
(2003) 10 DEL CK 0079
In the Delhi High Court
Case No : CWP 922 of 2001

Radhey Shyam Gupta

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 29-10-2003

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 35, Order 21 Rule 36, Order 21 Rule 95, Order 21 Rule 96
Constitution of India, 1950 — Article 226
Evidence Act, 1872 — Section 85
Land Acquisition Act, 1894 — Section 11A, 16, 17, 17(1), 17(2)

Citation : (2003) 7 AD 481 : (2003) 107 DLT 696 : (2003) 71 DRJ 608

Hon'ble Judges : B.C. Patel, C.J.;A.K. Sikri, J

Bench : Division Bench

Advocate : Sachin Nanwani, for LAC, Gita Mittal, for DSIDC and Deepak Khadaria, for DD A.S. Chandiok, S.P. Sharma and Manmeet Arora, for the Appellant; Sanjay Poddar, for the Respondent

Final Decision : Dismissed

Judgement

B.C. Patel, C.J.—By filing this petition in the year 2001, the petitioners have in effect prayed to quash and set aside the acquisition proceedings initiated by notification dated 16.6.1998 u/s 4 of the Land Acquisition Act, 1894 (hereinafter referred to as the Act) as also declaration dated 23.6.1998 u/s 6 of the Act.

2. Before embarking on the issues involved, let us point out at the outset that the same notification was impugned by some other petitioners in CWP No. 4260/98. A Division Bench of this Court while upholding the Notification dismissed the said writ petition. Normally calling the said detailed judgment dated 10.2.2003, a copy of which is placed on record by the respondents, this writ petition should have been dismissed straightway. However, learned counsel for the petitioner made an attempt to demonstrate that the aforesaid judgment of the Division Bench did not decide the issue in right perspective and made a fervent appeal for reference of the matter to the larger bench. In view of this

submission, we heard learned counsel for the petitioner at length and are giving our detailed reasons dealing with those submissions, in holding that the impugned Notification is valid in law and that the aforesaid judgment of the Division Bench in CWP 4260/98 does not require any reconsideration by the larger bench.

I FACTUAL MATRIX

1. It appears that after examining the report, the Government issued a notification u/s 4 of Act on 16.6.98. A copy of the notification is produced on page 83. The said notification clearly reveals that the land in village Chowki Mubarkabad is required to be taken by the Government at public expenses for a public purpose, namely the construction of CETP under planned development of Delhi. At the same time the Lt Governor, was satisfied about the urgency and, Therefore, invoked the provisions u/s 17(1) of the Act notifying that the provisions of Section 5(A) of the Act shall not apply. The notification refers to total area of 11 bigha 16 biswas. On 23.6.1998, declaration u/s 6 of the Act was published by a notification for the lands referred to in the earlier notification. On the same date, notification was published directing the Land Acquisition Collector, Delhi, to take possession of the land covered by notification u/s 4 of the Act dated 16.6.1998 and also u/s 6 of the Act dated 23.6.1998 on expiration of 15 days of notification under sub-Section (1) of Section 9 of the said Act. There is no dispute that award has been made by the Collector on 20.5.2000. It is also clear that the petition is filed on or about 6.2.2001, i.e., almost 2? years from the date of publication of declaration u/s 6 of the Act.

2. The petitioners approached this Court specifically stating that they are the owners in possession of superstructure upon the land on lease from Ramjas Foundation out of the land in Khasra No. 599/359/4 measuring 1 bigha 1 bids was situated in village Chowkri Mubarakabad. It is specifically averred by the petitioners that the aforesaid parcel of land bearing Khasra No. 599/359/4, which is 1/10th part of the total land sought to be acquired under the notification, was taken on lease by one Bharati Udyog Pvt. Ltd. from its recorded owner Ramjas Foundation. It is the case of the petitioners that Bharti Udyog Pvt. Ltd. transferred the land further through various documents. It is presently occupied by 15 persons as alleged in para 5(b) of the petition. Out of these 15 occupiers, only five alleged occupiers are before the Court in this petition.

3. In para 5(p), the petitioners averred as under:-

(p) That the petitioners have come to know that the award has also been declared in respect of the land in question but in continuation of the acquisition proceedings which are illegal and void ab initio, and as such the award itself is of no consequence and is liable to be quashed accordingly. It is also submitted that the possession as stated to have been taken illegally, contrary to the provision of Section 17(1) read with Section 9(1) and contrary to the notice issued by the respondents on 23.6.1998, is non est in the eyes of law and cannot be

understood as possession to have been taken under the provisions of Land Acquisition Act.

4. In para 5 (r), the petitioners averred as under :-

That some authorities visited the land in question belonging to the petitioners making certain measurements on 21.1.2001 and 24.1.2001 and on inquiry it was told that the land in question has already been acquired vide the aforesaid notification/declarations. It was also told that the possession on paper has already been taken on 10.7.1998.

Thus, in the petition, case is specifically pleaded that notice u/s 17(1) read with 9(1) came to be issued on 23-6-1998 and possession was taken on 10-7-1998.

II. WHEN POWER UNDER ARTICLE 226 IS TO BE EXERCISED UNDER LAND ACQUISITION CASES.

5. The power under Article 226 of the Constitution is discretionary. It will be exercised only in furtherance of interest of justice and not merely on making out a legal point and in the matter of land acquisition for public purpose interest of justice and the public interest coalesce. The Courts have to weigh the public interest vis-à-vis private interest while exercising the powers under Art. 226 - indeed any of their discretionary powers. *Ramniklal N. Bhutta and another Vs. State of Maharashtra and others*, .

6. It is also required to be noted that law courts under Article 226 of the Constitution, on a very sound equitable principle, exercise the jurisdiction and powers. Hence the equitable doctrine, namely, delay defeats equity has fullest application in the matter of granting relief under Article 226 of the Constitution. One should not forget that equity favors intelligent rather than indolent litigants. High Court has, no doubt, discretionary power under Article 226 of the Constitution but it should be exercised taking all relevant factors into pragmatic consideration.

III. CAUSE FOR ACQUISITION

7. About Delhi, in the case of *Jai Narain and Others Vs. Union of India and Others*, , the Apex Court pointed out in para 11 as under:

11. Delhi - the capital of India - one of the world's great and historic cities has come to be listed as third/fourth most polluted and grubbiest city in the world. Apart from air-pollution, the waters of river Yamuna are wholly contaminated. It is a paradox that the Delights- despite river Yamuna being the primary source of water supply-are discharging almost totality of untreated sewage into the river. There are eighteen drains including Najafgarh drain which carry industrial and domestic waste including sewage to river Yamuna. Thirty eight smaller drains fall into Najafgarh drain. The Najafgarh drain basin is the biggest polluter to river Yamuna. Eight of the drains including Najafgarh drain are untapped, four fully trapped and remaining six are partially trapped. All these eighteen drains, by and

large, carry untreated industrial and domestic wastes and fall into river Yamuna. The river Yamuna enters Delhi at Wazirabad in the North and leaves at South after traveling a distance of about twenty five kilometers. The water of river Yamuna till it enters Najafgarh is fit for drinking after treatment, but the confluence of Najafgarh drain and seventeen other drains make the water heavily polluted. The Bio Chemical Oxygen Demand (BOD) level in the river has gone so high that no flora or fauna can survive. It is of utmost importance and urgency to complete the construction of the STP's in the city of Delhi. The project is of great public importance. It is indeed of national importance. We take judicial notice of the fact that there was utmost urgency to acquire the land in dispute and as such the emergency provision of the Act were rightly invoked. We reject the first contention raised by the learned counsel.

8. In para 9 of the above case, the Apex Court pointed out as under:

"9. In Mehta" case, this Court on March 24,1995 observed as under :

A very grim picture emerges regarding increase of pollution in the city of Delhi from the two affidavits filed by Shri D. S. Negi, Secretary(Environment), Govt. of Delhi. He has pointed out that the population of Delhi which was about 17 lakhs in 1951 has gone up to more than 94 lakhs as per the 1991 census. In fact, more than 4 lakh people are being added to the population of Delhi every year out of which about 3 lakh are migrants. Delhi has been categorised as the fourth most polluted city in the world with respect to concentration of Suspended Particular Metal (SPM) in the ambient atmosphere as per World Health Organisation Report, 1989. From NEERI's annual report 1991 it is obvious that the major contributions, so far as air pollution is concerned, is of the vehicular traffic but the industries in the city are also contributing about 30% of the air pollution. So far as the discharge of effluent in Yamuna is concerned, the industries are the prime contributors apart from the MCD and NDMC which are also discharging sewage directly into the river Yamuna. We are dealing with the sewage problems in separate proceedings.

