
(2014) 12 GUJ CK 0125

In the Gujarat High Court

Case No : Special Civil Application No. 1688 of 2014

Premilaben and Others

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 08-12-2014

Acts Referred:

Constitution of India, 1950 — Article 226 — Gujarat Co-operative Societies Act, 1961 -
Section 108, 170 — Land Acquisition Act, 1894 - Section 11, 16, 18, 3(f), 4

Citation : (2015) 2 GLR 1369

Hon'ble Judges : Jayant M. Patel, J;C.L. Soni, J.

Bench : Division Bench

Advocate : Mahesh C. Bhatt and Vikram J. Thakor, for the Appellant; Rutvij Oza, A.G.P., for the Respondent

Final Decision : Dismissed

Judgement

C.L. Soni, J.?This petition filed under Art. 226 of the Constitution of India is by the original owners whose lands bearing Survey No. 287-2 admeasuring 4148 square meters (the land in question) with another land bearing Survey No. 287-1 admeasuring 1163 square meters were acquired by award dated 17-3-1975 under Sec. 11 of the Land Acquisition Act, 1894 ("the old Act") for the purpose of construction of the houses by "Shri Mahyavanshi Housing Co-operative Society Limited" - respondent No. 5 herein for its members belonging to weaker section of the society. The challenge made in this petition is against the report-proposal dated 3-5-2012 submitted by the District Collector to the Deputy Secretary recommending regularization of the construction of additional flats constructed by respondent No. 5 for more members than 35 as originally permitted by condition No. 13 of the order of the Collector dated 5-9-1966 for grant of the land to the society; against the order dated 11-9-2012 passed by the Secretary, Revenue Department accepting proposal of the Collector and regularizing the construction for more members on certain conditions including condition of constructing flats instead of tenements; against the communication dated 3-4-2013 from the Deputy Collector to the Collector stating that since the

construction of the flats in place of tenements has been regularized by the Government and since the Municipal Corporation has approved the plan for flats, there appears to be no legal hurdle against such construction; against the order dated 15-5-2013 of the District Collector for regularization of the construction of the flats on the conditions mentioned therein. The petitioners have also prayed to hold and declare that the action of the respondent authorities to drop proposal to restore the land in question to them and to allow respondent Nos. 5 to 6 to put up scheme of 115 flats is illegal, unjust and unconstitutional and that the petitioners are entitled for restoration of the ownership and possession of the land in question. The petitioners have also sought direction against the respondent authorities to take appropriate action against the activities carried out by respondent Nos. 5 and 6 on the land in question and to restore the lands to them.

2. It appears that by amendment permitted by the Court, the petitioners have made further prayer to quash and set aside the Notification dated 12-4-1967 issued under Sec. 4 and the Notification dated 1-6-1968 issued under Sec. 6 of the old Act.

3. It is the case of the petitioners that the District Collector vide its order dated 5-9-1967 accorded sanction to the scheme of respondent No. 5-Society for construction of houses for its members and to acquire the land for the said purpose. The scheme sanctioned was to provide houses to 35 members of the society with specific condition not to increase number of members and not to sell or transfer the plot to any person other than the members. There was also condition of construction of houses within two years from the date of taking over the possession of the land and the breach of any of the conditions was to result into cancellation of the land and the land was to be liable to be resumed by the Government. Pursuant to the sanction for the scheme, the land in question and another land were acquired and the possession was taken on 2-4-1975. However, respondent No. 5-Society did not utilize the land for the purpose for which it was acquired for almost 35 years nor even the society maintained any books of accounts or fulfilled the objects for which it was registered. It is further case of the petitioners that by order dated 13-11-2000, the District Registrar, Co-operative Societies wound up respondent No. 5-Society and appointed liquidator. The District Registrar also passed final order of liquidation on 14-12-2000, but thereafter, as per the information of the petitioners, said order of the District Registrar was set aside in an appeal by the appellate authority vide order dated 28-2-2003.

