was not reversed on account of the fact that the policy was not applicable or there was no pending litigation or in view of Murari's case (surpa) the petitioner had no right to pursue the matter any further or that the order of the previous Minister was not final.

The consideration for reversal of earlier order which is apparent is two fold:

(1) that the order or reversal of the order dated 13.4.1999 was on the basis of nothing of the Prime Minister not to denotify the land involved with Sita Ram Bhandar Trust. Whereas Mr. Salve, Solicitor General fairly conceded that the file of Kotla Mahingiran was never sent to the Prime Minister nor any order was made by the Prime Minister not to denotify the land in question;

(2) Shri Jagmohan on 6.7.1999 has also recorded that on Sita Ram Bhandar Trust file he has recorded his observation and that observation is applicable to this case as well.

The note of the Minister is based on the following nothings:

On 21.4.1999 there was a note of the Under Secretary (DD). The same is to the following effect:

"The factual position of the case may kindly be perused from page 38/N onwards. The draft denotification order kept in the file at flag Z as stated in the nothing at pre-page of Hon. Minister UAE may be approved, please.

This noting is at page 42 of the relevant file. Just after the change of the Minister when the present incumbent succeeded on 10.6.1999 a note was recorded which is to the following effect:

"The case was discussed with JS (UD) & S(UD). The information received from DDA is placed below. It indicates that possession of 600 bighas out of 615 bighas

notified for acqun. has already been taken over by DDA. Hence denotification is not legally possible. P1. p.u. with a brief not for re-circulation.

Sd/-;

10.6.99";

In the file no material has been placed nor shown which could indicate on the basis of which this information that possession of 600 bighas of land has been taken by the DDA has ben recorded.As a matter of fact, a note after 7 days makes this note inconsistent to the note of 17.6.1999 of Shri R.C. Nayak, Under Secretary (DDVA). The same is as under:

"The case of Denotification of Village Kotla Mahigiran, Tehsil Mehrauli New Delhi was examined without calling a fresh report up to date position of the case from DDA. The then Minister (UD) has ordered (P\_41/N) for the denotification of the land.

2.Subsequently, DDA has informed that out of 615. Bigha acquired by the Govt. physical possession of land measuring 600 Bigha has already been taken over by the DDA.

3. In the mean time the file relating to denotification of land in favor of Sita Ram Bhandar Trust has been called for by the Prime Minister and the PM has ordered that no land is to be denotified without the previous approval of Cabinet/PM. In view of this no further action is required in this case.

Submitted please.

Sd/-

(R.C. NAYAK)

US (DDVA)

17.6.99";

In Sita Ram Bhandar Trust case the Minister has recorded:-

".....The very idea of de-notification goes against the basic objective of bringing about planned and integrated development of Delhi. It also strikes at the very root of healthy and unassailable principle of ensuring that the benefits of infrastructural investment, made by the public authority,is reaped by it and not by any other agency which made no contribution towards it."

From the perusal of the above note which was recorded in Sita Ram Bhandar Trust file the Minister thought in strongly that in Delhi where DDA has invested on infrastructural investment there was no scope for any other agency or private developers to develop the land. Whether said stand was in conformity with the policy of the Minister's own government and if the same is in conformity, this Court has no power of judicial review.

But unfortunately that is not so. The housing policy which has been adopted by the Parliament pursuant to the order passed by the Supreme Court envisages the role of private participation to mobilise the resources facilitate and expand the investment. The National Housing Policy in terms of para 4.10 envisages the role of the Government as well as private sector and the community fiscal policy. Under 4.10.3, the policy inter alias laid down:

"4.10.3 The private developers and the organized sector will be encouraged to invest in various forms of housing and land development by access to finance, speedier approval of schemes and of the forms of support, removal of constraints to assembly and development of land, while they will be induced to devote a significant proportion of the investment in housing for lower and middle-income groups at affordable prices and conform to non-exploitative practices."

It was not only a policy which was no paper. To implement that policy in the National Capital Territory of Delhi the Government issued guide-lines dated 5.3.1999 for involving the private agencies/persons/companies in assembly and development of land and construction of house. That guide-lines envisaged the involvement of private developers in housing activities to take up land assembly and develop housing project with a minimum area of 10 acres of contiguous land having legal ownership of land with conforming land use as per MPD 2001.