Thereafter, on April 21,1995 this Court, regarding the construction of STP's observed as under :

Treatment of sewage is of utmost importance for health and for supply of pure water to the citizens of Delhi. Any delay in this respect is health-hazard and cannot be tolerated.

9. The land in dispute in the aforesaid case had been acquired for construction of CETPs and what the Apex Court pointed out in the case of Jai Narain [supra] para 6 is required to be read :

"6. The land in dispute is being acquired for the construction of STP. This Court in M.C. Mehta's case(supra), while directing the closure of the stone crushers in the city of Delhi, on May 15, 1992 observed as under :

"We are conscious that environmental changes are the inevitable consequence of

industrial development in our country, but at the same time the quality of environment cannot be permitted to be damaged by polluting the Air, Water and Land to such an extent that it becomes a health-hazard for the residents of the area. We are constrained to record that Delhi Development Authority, Municipal Corporation of Delhi, Central Pollution Control Board and Delhi Pollution Control Committee have been wholly remiss in the performance of the statutory duties and have failed to protect the environment and control air-pollution in the Union Territory of Delhi. Utter disregard to environment has placed Delhi in an inevitable position of being the world's third grubbier, most polluted and unhealthy city as per a study conducted by the World Health Organisation. Needless to say that every citizen has a right to fresh air and to live in pollution-free environment.

While dealing with the construction of STPs in Delhi, this Court in Mehta's case passed the following order on April 22, 1994.

"Needless to say that with the increase of Population in Delhi, it is of utmost urgency to set up the Sewage Treatment plant within the time bound Schedule."

Thereafter, on May 13, 1994 this Court issued various directions regarding the transfer of land to the Delhi Water Supply and Sewage Disposal Undertaking the (Undertaking) for the STPs in Delhi and finally directed as under :

We direct the D.D.A. through Mr. S. Roy, Commissioner, Lands to hand over the possession of the vacant land available for setting up of the Sewage Treatment Plant in various colonies within four weeks from today. We further direct the M.C.D to make payment in respect of these land simultaneously. Mr. S. Prakash, Engineer-in-Chief will be responsible for taking over the land and also for making payment to the D.D.A. on behalf of the M.C.D. The work for setting up of Sewage Treatment Plants shall be undertaken forthwith and shall be completed at war-footing.

This Court in M. C. Mehta's case passed the following order on December 14, 1994 :

"We directed the D.D.A. to issue notices through Newspapers consecutively for two days stating therein that the persons who have obtained stay orders from various Courts be present in this Court at 2.00 p.m. on December 14, 1994. The notices were published by the D.D.A. as directed by us. In response to the notices, Mr. S. M. Ashri, Dr. B. S. Chauhan, Mr. Maninder Singh and Mr. L. C. Chanchi, Advocates are present of behalf of the land owners. The only contention raised by the learned counsel for various land owners is that the Notifications under Sections 4 and 6 were issued in the year 1964 and 1966 respectively. According to them, the possession of land is still with them. It is further stated by the learned counsel that they are entitled to compensation at the rate of market value of the land today....

Keeping in view the facts and circumstances of this case, we direct that 13 writ

petitions mentioned in the public notice published in the Hindustan Times dated November 30, 1994, be transferred from the Delhi High Court to the file of this Court. These petitions be listed for final disposal in the 2nd week of February, 1995.

Meanwhile, we vacate the stay orders granted by the High Court in all these writ petitions and direct the Delhi Administration to take over the possession of the land and hand over to the Delhi Water Supply and Sewage Disposal undertaking."

10. Thus, considering the urgency, the Apex Court called the petitions from the High Court. The Apex Court considered the urgency in the case of *Jai Narain vs UOI*, and pointed out in para 10 that construction of STPs in the city of Delhi is of utmost importance and the work has to be carried out expeditiously. The project is of great public importance. The Court could take judicial notice of the fact that there was urgency in acquiring the land in dispute and such emergency provisions of the Act were rightly invoked. Such is the need of providing treatment plants.

11. New Delhi was faced with the problem of pollution and hence a petition was filed before the Apex Court by one M.C. Mehta against Union of India. From the order passed by the Apex Court, it transpires that the Apex Court considered construction of 15 Sewage Treatment Plants (for short, STPs). National Environmental Engineering Research Institute, (for short, NEERI), identified the land for 15 STPs. This petition pertains to a small parcel of land measuring 1000 sq mts, which was sought to be acquired for Anand Parvat CETP which was to be erected in a big parcel of land admeasuring 11000 sq yards. With regard to the time schedule for the construction of these projects, the Court did not lay down time schedule. As indicated in the order, the Lt Governor, Govt of NCT Delhi, was requested to fix a time schedule for the construction of these projects and issue necessary directions. The Chief Secretary, Govt of NCT Delhi was required to examine the matter and to take a decision in the light of the suggestions made by the Court in the order dated 18.12.1996.

12. In view of the order made by the Apex Court, the Central Government and Delhi Administration as also industrial units were required to contribute for the CTEP projects. Unit-wise contribution was required to be determined by NEERI in consultation with Delhi State Industrial Development Corporation (for short, DSIDC) within a period of three months from the date of the order. It appears that NEERI submitted a report on the subject matter which refers to Anand Parbat Industrial Estate. It is indicated in the report that the existing drainage system consists of open brick masonry line of 12000 meters length on both sides of narrow roads. Map, along with the details, are also in the report. In Volume II, a report with regard to Anand Parvat Estate is given in detail. It is for this project the lands i.e. subject matter of this petition was sought to be acquired.

IV. CONTENTIONS RAISED BY THE PETITIONERS:

13. The petitioners are owners in possession of the superstructure upon the land

on lease, and are also tenants of Ramjas Foundation having acquired possession indirectly. However, it is later on stated that they have become tenants of Ramjas Foundation.

14. Except 1 Bigha and 1 bids was in Khasra No. 599/359/4 , other parcels of land sought to be acquired belong to Sham Lal Bansiwali. The petitioners were not aware about the acquisition proceedings in question since they have not received any information or any notice and no authority ever came to the site/shops of the petitioners or even whispered about the acquisition in any manner.

15. The petitioners have come to know that award has been made in respect of the land in question. Possession, as stated by the respondents, has been taken illegally and contrary to the provisions of Section 9(1) of the Act and contrary to the notice issued by the respondent on 23.6.98. Same being non est cannot be construed having taken possession under the provisions contained under the Act.

16. Sham Lal Bansiwali challenged the impugned notification and acquisition proceedings vide CWP 4260/98, inter alia, requesting the Court to quash the notifications followed by declaration and notices as well as for quashing the proceedings with regard to possession being violative of the provisions contained in Section 9(1) read with Section 17(1) of the Act. The said writ petition is pending before the Court wherein the Court has stayed the demolition of the structure on the land in question; The notifications and acquisition proceedings as also the proceedings for taking possession in this petition and CWP 4260/88 are identical/connected. The petitioners are entitled to the similar relief during the pendency of the present writ petition. The possession, as alleged to have been taken on 10.7.98, cannot be considered under any circumstances in accordance with law, inasmuch as, notice u/s 9 was issued on 7.6.99, and, before the expiry of 15 days from the date of the said notice , possession could not have been taken.

17. Possession alleged to have been taken by the respondents is merely a paper possession and the petitioners have not been actually dispossessed and Therefore, it cannot be said that the possession of the land has been taken or that the land vests in the government. The right to apply for de-notifying is lost by following the said procedure and Therefore also the proceedings must be quashed.

18. u/s 48 of the Act, the Government is at liberty to withdraw the proceedings if possession is not taken. In the instant case, by indicating paper possession, right to move the Government for withdrawal has thus been taken away.