4. The petitioners have further averred that in the meantime, the T.P. Scheme No. 19 covering the area of the land in question was implemented and against the original Survey No. 287/2, Final Plot No. 92 admeasuring 2903 square meters came to be allotted. It is further stated that though the land was acquired for providing houses to the needy members of respondent No. 5-Society, respondent No. 5 entered into development agreement with respondent No. 6 on

2-1-2004 as per which, the respondent No. 6 was to construct 36 flats on 948.71 square meters of land and the remaining land was to be developed by respondent No. 6 for his own purpose. The petitioner, therefore, represented to the authorities for restoration of the land to them. The petitioners have taken contentions in the petition that the society has not used the land for the purpose for which it was acquired for more than about 35 years and committed breach of the order by constructing flats for more members.

5. The petition is opposed by respondent No. 5 by affidavit-in-reply and respondent No. 4-Deputy Collector has also filed affidavit-in-reply to the petition.

6. We have heard learned Advocates for the parties. Learned Counsel Mr. M.C. Bhatt appearing with learned Advocate Mr. Vikram J. Thakore for the petitioners submitted that the land was acquired for the purpose of construction of houses for members of respondent No. 5-Society and as per the condition of the scheme, sanctioned by the Collector, such construction was to be made within the span of only two years. Mr. Bhatt submitted that such purpose has not been served as the land has not been utilized for the construction of houses by respondent No. 5 for its members for more than 35 years. Mr. Bhatt submitted that in fact when there was clear breach of the conditions of the scheme approved by the Collector, the allotment of the land in favour of respondent No. 5 would stand cancelled and the land should be restored to the petitioners. Mr. Bhatt submitted that in the order of the Collector for according sanction to the scheme for construction of houses by respondent No. 5-Society, there was clear stipulation of construction of houses for 35 members of the society whereas the society un-authorizedly entered into development agreement with the builder - respondent No. 6 for construction of flats on 1/3rd part of the land and gave away remaining land to the builder for his own use which would definitely frustrate the public purpose for which the land was acquired and also would result into breach of the condition of sanction accorded by the Collector. Mr. Bhatt submitted that when the land is acquired for definite public purpose with specific condition of making construction within two years and if such land is not put to use for a long time of 35 years, the original owner of the land would certainly be entitled to restoration of the land. Mr. Bhatt submitted that in any case, the acquired land is not meant for profiteering by private persons, otherwise, it would be a fraud on the statute. Mr. Bhatt submitted that in the case on hand, respondent No. 5 has entered into development agreement with private builder and has allowed the builder to get the acquired land for the purpose for his own use, therefore, it cannot be said that the purpose for which the land was acquired has continued. Mr. Bhatt submitted that as per the original condition, only 35 members were to be given benefit of the construction of the houses and therefore, regularization of construction of 115 flats is totally illegal.

7. As against the above arguments, learned Asstt. Government Pleader Mr. Oza as well as learned Advocate Mr. Shirish Joshi appearing for the respective respondents submitted that there is no change in the purpose for which the land

was acquired and that the authorities have regularized construction for more members of the weaker section of the society which would be serving the better purpose for which the land was acquired as the construction of 115 flats would benefit more members of the society who are from the weaker section.

8. Having heard the learned Advocates for the parties, we find that the Collector by his order dated 5-9-1966 at Annexure-B approved the scheme of respondent No. 5-Society for construction of houses for its members belonging to weaker section. By the said order, sanction was also given to the acquisition of the land out of Survey No. 287 and to grant such land to the respondent No. 5-Society on permanent basis on certain conditions. As per the definition of public purpose given under Sec. 3(f) of the old Act, the purpose for which the scheme was sanctioned by the Collector is undisputedly a public purpose.

9. It appears that for the scheme approved, the land in question with another land was then acquired by following the procedure under the old Act by award dated 17-3-1975.