The said guide-lines also inter alias incorporated to harmonise compliance in view of the infrastructural investment made by the State so that the builders may not indulge in exploitative mechanism.

"2.(iii) The private agency/person/company should have legal ownership and/or legal possession of the land or the right to develop the land with conforming land use as per MPD-2001. 10 acres could be in the name of one person, or in the name of a company or partly in the name of a person and partly in the name of a company The 10 acres may comprise land partly owned and partly with development rights only....

(viii) The builder will contribute to Housing of EWS Fund for providing shelter to slum dwellers. The contribution will be Rs.5 lakhs per acre for plotted development. In the case of Group Housing, Rs.25,000/- per (sic.) of size 1000 sq ft. or more plinth area will be paid by developer.....

(xiv) The developer will hand over land free of cost to the local authority for such purposes as Police Station, milk booths, etc as per the Master Plan/Zonal Plan requirements.....

(xvi) The developers will surrender free to the local authorities, the following categories of land after they have been properly developed:-

(a) Play ground

(b) Park"

Therefore, there was no material before the succeeding Minister regarding

possession except what has been before the Minister who passed the order on 13.4.1999 regarding the possession of the land in question. In any case I have already dealt with the possession aspect in the earlier part. This file has not been sent to the Prime Minister. Therefore, there was no occasion for the Prime Minister to pass any order on this file.

The third and most important aspect on which the order passed by the earlier Minister has been overruled by the subsequent Minister it seems stems from his personal conviction with regard to the land and how same has to be dealt in Delhi for construction of houses. In a Parliamentary democracy governed by rule of law every body is entitled to hold his own personal opinion. But whether that personal conviction or opinion should affect the decision making process when there is a clear, well defined policy? If that is allowed to be done, I am afraid the whole functioning of a parliamentary democracy based on collective responsibility will face dangerous consequences.

Dissent and tolerance are the essence of democracy. Functioning within the parameter of policy is the mandate of collective responsibility.

After a long and arduous interaction between the offices of the Ministry, the Minister has taken the conscious decision to denotify the land. Can a subsequent minister can simply disagree with the view of the previous minister which he has taken in view of the discussions as reflected in the notes in the file and in consonance with the National Housing Policy 1994. To my mind until and unless subsequent Minister had referred the matter for discussion into the Cabinet for being overruled or indicated reasons consistent with the policy of the government, by a single stroke of pen he could not have altered the decision of the previous minister because he personally thought that private parties should not be allowed to deal with the land. This action was contrary to the policy of the Government of which he was a minister. In *Supreme Court Advocates-on-Record Association and another Vs. Union of India*, the Supreme Court held as under:

"It is not necessary for us to dwell into this subject any more. We agree that a convention while it is a convention is to be distinguished from the law. But this does not mean that what was formerly a convention cannot later become law. When customary rules are recognized and enforced by Courts as law, there is no reason why a convention cannot be crystalised into a law and become enforceable. "Conventions can become law also by judicial recognition" stated K.C. Where "Modern Constitution" (1966 Edition). It is no doubt correct that the existence of a particular convention is to be established by evidence on the basis of historical events and expert factual submissions. But once it is established in the Court of law that a particular convention exists and the constitutional functionaries are following the same as a binding precedent then there is no justification to deny such convention the status of law....

We are of the view that there is no distinction between the "constitutional law" and an established "constitutional convention" and both are binding in the field

of their operation. Once it is established to the satisfaction of the Court that a particular convention exists and is operating then the convention becomes a part of the "constitutional law" of the land and can be enforced in the like manner."

The principle of collective responsibility was discussed by the Supreme Court in *Common Cause*'s case (*supra*) where the Court held:

"The doctrine of collective responsibility has practical advantages. First, it counteracts departmental separation for each Minister has to be concerned with policies of other departments. Second, it prevents the policy of one department being determined unilaterally. Since it is the Cabinet as a whole which decides, ministers are less likely to be over-influenced by their civil servants. Third, it ensures that Cabinet decisions are based on principles and not on personalities.

Collective responsibility does not apply to a Minister's responsibility of his permanent officials or for his personal mistakes."