19. There is undue delay in acquiring the land. If Section 17(1) was invoked and immediate possession was taken, one could appreciate the issuance of notification and procedure followed as per Section 17(1) of the Act, but, in the instant case, lands were sought to be acquired from 1986 and till 1998 notification u/s 4 was not issued, Therefore, it cannot be said that there was urgency. If an opportunity of making representation would have been afforded to

the petitioners, the State would not have suffered at all. The Government has taken two years period to file reply and it is difficult to understand as to why hearing u/s 5A of the Act is not given to the petitioners.

20. The guidelines for acquisition have not been taken into consideration by the State, i.e. if the property is constructed, it is not to be acquired. For the said purpose reliance was placed on the policy issued by the Government.

21. The petitioners are in possession of only 1000 sq mts of land, and though the respondents are in possession of vast area of 11,000 sq mts., they have not carried out any development in that area and Therefore it cannot be said that they require the land urgently. Nothing is indicated as to what steps have been taken to develop the land and Therefore the Court should not assist the respondent.

V. REPLY OF THE RESPONDENTS:

As against the aforesaid submissions made on behalf of the petitioners, on behalf of the respondents, it was pointed out that:

22. The petitioners have no locus to file a petition. Petitioners not being the owners of land have no right to challenge the acquisition proceedings more particularly when there is no acceptable evidence to show that they have any right over the land and more particularly when after issuance of notification u/s 4 or 6 they have failed to challenge the acquisition within a reasonable period. The petitioners are not recorded owners as per their own say and Therefore they are not entitled to get any notice u/s 9 of the Act. Grievance can be made only by the owners and not by the petitioners, and that too after a delayed period. Vast area has been acquired and when some others who earlier approached the Court failed before this Court in establishing that acquisition proceedings are contrary to law, the petitioners who are alleging to have been in possession of 1000 sq mts of land should not be heard when they have no right. Power of attorneys are not executed before the appropriate authority as contemplated u/s 85 of the Evidence Act and, Therefore, no reliance can be placed on such documents. This petition is required to be considered in this background .

23. That the notification u/s 4 of the Act was issued on 16.6.1998 for the public purpose namely for construction of common effluent treatment plant under planned development of Delhi and Section 6 notification was issued on 23.6.1998. It is submitted that after issuing the requisite notifications under Sections 4, 17(1) and 6 of the land Acquisition Act, the notification under Sections 9(1) of the Act was issued on 23.6.1998.

24. On 10.7.1998 possession of the land was taken over after tendering 80% estimated compensation to the interested persons. The possession of the land in the said acquisition has been already taken and handed over to Delhi Development Authority on the same date. Once the possession is taken u/s 17 of the Act, the land vest in the government free from all encumbrances and this

petition is not maintainable after the acquisition proceedings are completed.

25. The petition has no merit and deserves to be dismissed in view of the principles laid down by the Apex Court in various cases.

VI. GUIDELINES IN CASE OF ACQUISITION BY THE APEX COURT

26. It would be relevant at this stage to take note of the judgment delivered by the Apex Court in *Ramniklal N. Bhutta and another Vs. State of Maharashtra and others*, . In para 10 of the judgment the Apex Court has pointed out as under:-

10. Before parting with this case, we think it necessary to make a few observations relevant to land acquisition proceedings. Our country is now launched upon an ambitious programme of all round economic advancement to make our economy competitive in the world market. We are anxious to attract foreign direct investment to the maximum extent. We propose to compete with China economically. We wish to attain the pace of progress achieved by some of the Asian countries, referred to as "Asian tigers", e.g., South Korea, Taiwan and Singapore. It is, however, recognised on all hands that the infrastructure necessary for sustaining such a pace of progress is woefully lacking in our country. The means of transportation, power and communications are in dire need of substantial improvement, expansion and modernization. These things very often call for acquisition of land and that too without any delay. It is, however, natural that in most of these cases, the persons affected challenge the acquisition proceedings in Courts. These challenges are generally in the shape of writ petitions filed in High Courts. Invariably, stay of acquisition is asked for and in some cases, orders by way of stay or injunction are also made. Whatever may have been the practices in the past, a time has come where the Courts should keep the larger public interest in mind while exercising their power of granting stay/ injunction. The power under Article 226 is discretionary. It will be exercised only in furtherance of interests of justice and not merely on the making out of a legal point. And in the matter of land acquisition for public purposes, the interests of justice and the public interest coalesce. They are very often one and the same. Even in a Civil Suit, granting of injunction or other similar orders, more particularly of an interlocutory nature, is equally discretionary. The courts have to weigh the public interest vis-a-vis the private interest while exercising the power under Article 226 - indeed any of their discretionary powers. It may even be open to the High Court to direct, in case it finds finally that the acquisition was vitiated on account of non-compliance with some legal requirement that the persons interested shall also be entitled to a particular amount of damages to be awarded as a lump sum or calculated at a certain percentage of compensation payable. There are many ways of affording appropriate relief and redressing a wrong; quashing the acquisition proceeding is not the only mode of redress. To wit, it is ultimately a matter of balancing the competing interests. Beyond this, it is neither possible nor advisable to say. We hope and trust that these considerations will be duly borne in mind by the Courts while dealing with challenges to acquisition proceedings.

In view of what Apex Court has pointed out, stay of the entire acquisition proceedings is not to be granted when in public interest is likely to suffer. In view of need for effluent treatment plant pointed out much earlier by the Apex Court in Jai narain's case (supra) and M.C. Mehta's case (supra), delay in view of legal proceedings has caused damage to the public at large and even exchequer will suffer a lot in view of escalating prices every year.

VII. possession AS UNDERSTOOD UNDER LAND ACQUISITION ACT

27. With regard to possession, the Apex Court in the case of M/s. Larsen and Toubro Ltd. Vs. State of Gujarat and Others, , has pointed out as under :-

"14. In Balwant Narayan Bhagde Vs. M.D. Bhagwat and Others, , a three Judge Bench of this Court was considering the question of taking possession of the acquired land under the Act. Bhagwati, J. (as he then was) delivered judgment for himself and A. C. Gupta, J. He said he agreed with the conclusion reached by Untwalia, J. (who was the third Judge) as also with the reasoning on which the conclusion was based. He, however, said that a separate judgment was being written as he felt that it was not necessary to consider the question of delivery of "symbolical" and "actual" possession as provided in Rules 35, 36, 95 and 96 of Order XXI of the CPC as that was not necessary for the disposal of the appeal before the Court. Bhagwati, J. said as under : (Para 1 of AIR)

There can be no question of taking "symbolical" possession in the sense understood by judicial decisions under the Code of Civil Procedure. Nor would possession merely on paper be enough. What the Act contemplates as a necessary condition of vesting of the land in the Government is the taking of actual possession of the land. How such possession may be taken would depend on the nature of the land. Such possession would have to be taken as the nature of the land admits of. There can be no hard and fast rule laying down what act would be sufficient to constitute taking of possession of land. We should not, Therefore, be taken as laying down an absolute and inviolable rule that merely going on the spot and making a declaration by beat of drum or otherwise would be sufficient to constitute taking of possession of land in every case. But here, in our opinion, since the land was lying fallow and there was no crop on it at the material time, the act of the Tehsildar in going on the spot and inspecting the land for the purpose of determining what part was waste and arable and should, Therefore, be taken possession of and determining its extent, was sufficient to constitute taking of possession. It appears that the appellant was not present when this was done by the Tehsildar, but the presence of the owner or the occupant of the land is not necessary to effectuate the taking of possession. It is also not strictly necessary as a matter of legal requirement that notice should be given to the owner or the occupant of the land that possession would be taken at a particular time, though it may be desirable where possible, to give such notice before possession is taken by the authorities, as that would eliminate the possibility of any fraudulent or collusive transaction of taking of mere paper possession, without the occupant or the owner ever coming to know of it.

"15. In Tamil Nadu Housing Board Vs. A. Viswam (Dead) by Lrs., , the issue whether the land in question was taken possession of in proceedings under the Act. It is not necessary for us to refer to the facts of that case. We find the following statement of law relevant to the controversy in the present case : (Para 9 of AIR)"

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 of Panchanama 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.