10. It appears that after the possession of the land admeasuring 4148 square meters of Survey No. 287-2 belonging to the petitioners and of 1166 square meters of Survey No. 287-1-B was given to respondent No. 5 society, respondent No. 5-Society was initially allotted Final Plot No. 92, but thereafter, it was allotted Final Plot No. 138 ad measuring 3582 square meters as could be seen from Annexure-H page 72. As per the conditions of the scheme approved by the Collector, the land was to be developed by the society for its 35 members within a period of two years from the date of taking over possession of the land. The respondent No. 5 in its affidavit-in-reply has stated that it could get the copy of the award as late as in the year 1996 and with great difficulties, it could get its name entered in the revenue record in the year 1998. It is further stated that initially, only 2830 square meters of the land in Final Plot No. 92 as against 5311 square meters of original plot was allotted but then after giving long fight by it, it got Final Plot No. 138 having area of 3890 square meters on 25-7-2005 and out of this area also, around 950 square meters of the land is still shown as part and parcel of the original Plot No. 91 which is neighbouring land. It is further stated that the District Registrar of the Co-operative Societies passed order for its liquidation on the ground that it has done nothing for a long time. However, such order of the District Registrar was set aside in the appeal preferred by the society. The order of the District Registrar dated 13-11-2000 is at Annexure-F for liquidation of respondent No. 5-Society under Sec. 170 read with Sec. 108 of the Gujarat Co-operative Societies Act, 1961.

11. It is required to be noted that the society which comprised of the members of the weaker section would have faced non-availability of funds from its members for developing the society with above-referred other hurdles.

12. The petitioners have placed on record copy of development agreement alleged to have been entered into by the society with the builder-respondent No.

6 dated 12-1-2004 at Annexure-I from which it appears that for construction of 36 flats, the cost of construction was to be borne by the developer and such construction was to come up on 948.71 square meters and the remaining area of 1854.29 square meters was to be developed by the developer as per his sweet-will. Such terms of the development agreement would lend support to the above-referred presumption that there would have been non-availability of funds from the members of respondent No. 5-Society for construction of the houses. However, as stated in the reply by respondent No. 5-Society, this agreement was later on cancelled and under the fresh agreement, the society has to bear the construction costs and the respondent No. 6 is to work as project manager by accepting 12% of the total costs. The cancellation of agreement dated 12-7-2006 is found written on the back portion of the original development agreement which can be seen from page 220. Such written portion of cancelling the agreement is not placed on record by the petitioners.

13. It appears that respondent No. 5-Society decided to construct 115 flats for more members from weaker section of the society and such construction of flats for 115 members has been regularized by the State Government by the orders impugned in the petition. It appears from the order dated 3-4-2012 of the Collector that initially the Collector examined the conduct of respondent No. 5-Society as regards the society's plan of making construction of 80 additional houses. However, the Collector on making inquiry, found that the society constructed more 80 flats and also found that the society made booking of 55 flats. The Collector therefore opined that since the society has made total construction of 15809 square ft. area, the land was not to be re-granted/restored to the original owners - the petitioners but as per Sec. 44(A) of the old Act and for breach of Condition No. 13 of the order of the Collector dated 5-9-1966, after resumption of the land by the Government, it could be restored to respondent No. 5-Society by regularizing the construction made for more members of the society. Such recommendation of the Collector dated 3-5-2012 is at Annexure-R. Based on such recommendation, the Under Secretary considered the matter for regularization of construction for additional members of respondent No. 5-Society and passed order dated 21-9-2012 to regularize the construction of flats in place of tenements on conditions that the members of the society shall be only from the weaker section of the society for which the affidavit from respondent No. 5-Society was to be obtained. It appears that the Deputy Collector then made report to the Collector dated 3-4-2013 at Annexure-T stating that the construction of flats in place of tenements is regularized by the Government for which the Municipal Corporation has sanctioned the plan and there appears to be no legal hurdle against construction of flats in place of tenements. The Collector then passed order dated 15-5-2013 at Annexure-V recording regularization of construction of 115 flats and about the affidavit made by the society to the effect that the members of respondent No. 5-Society shall be only of weaker section. It is also stated in the order that the construction shall be as per the plan sanctioned by the Municipal Corporation and the rules and the regulations of the

Municipal Corporation shall be strictly followed by respondent No. 5-Society.