In *Laker Airways Ltd. Vs. Department of Trade* (1976) 3 WLR : (1977) 2 All. E.R.182, Lord Denning MR discussed the nature of prerogative and said:

"Seeing that the prerogative is a discretionary power to be exercised for the public good, it follows that its exercise can be examined by the courts just as any other discretionary power which is vested in the executive."

"Likewise it seems to me that, when discretionary powers are entrusted to the executive by the prerogative-in pursuance of the treaty-making power-the courts can examine the exercise of them so as to see that they are not used improperly or mistakenly."

Lord Denning in *Padfield Vs. Minister of Agriculture, Fisheries and Food* 1968 AC 997: (1968) 1 All ER 694 observed:

"If the decision-making body is influenced by considerations which ought not to influence it or fails to take into account matters which it ought to take into account, the court will interfere."

The Court cannot substitute its judgment for the judgment of authorities. When the action of the authority is so unfair or unreasonable that no reasonable person would have taken that action, only in these cases Court will intervene to uphold rule of law.

It was contended before me that this Court can issue a writ of mandamus or an appropriate direction to compel the performance in a proper and lawful manner of the discretion conferred by the Government or a public authority and in a proper case in order to prevent injustice resulting to the concerned parties the Court may itself pass an order or give directions which the Government or the public authority should have passed or given had it properly and lawfully exercised its discretion and on the basis of *Comptroller and Auditor-general of India, Gian Prakash, New Delhi and Another Vs. K.S. Jagannathan and Another*, it was contended that a direction be issued to the respondents to publish the

notification, a draft of which was prepared and ordered to be published by the previous Minister on 13.4.1999.

The Court in *Comptroller & Auditor General of India, Gian Prakash*" case (supra) held as follows:

There is thus no doubt that the High Courts in India exercising their jurisdiction under Article 226 have the power to issue a writ of mandamus or a writ in the nature of mandamus or to pass orders and give necessary directions where the government or a public authority has failed to exercise or has wrongly exercised the discretion conferred upon it by a statute or a rule or a policy decision of the government or has exercised such discretion mala fide or on irrelevant considerations or by ignoring the relevant considerations and materials or in such a manner as to frustrate the object of conferring such discretion or the policy for implementing which such discretion has been conferred. In all such cases and in any other fit and proper case a High Court can, in the exercise of its jurisdiction under Article 226 issue a writ of mandamus or a writ in the nature of mandamus or pass orders and give directions to compel the performance in a proper and lawful manner of the discretion conferred upon the government or a public authority, and in a proper case, in order to prevent injustice resulting to the concerned parties, the court may itself pass an order or give directions which the government or the public authority should have passed or given had it properly and lawfully exercised its discretion."

It is proper exercise of public power in a republic which is sine qua non of parliamentary democracy governed by rule of law. Rule of law must keep pace with the rule of life. From the order passed by the subsequent Minister there is nothing on record to show that there was some change in the circumstances for rescinding the earlier order passed by the previous Minister on 13.4.1999. It is neither contended nor brought on record that the earlier decision was passed by the person who did not have the authority or decision was incorrect, mala fide, arbitrary or was taken on extraneous considerations or was not legal or suffered from non-application of relevant factors or the same was without jurisdiction. In the subsequent decision it has not been mentioned by the minister concerned that the previous decision was an erroneous decision and was based on wrong premises and was inconsistent with the Government Policy. Therefore, same could not be allowed to be perpetuated.

Therefore the decision taken on 6.7.1999 by the subsequent Minister without taking into consideration the material placed before the earlier Minister, without taking into consideration that no notification u/s 22 of the Delhi Development Act has been issued to place the land at the disposal of the DDA and without taking into consideration that if notification in terms of Section 22 has not been issued would make the decision irrational, as well as amounts to procedural irregularity. No possession could have been taken by the DDA in accordance with law, as discussed above, the possession taking reports, to say the least, suffers from contradictions as well as lacks credence. This Court is not concerned with the

decision. It is only concerned with the manner in which the decision to over rule the earlier decision has been taken. Decision making process is vitiated on account of irrationality, the same is based on irrelevant consideration.

In view of above reasons. I quash the order dated 6.7.1999 on the aforesaid premises. Rule is made absolute. All the pending applications are disposed of .

Petition is allowed.

V