"16. In Balmokand Khatri Educational and Industrial Trust, Amritsar Vs. State of Punjab and others, , this Court again considered the same very question of taking possession of land and said as under : (Para 4 of AIR)

It is seen that the entire gamut of the acquisition proceedings stood completed by 17-4-1976 by which date possession of the land had been taken. No doubt, Shri Parekh has contended that the appellant still retained their possession. It is now well-settled legal position that it is difficult to take physical possession of the land under compulsory acquisition. The normal mode of taking possession is drafting the Panchanama in the presence of Panchas and taking possession and giving delivery to the beneficiaries is accepted mode of taking possession of the land. Subsequent thereto, the retention of possession would tantamount only to illegal or unlawful possession.

28. In the case of General Manager, Telecommunication and Another Vs. Dr Madan Mohan Pradhan and Others, , the Apex Court in para 3 pointed out thus:

It is common knowledge that possession would always be taken under a memo and handing over also would also be under the memo. It is recognised usual practice in all acquisition proceedings. By operation of Section 17(1) even before the award could be made, the Land Acquisition Officer is entitled to take possession of land. He did so. Time mentioned in Section 9 stood expired by then. Even otherwise the award was made on 2.11.1976. By operation of Section 16 of the Act, right, title and interest in the land vested in the government absolutely free from all encumbrances. Thereby the Government became absolute owner w.e.f. 12.4.1976.

29. Learned counsel for the petitioners submitted that when larger bench has rendered a decision [viz. B.N. Bhagde, supra], the same is to be followed by the other Benches. His contention is that the Division Bench of this Court in CWP No. 4260/98 has considered the judgment delivered by the Apex Court which was a decision rendered by a Division Bench consisting of two Honourable Judges. He submitted that the decision of larger bench should have been considered and followed. Learned counsel submitted that the Apex Court decision in the case of

Chander Parkash vs State of U.P. : (2002)IILLJ841SC , has clearly pointed out that pronouncement by a Division Bench is binding on another Division bench of the same or smaller number of judges. Learned counsel invited our attention to paras 8, 14, 17 and 21 of the judgment and submitted that the Division Bench of this Court ought to have followed the decision of the larger bench of the Apex Court in preference to the decision or a judgment delivered by a bench of two learned judges of the Apex Court.

30. As against the above, it was submitted by the learned counsel for the respondent that the Apex Court in Tamil Nadu Housing Board's case [supra] considered the judgment of the Apex Court in the case of B.N. Bhagde (supra) and thereafter have come to the conclusion as indicated in para 9 of the judgment of the Apex Court and, Therefore, it is not correct to say that in case of Tamil Nadu Housing Board's case the Apex Court has not considered the decision of the larger bench of the Apex Court in the case of B.N. Bhagde (supra).

31. We have read along with the learned counsel the judgment of the Supreme Court in two cases i.e. B.N. Bhagde (supra) and Tamil Nadu Housing Board (supra). On a careful reading, we find no substantial conflict in the views expressed by the Supreme Court in the said two cases (supra). So far as High Court is concerned, even if there appears to be some inconsistency in two judgments of the Supreme Court, on a common question brought before it in two different cases, it is expected to follow both and try to resolve the seeming conflict, if any, between the two judgments of the Supreme Court. In a judgment of a Division Bench of the Gujarat High Court in the case of People's Union for Civil Liberty vs. State of Gujarat 2000 (1) G L R 547, Hon''ble Chief Justice Mr. D.M. Dharmadikari, (as his Lordship then was), had an occasion to examine these aspects. In that case, learned counsel for the petitioner before the Court extensively read the observation of the Apex Court in Olga Tellis and Others Vs. Bombay Municipal Corporation and Others, and contended that five member Constitution Bench decision in Olga Tellis (supra) could not have been indirectly overruled or disregarded by two Judges Bench of the Supreme Court in the case of Ahmedabad Municipal Corporation Vs. Nawab Khan Gulab Khan and others, . Learned Chief Justice pointed out in para 7 as under:-

We have read along with the learned counsel the judgment of the Supreme Court in the two cases i.e. Olga Tellis and nawab Khan (supra) On a careful reading we find no substantial conflict in the views expressed by the Supreme Court in the two cases. So far as the High Court is concerned when two judgments of the Supreme Court appear to be inconsistent on common issues brought before it in two different cases, it is expected to follow both the verdicts and try as best as possible to resolve seeming conflict, if any, between the two decisions of the Supreme Court.

32. Considering both the decisions, the High Court has to resolve seeming conflict, if any, and has to arrive at a conclusion. In the instant case, there is no conflict and considering the facts and circumstances of the case, the possession

is taken in accordance with law.

In view of the evidence on record, we are of the view that the ingredients sufficient to constitute taking actual possession has been met with in the instant case, and the possession of the land is with the Government.

VIII. ONCE POSSESSION IS TAKEN, LAND VEST IN GOVT

The Apex Court in *General Manager, Telecommunication and Another Vs. Dr Madan Mohan Pradhan and Others*, , pointed out in para 4 as under:-

4. It is already seen that the possession having already been taken on 12.4.1976 and vested in the Government free from all encumbrances and many others having accepted the award and some had received the compensation under protest, the High Court was wholly unjustified in interfering with the acquisition. We have seen the plan produced before us which would indicate that the land acquired comprises the establishment of officers, building and 2000 electronic exchange. Under these circumstances, it would be highly inconvenient to exclude this land from acquisition. The purpose of enquiry u/s 5A is only to show that any other convenient and suitable land would be available other than the land sought to be acquired, or there is no public purpose.

In the facts and circumstances of the instant case, the possession is already taken and the land vests in the Government free from all encumbrances.

IX. ALLEGED BREACH OF SECTIONS 9 AND 17

33. On behalf of the petitioners reliance was placed on the decision of Punjab & Haryana High Court in the case of *Mohd. Salim and others Vs. State of Punjab and others*, . The Court was informed that the Collector had not given any public notice u/s 9(1) of the Act. That was a case of taking possession u/s 17(2) of the Act, as applicable in the State of Punjab. In view of the provisions contained in Section 17(2), as applicable in the State of Punjab, the Collector may immediately after publication of the notice mentioned in sub-section (1) and with the previous sanction of the appropriate government enter upon and take possession of such land which shall thereupon vest absolutely in the Government free from all encumbrances. The proviso requires that at least 48 hours notice of his intention so to do, or such longer notice, as may be reasonably sufficient to enable the occupier to remove his moveable property from such building is required to be issued.

34. Relying upon the decision of Punjab and Haryana High Court in the case of *Har Pal Singh v. State of Punjab* AIR 1952 P & H 314, learned counsel for the petitioner submitted that it was not proper to invoke the provisions of Section 17 and the State should wait for another 30 days so as to enable the occupier to file objections u/s 5 of the Act.

35. The submission made by the learned counsel for the respondent is that the possession was taken prior in time , i.e. to say before issuance of notice u/s 9 of

the Act, and, Therefore, possession cannot be said to have been taken in accordance with law. Issuance of notice under S. 9 on 7.6.99 is not at all pleaded in the petition. In petition date of notice is referred as 23.6.98. The subsequent contention of the petitioners that of issuance of notice is 7.6.99, is an afterthought version and is probably raised as in judgment of the aforesaid writ petition, being CWP 4260 of 1998, the date referred is 7.6.99. What is relevant is the date pleaded in the petition. In the other case, notice may be of a different date. Thus, there is no averment in the present petition about taking possession prior to issuance of notice u/s 9 but relying on the dates mentioned in CWP 4260 of 1998, a case is sought to be made out and canvassed before this Court that the notice is issued on 7.6.1999 whereas possession is taken on 23.6.1998. In view of the Apex Court's decision in the case of Lt. Governor of Himachal Pradesh and Another Vs. Avinash Sharma, , we find no merit in the contention raised by the learned counsel. In that case notification u/s 17(1) and (4) was issued by the State Government and possession had been previously taken i.e. earlier from the date of expiry of 15 days of the publication of notification u/s 9(1) of the Act. It is in this situation, the Apex Court pointed out in para 4 as under:-

4. In the present case a notification under S. 17(1) and (4) was issued by the State Government and possession which had previously been taken must from the date of expiry of fifteen days from the publication of the notice u/s 9(1), be deemed to be in the possession of the government. We are unable to agree that where the Government has obtained possession illegally or under some unlawful transaction and a notification under S. 17(1) is issued the land does not vest in the government free from all encumbrances. We are of the view that when a notification under S. 17(1) is issued, on the expiration of fifteen days from the publication of the notice mentioned in Section 9(1) , the possession previously obtained will be deemed to be the possession of the Government u/s 17(1) of the Act and the land will vest in the government free from all encumbrances.