14. From the above, what appears is that though respondent No. 5 could not comply with the condition of constructing the houses for its members within the time stipulated in the original order and that it has enhanced the number of residential units for 115 members from 35 members, however, in the facts of the case, the State Authorities have regularized such breach of conditions. The contention taken in the petition by amendment that before passing the orders of regularization, the petitioners were required to be heard, cannot be accepted as the land since stood vested with the Government, the petitioners lost their rights to the land and after allotment to respondent No. 5, the petitioners would cease to have any interest in the land, and therefore, there was no question of giving any hearing to the petitioners. We find that the original purpose has remained the same and unaltered for which the scheme was sanctioned by the Collector and the land was acquired. As per the report of the Collector, most part of the land have been developed. Not only this but the regularization of construction for more members is ordered strictly on a condition that the members of the society to be allotted the flats shall be only from the weaker section of the society. We are, therefore, of the view that since the original purpose for which the scheme was approved by the Collector and the land was acquired has remained the same and since 115 members from weaker section will have their housing accommodation it could be said that the public purpose for which the land was acquired would be better served.

15. It is true that the society has taken long time in constructing the houses for its members. However, at the same time, now when the same society is achieving its object of constructing houses for its members belonging to weaker section of the society, we do not find any error in the action of the State Government and the Collector in regularizing the additional construction of flats for more members of the society. We therefore do not accept the challenge made by the petitioners to the initial proposal of the Collector and the order made by the State Government for regularization of the construction for more members of the society and the further order made by the Collector in approving such additional construction for more members based on the order of regularization passed by the State Government.

16. Learned Advocate Mr. Bhatt however submitted that since the land remained unutilized for more than 35 years and is given to the private builder by respondent No. 5, it should be restored to the petitioners as the public purpose for which the land was acquired stood frustrated. We do not agree with such submission as the petitioners are responsible for delay and latches in making such grievance of non-utilization of the land for such a long time. Not only this but from the record, we find that the development agreement with respondent No. 6 initially entered into by respondent No. 5 stood cancelled and now it is respondent No. 5 which is developing the land at its own costs by recovering the amount from its members as could be seen from one of the agreement entered

with the member, copy whereof is found at Annexure R-II with the affidavit of respondent No. 5-Society. Be that as it may, when the development agreement dated 12-1-2004 was cancelled on 12-7-2006 and when the acquired land has been utilized by respondent No. 5 for construction of 115 flats for its members belonging to weaker section of the society, we do not find that the petitioners could be made entitled to restoration of their acquired land.

17. Mr. Bhatt however relied on the decision of the Hon''ble Supreme Court in the case of Royal Orchid Hotels Limited and Another Vs. G. Jayarama Reddy and Others, so as to point out that there is no limitation prescribed for filing the petition under Art. 226 of the Constitution of India to claim relief for restoration of the land if not used for the public purpose and transferred to the private parties. We find that in the said case, the lands acquired were transferred to the private parties and the Hon''ble Supreme Court negated the objection of limitation raised against filing of the petition. In the said case, the Hon''ble Supreme Court held and observed in Paras 22 to 27 as under:

"22. In the light of the above, it is to be seen whether the discretion exercised by the Division Bench of the High Court to ignore the delay in filing of writ petition is vitiated by any patent error or the reasons assigned for rejecting the appellants' objection of delay are irrelevant and extraneous. Though, it may sound repetitive, we may mention that in the writ petition filed by him, respondent No. 1 had not only prayed for quashing of the acquisition proceedings, but also prayed for restoration of the acquired land on the ground that instead of using the same for the public purpose specified in the notifications issued under Secs. 4(1) and 6, the Corporation had transferred the same to private persons. Respondent No. 1 and other landowners may not be having any serious objection to the acquisition of their land for a public purpose, and therefore, some of them not only accepted the compensation, but also filed applications under Sec. 18 of the Act for determination of market value by the Court. However, when it was discovered that the acquired land has been transferred to private persons, they sought intervention of the Court and in the three cases, the Division Bench of the High Court nullified the acquisition on the ground of fraud and misuse of the provisions of the Act.

23. Insofar as land of respondent No. 1 is concerned, the same was advertised in 1987 along with other parcels of land (total measuring 5 acres) and Corporation executed lease in favour of M/s. Universal Resorts Limited in 1992. However, no material has been placed on record to show that the said exercise was undertaken after issuing notice to the landowners. When respondent No. 1 discovered that his land has been transferred to private entity, he made grievance and finally approached the High Court. During the intervening period, he pursued his claim for higher compensation. Therefore, it cannot be said that he was sleeping over his right and was guilty of laches.

24. A reading of the impugned judgment, the relevant portions of which have been extracted hereinabove shows that the Division Bench of the High Court

adverted to all the facts, which has bearing on the issue of delay including the one that on the advice given by an Advocate, respondent No. 1 had availed other remedies and opined that the delay had been adequately explained. Thus, it cannot be said that the discretion exercised by the High Court to entertain and decide the writ petition filed by respondent No. 1 on merits is vitiated by any patent legal infirmity. It is true that the writ petitions filed by the brothers of respondent No. 1 had been dismissed by the learned Single Judge on the ground of delay and the writ appeals and the special leave petitions filed against the order of the learned Single Judge were dismissed by the Division Bench of the High Court and this Court respectively, but that could not be made basis for denying relief to respondent No. 1 because his brothers had neither questioned the diversification of land to private persons nor prayed for restoration of their respective shares. That apart, we find it extremely difficult, if not impossible, to approve the approach adopted by the learned Single Judge in dealing with Writ Petition Nos. 2379 and 2380 of 1993 filed by the brothers of respondent No. 1. He distinguished the judgments of the Division Bench in *Mrs. Behroze Ramyar Batha v. Special Land Acquisition Officer*, (supra) and *Smt. H.N. Lakshamma v. State of Karnataka*, without any real distinction and did not adhere to the basic postulate of judicial discipline that a Single Bench is bound by the judgment of the Division Bench. Not only this, the learned Single Judge omitted to consider order dated 3-10-1991 passed in Writ Petition Nos. 19812 to 19816 of 1990 - *Annaiah v. State of Karnataka*, in which the same Division Bench had quashed notifications dated 28-12-1981 and 16-4-1983 in their entirety. Unfortunately, the Division Bench of the High Court went a step further and dismissed the writ appeals filed by the brothers of respondent No. 1 without even advertng to the factual matrix of the case, the grounds on which the order of the learned Single Judge was challenged and ignored the law Laid down by the Co-ordinate Bench in three other cases. The special leave petitions filed by the brothers of respondent No. 1 were summarily dismissed by this Court. Such dismissal did not amount to this Court's approval of the view taken by the High Court on the legality of the acquisition and transfer of land to private persons. In this connection, reference can usefully be made to the judgment in *Kunhayammed and Others Vs. State of Kerala and Another*, .

25. The next question which merits examination is whether the High Court was justified in directing restoration of land to respondent No. 1. In *Mrs. Behroze Ramyar Batha v. Special Land Acquisition Officer* (supra), the Division Bench of the High Court categorically held that the exercise undertaken for the acquisition of land was vitiated due to fraud. The Division Bench was also of the view that the acquisition cannot be valid in part and invalid in other parts, but did not nullify all the transfers on the premise that other writ petitions and a writ appeal involving challenge to the acquisition proceedings were pending. In *Annaiah v. State of Karnataka* (supra) the same Division Bench specifically adverted to the issue of diversification of purpose and held that where the landowners are deprived of their land under the cover of public purpose and there is

diversification of land for a private purpose, it amounts to fraudulent exercise of the power of eminent domain.