36. The petitioners claiming to be in possession have never raised objection to the acquisition proceedings after issuance of notification u/s 4, declaration u/s 6 or notification u/s 17(1) or notice u/s 9(1) of the Act. They have not thought it fit to approach the Court before the award was made by the Land Acquisition Collector under the Act. From all these, what is required to be inferred is that the petitioners peacefully handed over possession, never objected to the possession and never filed any reply to the notice u/s 9 even after the possession was taken. Merely because some one filed a petition, the petitioners have rushed to the Court and in view of the fact that an order was passed in one of such petitions, the petitioners were also protected. It is in view of these that authorities could not make use of the land which they were entitled to make use soon after acquisition. As pointed out by the Apex Court in the case of Lt Governor Himachal Pradesh (supra), even if possession was previously taken, the same will be deemed to be in possession of the Government u/s 17 of the Act on expiration of the period indicated in the notice, and land will vest in the

Government free from all encumbrances.

37. The Apex Court had an occasion to consider the case of Lt Governor of Himachal Pradesh (supra) in the case of Jethmull Bhojraj Vs. State of Bihar and Others, . The Full Bench of the Apex Court considered the said decision in para 13. In that case the property had been taken possession of by the Government before the proceedings commenced. Therefore, the Court pointed out that when the possession had been previously taken, it must, on the expiry of 15 days from the publication of the notice u/s 9(1) be deemed to be the possession of the Government.

38. In view of the fact that possession had been taken which is substantiated by documentary evidence, this Court is of the opinion that the possession was taken on 10-7-1998. Even if the contention of the petitioners is presumed for the sake of arguments to be correct, in view of the law laid down by the Apex Court which we have referred herein above, land is deemed to be the possession of the government and shall vest in the government free from all encumbrances on the expiry of 15 days from the publication of the notice u/s 9(1).

39. It may be noted that in the instant case the petitioners came out with a case in the petition that notice u/s 9 was issued 23.6.1998 and possession was taken on 10.7.98. It appears that in the writ petition No. 4260/98 the learned Judges have referred to the date of issuance of notice u/s 9 as 7.6.1999, and Therefore the petitioners later on came out with a case that in the instant case also notice has also been issued on 7.6.1999 after possession was taken. We are of the view that the said contention cannot be accepted. Even otherwise in view of the Honourable Supreme Court's decision, even if it is presumed to have been issued subsequently there is no merit in this contention.

X. ownership/POWER OF ATTORNEY

40. On behalf of the respondent it was submitted that the petitioners have no legal rights in view of the fact that in para 5(b) and (c) of the petition the case of the petitioners is that they are owners of the superstructure built on the lands owned by Ramjas Foundation. The petitioners have averred that it was leased to Bharti Udyog Pvt. Ltd. after 15th October, 1961. No documentary evidence is produced to satisfy that Ramjas Foundation entered into an agreement with Bharti Udyog Pvt. Ltd. On behalf of the respondent it was pointed out that there was a power of attorney executed by Bharti Udyog Pvt. Ltd. in favor of Shyam Lal, a copy of which is produced at pages 43-44. In the power of attorney, it is alleged that the executant was the exclusive lessee and in possession of built-up area on leasehold rights of land admeasuring 185 sq yards being part of plot No. 60. Thus, only a power of attorney was executed in favor of Sham Lal to apply and get the lease of the said land transferred in his own name in the office of Ramjas Foundation and to apply to the Government authority to construct or make any additions or alterations in the said property, etc. This document is not executed as required u/s 85 of the Evidence Act. The aforesaid Sham Lal

executed a power of attorney in favor of Sunil Kumar Goel to look after, supervise, control and manage the structure on a part of plot No. 60. This power of attorney is also not executed in accordance with law. The said Sunil Kumar Goel executed power of attorney in favor of Shri Radhey Sham Gupta to look after, supervise, control and manage the structure on a part of plot No. 60. The said document is not executed in accordance with the Evidence Act. The said Radhey Shyam Gupta executed power of attorney in favor of one Rakesh Kumar, inter alia, stating that as general attorney of M.C. Aggarwal, is appointing Rakesh Kumar as general attorney to pay the lease money and other dues of a part of the plot No. 60, etc. This power of attorney is also not executed in accordance with the provisions contained u/s 85 of the Evidence Act. There is another power of attorney alleged to have been executed by M.C. Aggarwal appointing Nar Singh Das as true and lawful general attorney, that is, with respect to 125 sq yards of land on plot No. 60. This document also is not executed in accordance with the Evidence Act.

41. Simple copy of lease deed alleged to have been executed between Bharti Udyog Pvt. Ltd. and Ramjas College Society is placed at page 37.

42. On behalf of the respondent it was submitted that even assuming without admitting that the power of attorney has some legal sanctity, in view of the terms and conditions of the alleged covenant, Bharti Udyog Ltd. was not authorized to let or sublet any portion or assign the same in any manner whatsoever and was not authorized to use it for any business, except the business of letting exclusively and of which the tenant is the sole proprietor. Not only that, the said lease deed specifically prohibited Bharti Udyog Ltd. from constructing any structure or using it or installing any structure or fixtures of any kind whatsoever on the land without an express and written consent and permission of the Society (Ramjas College Society). It prohibited Bharti Udyog Ltd. from altering the condition of the open land in any way or from excavating or defacing the same. It is in view of this document placed on record by the petitioners, it was submitted that in view of lease deed alleged to have been executed between Bharti Udyog Ltd. and Ramjas College Society, it is clear that Bharti Udyog Ltd. was the only party authorised to use the land as indicated in the document for a limited period only, and was not authorised to construct any property upon the land. The document is not legal document, as there is nothing to show that it was executed on the required stamp paper and was registered. Mere cyclostyled copy is placed on record and such document cannot be read as if original or authenticated document.

43. On behalf of the respondent attention of the Court was drawn to Section 85 of the Evidence Act, 1872, which reads as under :-

85. Presumption as to power of attorney.-The Court shall presume that every document purporting to be a power of attorney, and to have been executed before, and authenticated by, a notary Public, or any Court, Judge, magistrate, Indian Counsel or vice-Consul, or representative of the Central Government was

so executed and authenticated.

It is submitted that no presumption can be raised about any of the power of attorney placed on record. It was submitted that if any objection was to be taken regarding the land acquisition proceedings, that could have been taken only by the owner. owner having not objected, these petitioners cannot object to the acquisition. We find much force in this submission. The right of persons other than owners in land acquisition proceedings is only to claim compensation, if entitled to in accordance with law. Therefore, if the petitioners had any interest, they could have approached the authority at the relevant, appropriate time in accordance with law for compensation.

XI. RECORDED owner/ DUTY OF COLLECTor

44. It is also admitted position that the petitioners are not the recorded owners. On behalf of the respondent it was submitted that the petitioners' names are not reflected as owners or occupiers of the land in the revenue record. It is not the case of the petitioners that they got their names recorded in the revenue record in pursuance of the alleged documents on which reliance is placed. Therefore, it was submitted on behalf of the respondents that there is no question of serving any notice to the petitioners under the circumstances. Notice is required to be issued to the owners or occupiers of the property whose names are appearing in the revenue record. The Apex Court in *Winky Dilawari (Smt) and Another Vs. Amritsar Improvement Trust, Amritsar*, has taken the view that failure to serve personal notice on the persons whose names have not been mutated in the official Record of Rights in pursuance of any sale in their favor does not vitiate the proceedings for acquisition.