26. The pleadings and documents filed by the parties in these cases clearly show that the Corporation had made a false projection to the State Government that land was needed for execution of tourism related projects. In the meeting of officers held on 13-1-1987, i.e. after almost four years of the issue of declaration under Sec. 6, the Managing Director of the Corporation candidly admitted that the Corporation did not have the requisite finances to pay for the acquisition of land and that Dayananda Pal, who had already entered into agreements with some of the landowners for purchase of land, was prepared to provide funds subject to certain conditions including transfer of 12 acres 34 guntas land to him for house building project. After 8 months, the Corporation passed resolution for transfer of over 12 acres land to Dayananda Pai. The Corporation also transferred two other parcels of land in favour of Bangalore International Centre and M/s. Universal Resorts Limited. These transactions reveal the true design of the officers of the Corporation, who first succeeded in persuading the State Government to acquire huge chunk of land for a public purpose and then transferred major portion of the acquired land to private individual and corporate entities by citing poor financial health of the Corporation as the cause for doing so. The Courts have repeatedly held that in exercise of its power of eminent domain, the State can compulsorily acquire land of the private persons but this proposition cannot be over-stretched to legitimize a patently illegal and fraudulent exercise undertaken for depriving the landowners of their constitutional right to property with a view to favour private persons. It needs no emphasis that if land is to be acquired for a company, the State Government and the company is bound to comply with the mandate of the provisions contained in Part VII of the Act. Therefore, the Corporation did not have the jurisdiction to transfer the land acquired for a public purpose to the companies, and thereby, allow them to bypass the provisions of Part VII. The diversification of the purpose for which land was acquired under Sec. 4(1) read with Sec. 6 clearly amounted to a fraud on the power of eminent domain. This is precisely what the High Court has held in the judgment under appeal, and we do not find any valid ground to interfere with the same more so because in *Annaiah v. State of Karnataka* (supra), the High Court had quashed the notifications issued under Secs. 4(1) and 6 in their entirety and that judgment has become final.

27. The judgment in *Om Parkash Vs. Union of India (UOI) and Others*, , on which reliance has been placed by Shri Naganand is clearly distinguishable. What has been held in that case is that quashing of the acquisition proceedings would enure to the benefit of only those who had approached the Court within reasonable time and not to those who remained silent. In this case, respondent No. 1 independently questioned the acquisition proceedings and transfer of the acquired land to M/s. Universal Resorts Ltd. In other words, he approached the High Court for vindication of his right and succeeded in convincing the Division Bench that the action taken by the Corporation to transfer his land to M/s.

Universal Resorts Limited was wholly illegal, arbitrary and unjustified."

18. In the case on hand, the eminent domain of acquisition of land is not exercised by the State to transfer the land to private party. The respondent No. 5 has also not transferred the land to the private party. The State Government and the Collector have found that the respondent No. 5 has been developing the land for more members belonging to weaker section of the society and thus 115 families of weaker section of the society shall have the benefit of houses constructed by respondent No. 5-Society whereby the public purpose would be duly served. In such fact situation, we find that the claim of the petitioners for restoration of the land cannot be accepted on account of long delay and laches on the part of the petitioners in invoking the writ jurisdiction of this Court. We have gone through another judgment cited by Mr. Bhatt in the case of Basawaraj and Others Vs. The Spl. Land Acquisition Officer, on the aspect of delay. It will have no bearing on the facts of the case.