45. In the case of *W.B. Housing Board and Others Vs. Brijendra Prasad Gupta and Others*, the Apex Court observed in para 8 as under:

It is no part of the duty of the Collector to make a roving inquiry into ownership of the persons. We are of the opinion that the requirement of the law were met when notices were served upon the recorded owners as per the Record of Rights

46. These decisions were considered in *Ahuja Industries Ltd. Vs. State of Karnataka and Others*, and the Apex Court reiterated that it could be seen from the above order that service of notice on a person shown as owner or occupier in the Record of Rights is sufficient even if the said person has already sold the land prior to the notification unless it is substantiated otherwise that the party concerned has knowledge of the rights or interest of any person other than those found recorded as owners/occupiers in the revenue record. As pointed out above, no material is placed before the Court to indicate that names of the petitioners are appearing in the revenue record as owners/occupiers of the said land. Therefore, they have no right to make any grievance. If one desires that his name should be recorded in the revenue record it is for him to make appropriate application to the revenue authority for entering his name in the record as an occupier or as the owner and it is for the petitioners to place such entries on

record. The Apex Court has further pointed out that failure to make entries on the part of the Revenue Authorities by itself would not cast any obligation on the authorities under the Act to make a roving enquiry and try to locate the owner who may have subsequently purchased the land from the previous owner. Failure on the part of the Revenue Authority to make entry in the register of mutation in favor of the subsequent owner would not render the acquisition proceedings bad in law on account of non-issuance of notice inviting objections to the acquisition proceedings or service thereof.

47. When a notification is issued u/s 4 of the Act in newspapers drawing attention of the public at large about the acquisition, it becomes bounden duty of the person interested to approach the authority in accordance with law. Over and above publication of the notification in newspapers, it is also published in the gazette as well the substance of such notification is caused to be published at convenient places of the concerned locality. Thus, the public at large is informed and Therefore it becomes the duty of the person interested to approach the authority concerned. In view of the Apex Court decision referred hereinabove, in the opinion of this Court, the respondent authorities are not required to enquire and locate the person/s who may have possessed/ purchased the land in acquisition and issue notice to him.

48. In the opinion of the Court, after issuance of notifications and declarations, it was for the petitioners to approach the appropriate authorities. Now, in view of delay and laches, petitioners cannot seek assistance of the Court more particularly, after award is made.

49. Reliance was placed for this purpose on the decision of the Apex Court in case of Executive Engineer, Jal Nigam Central Stores Division, U.P. Vs. Suresha Nand Juyal alias Musa Ram (Deceased) by LR's and others, . The petitioners being not the recorded owners of the lands in question, and the recorded owners having not raised any objection with regard to the acquisition proceedings, the petitioners have no right to challenge the proceedings. They are not recognised as owners or occupiers, as there is nothing to show in the revenue record or any other record maintained by the Government that they are the owners. No documentary evidence admissible in evidence is placed on record to indicate that they were in possession.

XII. NOTICE u/s 9

50. It was submitted on behalf of the petitioners that it is necessary to issue notice u/s 9 before taking possession, while on behalf of the respondent it was submitted that non-service of notice u/s 9 is not at all fatal to the acquisition. On behalf of the respondents, reliance is placed on the judgments in the cases of Roshanra Begum vs UOI AIR 1993 DELHI 206 and Shashikant Sadashiv Bagwe and etc. Vs. State of Maharashtra and others, , wherein the contention of the petitioners that the acquisition is a nullity in the absence of service of notice u/s 9 was rejected. The Court pointed out that the officer found the names of the

recorded owners and notices were served on them. It was submitted by the persons claiming to be in possession that they were in possession and that can be established by documentary evidence in the form of Shops and establishment license, rent bills etc. The Division Bench pointed out that it was not possible to examine the document in writ jurisdiction under Article 226 when Special land Acquisition Officer specifically denied that those persons were in occupation. The Court pointed out that the Land Acquisition Officer is required to serve only persons whose names appeared on official record and also to those persons who are interested in the land. As pointed out by the courts, the land Acquisition officer is not required to make roving enquiry and in our view only recorded occupier/owner were required to be served and not others. Therefore the grievance made in this respect has no substance.

XIV. URGENCY

51. The delay on account of the lethargic action in the matter of acquisition is not sufficient to nullify the urgency which existed at the time of issuance of notification. In *Jage Ram and Others Vs. State of Haryana and Others*, , the Apex Court upheld the exercise of power of urgency u/s 17(4) and held that lethargy on the part of the officers at an early stage was not relevant to decide whether on the date of notification there was urgency or not. In *Rajasthan Housing Board and Others Vs. Shri Kishan and Others*, , the Apex Court had held that it must be remembered that satisfaction u/s 17(4) is subjective, and that so long as there is material upon which the Government could have formed the said satisfaction fairly, the Court would not interfere nor would it examine the material as an appellate authority.

52. It is very clear from the following decisions of the Apex Court that the Apex Court has considered purposes similar to the erection of CETP in the instant case as urgent and upheld the issuance of notification u/s 17(1) and 17(4): the notification of Section 17(1) and 17(4) have been upheld as such for treatment plant (*Jai Narain v UOI* 1996 (2) SCC 9; for shifting of timber business from the walled city of Delhi, *Union of India and others Vs. Praveen Gupta and others*, ; for the purpose of construction of new transit station of Delhi Airport, (*Deepak Pahwa v LG of Delhi* AIR 1984 SC 1712; for the purpose of planned development as per plan submitted to the Government by Ghaziabad Development Authority, *A.P. Sareen and others Vs. State of U.P. and others*, ; shifting of fruits and vegetable market from a congested locality, (*Bhagat Singh v State of U.P.*). ; for construction of market yard for the appellant in *Krishi Utpadan Mandi Samiti, Muzaffarnagar (U.P.) Vs. Ratan Prakash Mangal and Others*, ; for technological park in the case of *S.S. Darshan v State of Karnataka*. AIR 1996 SC 1459 and for construction of residential and commercial building where Section 17(4) was applied as unauthorised colonies would have come up on the land in question in the case of *Satbir v State of U.P.* AIR 1998 Allahabad 177.

XV. DELAY IN APPROACHING THE COURT

53. It is clear that the petition is filed after an award was made by the Land Acquisition Collector. The petitioners did not bother to approach the Court after issuance of notification u/s 4, notification u/s 17(1) as also soon after declaration u/s 6 was made. The petitioners did not approach soon after the notice u/s 9 was issued but have approached as someone else approached the Court after award was made. In view of this, on behalf of the respondent it was submitted that the petitioners had allowed the machinery to complete the acquisition proceedings and Therefore they have no right to challenge the proceedings. Attention of the Court was drawn to the decision of the Apex Court in the case of State of Rajasthan and Others Vs. D.R. Laxmi and Others, , wherein the Apex Court quoted HWR Wade" Administrative Law (7th Edn at pages 3432-343).

The truth of the matter is that the Court will invalidate an order only if the right remedy is sought by the right person in the right proceedings and circumstances. The order may be hypothetically a nullity, but the Court may refuse to quash it because of the plaintiff's lack of standing, because he does not deserve a discretionary remedy, because he has waived his rights or for some other legal reason. In any such case the "void" order remains effective and is, in reality, valid. It follows that an order may be void for one purpose and valid for another, and that it may be void against one person but valid against another. A common case where an order, however, void, becomes valid is where a statutory time-limit expires after which its validity cannot be questioned. The statute does not say that the void order shall be valid; but by cutting off legal remedies it produces that result.

54. In our opinion, in a case like this the Court must decline to grant relief and extraordinary jurisdiction should not be exercised. In the case of State of Haryana and others Vs. Dewan Singh and others, , notification u/s 4 of the Act was published on 22.1.1981. The Collector after conducting the enquiry made an award and allegedly took possession of the land on even date. The respondent asserted that they were in possession. Writ petition was filed on 13.5.85 challenging the notification on the grounds that dispensing with enquiry u/s 5-A, and exercising power u/s 17(4) were bad in law, as there was no urgency and the award was bad on the face of the case. High Court allowed the petition. The Apex Court pointed out that High Court was not justified in interfering with the award dated 19.4.84 made by the Collector and the notification u/s 4 of the Act. The Apex Court pointed out that the notification u/s 4(1) and the declaration were not challenged till 13.5.85, while the award was made on 13.4.84. The Apex Court pointed out that after the award was made the Court would not be justified in quashing the notification u/s 4(1) declaration u/s 6 and for dispensation of an enquiry u/s 5-A. In view of this, in our view, the respondent has rightly submitted that it is too late to interfere with the acquisition proceedings.