19. However, we would like to refer to the decision of the Hon'ble Supreme Court in the case of Haryana State Handloom and Handicrafts Corporation Ltd. and Another Vs. Jain School Society, . In the said case, the land acquisition was challenged after a period of 22 years from the date of notification under Sec. 4 of the old Act. Hon'ble the Supreme Court has held and observed in Paras 7 to 11 as under:

"7. It was next submitted that even though there were delay and laches on the part of the respondents they were justified in filing the Writ Petition as the fraud was being played by the State and the acquiring body. It was submitted that the land was sought to be transferred to some other body even though the acquisition was on behalf of appellants. It was submitted that the respondents filed the Writ Petition as this fraud came to their knowledge. We see no substance in this contention also. In the Writ Petition there is no ground of fraud. These are also facts which came to light as a result of the reply filed by the State in the Writ Petition. It was the State who mentioned that the appellants did not have the money to develop the land and that therefore the land was proposed to be transferred to some other party. This would afford no ground for entertaining a Writ Petition which was filed 22 years after the Sec. 4 Notification had been issued.

8. Recently, in the case of Northern Indian Glass Industries Vs. Jaswant Singh and Others, , this Court considered the question whether a Writ Petition filed after 17 years of issue of a notification under Sec. 4 could be entertained. This Court has held that such a Writ Petition must not be entertained. It is held that the Writ Petition must be dismissed on the grounds of delay and laches itself. It is held that mere non-payment of enhanced compensation or the fact that the land had not been put to use for the purpose of which it was acquired would be no ground for justifying delay and laches. We are in full agreement with the view expressed therein.

9. In this case, there is absolutely no explanation for the delay and laches of over 22 years, particularly when the respondents had applied for enhancement of compensation.

10. The only ground given by the High Court in justifying delay is as follows:

"Mr. Gupta contends that the petition is belated. We are unable to accept the contention. The respondent is trying to take advantage of its own wrong. The petitioner had waited patiently to see if the respondent would utilize the land. When it found that nothing was being done, the petitioner has approached this Court. The petitioner cannot be accused of any delay so as to disentitle it to the relief. The delay, if any, shows the bona fides of the petitioner."

In our view, this reasoning is entirely unsustainable and erroneous. The respondents did not need to wait 22 years to see that nothing was being done to utilize the land. The High Court was entirely in error in stating that the respondents could not be accused of any delay and that the delay in fact showed the bona fides of the respondents. Further, the High Court seems to have overlooked the fact that the respondents had applied for enhancement of compensation and had filed a Writ Petition only after those proceedings were over.

11. In our view, the judgment of the High Court is unsustainable and is accordingly set aside. The Writ Petition filed by the respondents stands dismissed."

20. In the present case, we find that for restoration of land and for challenging the acquisition proceedings, the petitioners have filed the present petition after a period of more than 35 years on the ground of non-use of land for all these years. From the judgment in the case of Northern Indian Glass Industries Vs. Jaswant Singh and Others, considered by the Hon'ble Supreme Court in Haryana State Handloom and Handicrafts Corporation Ltd. and Another Vs. Jain School Society, , following observations in Paragraph 6, 9 and 12 need to be referred:

"6. It is not in dispute that the writ petition was filed almost after 17 years from the date of passing the award and after taking possession of land. There is no explanation for inordinate delay and laches except the statement made in Para 8 of the writ petition to the effect, that although the possession of the land was taken 17 years back in 1973, the compensation was not paid fully and the acquisition was mala fide and illegal and that the acquisition was made only to peg down the prices. It is also not in dispute that respondent Nos. 1-5 accepted/ received the amount of condensation as early as on 16-10-1974 on the basis of the award passed; they sought reference under Sec. 18 of the Act for enhancement of the compensation and further they pursued the matter in the High Court seeking further enhancement of the compensation till 1988. Three years thereafter they filed writ petition challenging the acquisition proceedings. In our view, in the absence of any explanation for inordinate delay and laches on the part of the respondent Nos. 1-5 in approaching the High Court, the writ

petition ought to have been dismissed on this short ground. It appears that the High Court was impressed by two circumstances (1) that even after 17 long years the respondents were not paid enhanced compensation, and (2) if the acquisition proceedings are not quashed and if no direction is given to re-vest the land in respondent Nos. 1-5, there would be unjust enrichment by the appellant-company. According to the High Court, this was extraordinary situation, which warranted exercise of its writ jurisdiction to quash the acquisition proceedings.