55. In the case of The Municipal Council, Ahmednagar and Another Vs. Shah Hyder Beig and Others, , the Apex Court pointed out in para 14 as under:

14...It is now a well settled principle of law and we need not dilate on this score to the effect that while no period of limitation is fixed but in the normal course of events, the period, the party is required for filing a civil proceeding ought to be the guiding factor. While it is true that this extraordinary jurisdiction is available to mitigate the sufferings of the people in general but it is not out of place to mention that this extraordinary jurisdiction has been conferred on to the law Courts under Art. 226 of the Constitution on a very sound equitable principle. Hence, the equitable doctrine, namely, "delay defeats equity" has its fullest application in the matter of grant of relief under Art. 226 of the Constitution. The discretionary relief can be had provided one has not by his act or conduct given a go-bye to his rights. Equity favors a vigilant rather than an indolent litigant and this being the basic tenet of law, the question of grant of an order as has been passed in the matter as regards restoration of possession upon cancellation of the notification does not and cannot arise.

56. In para 17, the Apex Court pointed out that in any event after the award is passed, no writ petition can be filed challenging the acquisition notice or any proceedings therein. This has been the consistent view taken by the Apex Court. The Apex Court in the case of *Municipal Corporation of Greater Bombay Vs. The Industrial Development Investment Co. Pvt Ltd., and others*, , pointed out in para 29 as under:

It is well settled law that when there is inordinate delay in filing the writ petition and when all steps taken in the acquisition proceedings have become final, the Court should be loath to quash the notifications. The High Court has, no doubt, discretionary powers under Art. 226 of the Constitution to quash the notification under S. 4(1) and declaration under S. 6. But it should be exercised taking all relevant factors into pragmatic consideration. When the award was passed and possession was taken, the Court should not have exercised its power to quash the award which is a material factor to be taken into consideration before exercising the power under Art. 226. The fact that no third party rights were created in the case is hardly a ground for interference. The Division Bench of the High Court was not right in interfering with the discretion exercised by the learned single Judge dismissing the writ petition on the ground of laches.

57. In the case of *Larsen and Toubro, (supra)*, the Apex Court in para 21 pointed out as under :

21. This Court has repeatedly held that writ petition challenging the notification issued under Sections 4 and 6 of the Act is liable to be dismissed on the ground of delay and laches if challenge is not made within a reasonable time. This Court has said that the petitioner cannot sit on the fence and allow the State to complete the acquisition proceedings on the basis that notification u/s 4 and the declaration u/s 6 were valid and then to attack the notifications on the grounds which were available to him at the time when these were published as otherwise it would be putting premium on dilatory tactics. Writ petition (SCA 5149/89) is thus barred by laches as well.

58. The contention of the petitioners regarding delay is also required to be rejected on the ground that the award has been made and possession has been taken and land vested in the Government free from all encumbrances. Arising out of the same acquisition proceedings, other petitions were filed in the High Court and stay was granted against the respondent in those proceedings. The respondent could not Therefore take action. This lapse of time would Therefore not give any right to the petitioners to contend that the acquisition warrants interference of this Court.

XIII. DELAY IN PROCEEDINGS

59. The petitioners allowed the acquisition proceedings, without any objection despite public notices, to be culminated into an award. Before making the award possession was taken on 10.7.1998. Thus after long delay the petitioners cannot be heard.

60. In the instant case, it is required to be stated that it was for the petitioners to make appropriate applications to the appropriate authority after issuance of notification under Sections 4(1) and 17(1) of the Act and also declaration u/s 6 of the Act. Having failed at all stages, the petitioners cannot be heard after a delayed period of more than three years more particularly when the acquisition proceedings have been concluded in the form of an award.

61. Learned counsel for the petitioners submitted that on account of delay proceedings must be quashed. The Apex Court in the State of U.P. Vs. Smt. Pista Devi and Others, , had an occasion to consider the delay and elimination of enquiry u/s 5(A) of the Act. The Apex Court examined the case of Kasireddy Papaiah (Died) and Others Vs. The Government of Andhra Pradesh and Others, . Andhra Pradesh High Court dealing with a problem of providing housing accommodation, observed:

The greater the delay, the more urgent becomes the problem, Therefore, one can never venture to say that invocation of the emergency provision of the Land Acquisition Act for providing house sites for Harijans is bad merely because the officials entrusted with the task of taking further action in the matter are negligent or tardy in the discharge of their duties, unless, of course, it can be established that the acquisition itself is made with an oblique motive. The urgent pressures of history are not to be undone by the inaction of the bureaucracy. I am not trying to make any pontific pronouncements. But I am at great pains to point out that provision for house sites for Harijans is an urgent and pressing necessity and that the invocation of the emergency provisions of the land Acquisition Act cannot be said to be improper in the absence of mala fides, merely because of the delay on the part of some Government officials .

62. The observations made by the Andhra Pradesh High Court has been quoted with approval in Deepak Pahwa and Others Vs. Lt. Governor of Delhi and Others, . The Apex Court in Pista Devi (supra) held in para 6 as under:

We are of the view that in the facts and circumstances of this case the post notification delay of nearly one year is not by itself sufficient to hold that the decision taken by the State Government u/s 17(1) and (4) of the Act at the time of the issue of the notification u/s 4(1) of the Act was either improper or illegal.

63. In the instant case, there is need of Common Effluent Treatment Plant on account of pollution. The Apex Court considering the emergency, issued directions. The matter has been delayed in this regard and there should be no further delay in the matter and looking to the need of the day, treatment plant must be erected at the earliest failing which the cost would be burdensome to the public at large. Not providing treatment plant would pollute the atmosphere and would be hazardous to the health of the citizens. The legislature has made stringent provision for stoppage of pollution and, Therefore, any delay would amount to playing mischief with the health of the people and that cannot be permitted. In the case of Chameli Singh and others etc. Vs. State of U.P. and another, , the Apex Court quoted with approval again the decision delivered by the Andhra Pradesh High Court in Kasireddy Pappaiah's case (supra) and State of U.P. v Pista Devi (supra) and further pointed out that the ratio of Kasireddy was quoted with approval by three Judges Bench in Deepak Pahwa (supra) and that delay by officials was held to be a no ground to set at naught the power to exercise emergency clause. In para 15, the Apex Court, in Chameli Singh pointed out as under:-

The pre-notification and post -notification delay caused by the officers concerned does not create a cause to hold that there is no urgency

64. In the instant case, erection of CETP is absolutely necessary in the public interest and to avoid health hazard and for better environment. Therefore, post-notification delay or pre-notification delay cannot be taken into consideration, if any. In case of Deepak Pahwa vs LG Delhi (supra) a three-Judges Bench of the Apex Court considered the notification issued u/s 17(4) where there was lapse of time of eight years due to inter-department discussion before issuing notification. The Apex Court held that, that itself was considered to be a ground for invocation of emergency clause.

65. With regard to delay, it was pointed out that the Division Bench in CW 4260/98 stayed the proceedings in August, 1998 and the petition was decided on 10.2.2003 and, Therefore, there is no question of delay. On the contrary, the project has been held up. It was further pointed out that in view of the order made by the Supreme Court, NEERI was entrusted to examine the matter. Various industries covered up by 15 industrial estates are covered by Apex Court judgment. Number of factors were required to be taken into consideration for finding out appropriate locations after the outline was drawn for CETPs. Assessment was required to be made. There was also question of contribution from industries. Apart from administrative delays, if further delay is caused the people at large would suffer. It was submitted that in view of this it cannot be said that there is delay. It was also submitted that vast area has been acquired

and merely because 1000 sq mts of land is in possession of the petitioners in view of the order made by the Court, the entire development of CETP should not be held up. It is in the interest of citizens of this city to see that CETP is erected at the earliest and is made operative

On 10.7.1998 possession of the land was taken over after tendering 80% estimated compensation to the owners on record. The possession of the land in the instant acquisition has been already taken and handed over to Delhi Development Authority on the same date.

XVI. ACQUISITION - WITHDRAWAL FROM ACQUISITION

66. Government policy including any policy formed by local authorities not to acquire built up land cannot come in the way of acquisition, as the lands are sought to be acquired after issuance of notification u/s 4 and declaration u/s 6 of the Act which is the conclusive evidence that the land is needed for public purpose.

67. After the exercise of these powers, it cannot be, and should not be, interfered lightly by the Courts. All the same, in view of the provisions contained u/s 48 the appropriate authority may invoke the provisions in the manner prescribed u/s 48.