9. Looking to the facts of the present case and conduct of the respondent Nos. 1-5, the High Court was not at all justified in ignoring the delay and laches and granting relief to them. As already noticed, the respondent Nos. 1-5 approached the High Court by filing writ petition almost after a period of 17 years after finalization of the acquisition proceedings. They accepted the compensation amount as per the award and sought for enhancement of the compensation amount without challenging the notification issued under Secs. 4 and 6. Having sought for enhancement of compensation only, they filed writ petition even three years after the appeals were disposed of by the High Court in the matter of enhancement of compensation. There is no explanation whatsoever for the inordinate delay in filing the writ petitions. Merely because full enhanced compensation amount was not paid to the respondents, that itself was not a ground to condone the delay and laches in filing the writ petition. In our view, the High Court was also not right in ordering restoration of land to the respondents on the ground that the land acquired was not used for which it had been acquired. It is well-settled position in law that after passing the award and taking possession under Sec. 16 of the Act, the acquired land vests with the Government free from all encumbrances. Even if the land is not used for the purpose for which it is acquired, the land owner does not get any right to ask for re-vesting the land in him and to ask for restitution of the possession. This Court as early as in 1976 in *Gulam Mustafa and Others Vs. The State of Maharashtra and Others*, has stated thus:

"At this stage, Shri Deshpande complained that actually the municipal committee had sold away the excess land marking them out into separate plots for a housing colony.. Apart from the fact that a housing colony is a public necessity, once the original acquisition is valid and title has vested in the Municipality, how it uses the excess land is no concern of the original owner and cannot be the basis for invalidating the acquisition. There is no principle of law by which a valid compulsory acquisition stands voided because long after the requiring authority diverts it to a public purpose other than the one stated in the Sec. 6(3) declaration."

12. If the land was not used for the purpose for which it was acquired, it was open to the State Government to take action but that did not confer any right on the respondents to ask for restitution of the land. As already noticed, the State Government in this regard has already initiated proceedings for resumption of

the land. In our view, there arises no question of any unjust enrichment to the appellant-company."

21. We, having examined the matter on facts, since find that the land is to be utilized for the members belonging to weaker section of the society, the period of 35 years taken by the petitioners for filing the petition would go against the petitioners for not entertaining the petition on the ground of delay and laches in approaching the Court. Mr. Bhatt, however, attempted to submit, without support of the pleadings in the petition, that the Compensation was not paid to the petitioners, and therefore, the acquisition of the lands should not continue. We, therefore, called for the original record and on perusal, found that the amount of compensation awarded under Sec. 11 of the old Act was deposited in the Treasury in the year 1975. Learned A.G.P. Mr. Oza submitted that the compensation was required to be deposited with the Treasury as the petitioners did not accept the compensation and requested to make reference under Sec. 18 of the old Act. On perusal of the record, we find that on the basis of the application of the petitioners, the Land Acquisition Officer had also made reference under Sec. 18 of the old Act. In such view of the matter, we do not find it proper to consider above submission in the present proceedings initiated after a period of 35 years. We find that at this stage, such contention, in the facts of the case, would be of no help to the petitioners. For the reasons stated above, the petition is dismissed. Notice is discharged. Interim relief, if any, stands vacated. However, we direct the authorities to strictly ensure that the members of respondent No. 5-Society shall be only from the weaker section of the society and the allotment of flats shall be made only to such members from the weaker section of the society. No costs.

After pronouncement of the order, Mr. Thakor prays for continuation of the status quo order qua construction. Considering the facts and circumstances, we are not inclined to continue the interim relief. Hence, the said request is rejected.