68. In the case of Nirmalendu Dev Nath and Others Vs. Union of India and Others, , this Court had an occasion to examine the policy in para 10 of the said judgment. The court examined the contention that the Government in view of its policy decision cannot acquire built up area. The power is statutory, which is required to be exercised in public interest. If the land is needed for a public purpose, mere fact that there is policy of the government not to acquire the built up area, cannot come in the way of acquisition. If it was so, the public authority will not be able to acquire built up area to decongest the localities and to provide civic amenities including sanitation, parks, amusement centers, etc, which are essential for healthy living.

69. Contention in respect of the policy of leaving out from acquisition built up area has been repelled in another decision of this Court in Roshanara Begum v. Union of India 1996 (I) A.D.(Delhi) 6. The court in the case of Nirmalendu pointed out that appeal filed against the Full Bench decision has been dismissed by the Supreme Court (See. Murari and Others Vs. Union of India (UOI) and Others, .)

70. While rejecting the contention that the property which was covered with building cannot be acquired, the Apex Court pointed out in a case where large extent of land is being acquired for planned development of urban area, it would not be proper to leave small portion over which some superstructure has been constructed out of the development scheme.

71. In Roshanara Begam (supra), the Full Bench of this Court after considering a reported case of the Supreme Court in Jatan Singh and the decision of a Division

bench in the case of Sri Bhagwan vs UOI 1991 (2) Delhi Law 59 expressed the view as under:

We are of the view that reasoning given by the Division Bench in this judgment is quite sound and does not call for any interference by us. Hence mere fact that certain areas have been built up or improved upon by person concerned, would not in any manner vitiate the acquisition proceedings."

72. Reading the decision of Shanti Sports Club and another Vs. Union of India and others, , it appears that the Division Bench had examined other cases also. The Division Bench in the case of Nirmalendu (supra) after considering various decisions held as under:

The contentions that there is any policy to regulate unauthorised colonies or there is a policy decision not to acquire built up area, are concluded against the petitioner by a Division bench decision of this Court in the case of Atar Singh vs DDA (CW 3110 of 1991) decided on 10th August, 1992. In Attar Singh's case also it was alleged that the petitioner had a godown built up area situated in village Haiderpur on private land and no action can be taken by the respondents against the petitioner. In that case too, the Bench referred in the judgment to the same Award No. 50/80-81 made on 18th July, 1980. The contention that there was a policy of Government to regularise the unauthorised colonies and also not to acquire built up area was rejected

73. That apart whenever constructed property is required to be acquired the claimants would be entitled to receive compensation in accordance with law, that is to say that for the land as well as of the property. Division Bench in Shanti Sports club (supra) further held :

The contention in respect of the policy of leaving out from the acquisition built up area has also been repelled in another Division Bench decision of this Court in Shri Bhagwan and Anr v. UOI and ors 1991(2) Delhi Law 59 . This decision has been affirmed by a Full Bench of this Court in Roshanara Begum v UOI 1996 I AD Delhi 6. We may also notice that the appeal filed against Full Bench decision has been dismissed by the Supreme Court (See. Murari and Others Vs. Union of India (UOI) and Others,).

74. This court, considering various decisions and provisions of law, is of the opinion that under the Act it is open for the government to acquire the land or land with built up area, on being satisfied that the same is required for a public purpose. Once a declaration is made u/s 6, declaration itself is conclusive evidence that land is needed for a public purpose and once declaration is made it cannot be said that it is not required to be acquired. Division Bench in the case of Shanti Sports club while repelling the contention raised by senior counsel for the petitioner that since the club is already serving a public purpose it should not be taken over and ought to have been released from acquisition and regularized in favor of the petitioners, recorded inability to accept it as it would amount to granting legitimacy to unauthorized occupation of land. It seems that the order

impugned therein could not be interfered on the ground that the land is already being used for beneficial purpose. This view finds sustenance from a decision of the Supreme Court in *Gandhi Grah Nirman Sahkari Samiti Ltd. ect. etc. Vs. State of Rajasthan and others*, . In that case acquisition was impugned, inter alia, on the ground that land was being utilised for a public purpose, namely, a polo ground which purpose was much more beneficial than the one for which land was acquired. The Supreme Court held that the court cannot go into comparative utility of public purpose in this regard.

75. It is also contended on behalf of the respondent that the land owner has no right in the land after acquisition is complete. In the instant case the owners have not raised any objection. Not only that but as pointed by the counsel for the respondent 80% of the estimated compensation was already tendered to the owner and thereafter possession was taken which has been handed over to DDA on the same date.

76. It was further submitted that the petitioners have no right u/s 48 of the Act, but only the beneficiary has a right to object to any order/consideration for de-notification. On behalf of the DDA, it was submitted that the DDA being the beneficiary, had not only raised objection but on the contrary claimed that it needed the land for CETP.

77. In *Senjeevanagar Medical and Health Employees Co-operative Housing Society Vs. Mohd. Abdul Wahab and Others*, the Court has pointed out that the property under acquisition having been vested in the appellant, in the absence of any power under the Act, except by exercise of power u/s 48(1), valid title cannot be defeated.

78. In the case of *Rajasthan Housing Board and Others Vs. Shri Kishan and Others*, the Apex Court pointed out that "we are of the further opinion that in any event the government could not have withdrawn from acquisition u/s 48 inasmuch as the government had taken possession of the land. Once the possession of the land is taken, it is not open to the Government to withdraw from the acquisition."

79. In *Awadh Bihari Yadav and Ors v State of Bihar and Ors* (1993) 4 SCC 31, the Apex Court pointed out that on taking possession of the land, it vests in the government and government cannot withdraw from the acquisition. Even if no award is made within the prescribed period under S. 11-A, it would not lapse.

80. In *Satendra Prasad Jain and Others Vs. State of U.P. and Others*, , the Apex Court pointed out that Government cannot withdraw acquisition u/s 48 once it has taken possession u/s 17. Section 11A of the Act has no application to the case of acquisition u/s 17 because the lands have already been vested in the government and there is no provision in the Act by which land vested in the government can be reverted to the owner.

81. Learned counsel for DDA submitted that there is no question of unilateral

decision of the State Government for withdrawal of the notification. Learned counsel submitted that when under Sections 4/6 of the Act notifications are issued, acquisition process commences and that process cannot be reversed by rescinding this notification. In this case, award has been made. Learned counsel submitted that it is, Therefore, implicit that withdrawal from acquisition has to be notified and Therefore notification in the official gazette is required to be issued if the State Govt decided to withdraw from the acquisition u/s 48 of any land of which possession has been taken. In the case of Larsen and Toubro (supra) acquisition was for a company, the Apex court pointed out that several reason to withdraw from acquisition may be there but it must be made known to the company which may have equally sound reasons, or perhaps more, which might persuade the State Government to reverse its decision of withdrawing from acquisition. In view of the Apex Court decision, it was submitted that the parcel of land is required for CETP and the same is required to be erected on an extremely urgent basis; hence, once decision is taken, there is no question of its withdrawal. In view of the decisions of the Apex Court, we are of the opinion that the petitioners have no right either to seek de-notifying or withdrawal of the proceedings.

82. The Land is sought to be acquired for a public purpose for erection of treatment plant in view of the directions given by the Apex Court.

Thus, in short, the petitioners have not challenged the notification u/s 4 of the Act dated 16th June, 1998 and declaration dated on 23rd July 1998 in time. The notices issued u/s 9(1) and 17(1) of the Act have also not been challenged in time. This petition is filed after two and a half years of making the award and Therefore it cannot and must not be entertained.

Another petition under the impugned notification filed by others, being CWP 4260/1998, has been dismissed by a Division Bench considering various submissions in detail.

Possession was taken on 10.7.1998 and the land is, Therefore vested in the Government free from all encumbrances. Admittedly the alleged transfer of property in favor of the petitioners has taken place after issuance of requisite notifications under the Act, and, Therefore, the transferees have no right, except to claim compensation in accordance with law if they are entitled to.

Law contemplates issuance of notice only to owners / occupiers on record at the relevant date of notification. Even assuming that the petitioners are interested persons, as they have not approached the competent authority after issuance of notification and declarations, they cannot be heard at this belated stage.

There is delay in approaching the Court, and Therefore, in view of various pronouncements of the Apex Court, at the belated stage this petition can not and must not be entertained.

83. In view of what has been discussed above, this Court is of the opinion that

the petition is required to be dismissed with costs, which we quantify at Rs. 20,000/- by each petitioner.