
(1992) 05 AHC CK 0067

In the Allahabad High Court

Case No : Writ Petition No. 545 of 1991 connected with 9805, 10029, 10183, 10187 etc. etc.,

Ram Jiyawan

APPELLANT

Vs

State of U.P. and others

RESPONDENT

Date of Decision : 21-05-1992

Acts Referred:

Constitution of India, 1950 — Article 14, 226, 300A
Land Acquisition (Amendment) Act, 1984 — Section 11(1), 11A, 6, 6(1)
Land Acquisition (Uttar Pradesh Amendmet and Validation) Ordinance, 1990 — Section 2, 4, 6
Land Acquisition Act, 1894 — Section 11, 11(1), 11A, 12, 12(1)

Citation : AIR 1994 All 38

Hon'ble Judges : S.C. Mathur, J; R.K. Agarwal, J

Bench : Division Bench

Advocate : Sri O.P. Pal, for the Appellant; C.S.C., for the Respondent

Final Decision : Allowed

Judgement

S.C. Mathur, J.—These petitions arise from proceedings to acquire land under the provisions of the Land Acquisition Act, 1894 (1 of 1894), for short Act. Common questions of law have been raised and, therefore, the petitions were heard together and are being disposed of by this common judgment. The facts stated in the judgment have been taken from Writ Petition No. 545 of 1991 in which short counter-affidavit has been filed on behalf of the Land Acquisition Officer.

2. The facts generally stated in these petitions are as follows:--

Notification u/s 4 was issued and thereafter declaration u/s 6 was made. Section 17 was applied and possession of the notified land was taken by the Collector before publication of the award. At the time of taking possession there were trees and standing crops on the land and they were damaged but no compensation was paid for such damage at the time possession was taken and compensation for such damage was not included even in the final award. Notice

was issued u/s 9(1) and the petitioners preferred claims for compensation. No date was fixed for hearing of the claims and the award was published in the absence of the petitioners. The petitioners were deprived of the opportunity of adducing evidence in support of their claim. Without giving them opportunity of hearing the award was made which is accordingly ex parte. The award has been made without obtaining the approval of the State Government as required by the first proviso to Section 11(1). The award was not made within the period of two years from the date of the publication of the declaration u/s 6(1) mentioned in Section 11-A and, therefore, the entire acquisition proceedings lapsed. In determining compensation provisions of the Act have been violated which render not only the award invalid but also nullify the entire acquisition proceedings.

3. In certain petitions notifications under Sections 4(1) and 6(1) were issued on the same day which, it is claimed, violates Sec. 17(4) of the Act.

4. In some of the petitions the allegation is that the original claimant died and application was made for bringing his legal representatives on record but the application was not disposed of.

5. On the above facts it is claimed that the following provisions of the Act have been violated.

6. Sections 3(a), 9(2), 11, 11-A, 13, 15-A (Proviso), 23 and 31. Paragraph 375 of the Land Acquisition Manual is also alleged to have been violated. On account these alleged violations, it is claimed, on entire acquisition proceedings have either lapsed or have become invalid resulting in invalidation of the award. On these picas the petitioners pray for the quashing of the entire acquisition proceedings and the award.

7. In support of the aforesaid pleas the learned Counsel for the petitioners Sri O. P. Pal has cited the following authorities:--

- (1) Smt. Saroj Kumari Vs. The State of Madhya Pradesh and Others, ;
- (2) Mohinder Singh Sharma and Others Vs. State of Haryana and Others, ;
- (3) Sharan Pal Singh and others Vs. State of Punjab and others, ;
- (4) AIR 1990 RD 319 (DB) (All), Ram Avadh Singh v. State of Uttar Pradesh; and
- (5) Dr. Angolo Fernandes Vs. Union of India and others, .

8. The learned Counsel for the opposite parties do not admit that any provision of the Act has been violated. They further submit that even if any provision of the Act relating to determination of compensation and payment thereof has been violated the same does not result in invalidation of the acquisition proceedings or the award. The award, the learned Counsel contends, is merely an offer of compensation. This offer may be accepted without reservation or may be accepted under protest. In the former case the matter ends with acceptance of the payment of the awarded compensation. In the latter case the claimant may

receive payment of the awarded compensation and press his claim for the balance by making application u/s 18. Once application is made u/s 18 and reference is made to the Civil Court, the Court may confirm the compensation awarded by the Land Acquisition Officer or enhance it. The award of the Civil Court is Decree u/s 26 and is, therefore, executable under the provisions of the Code of Civil Procedure, 1908, for short Code. On this basis the learned Counsel contends that there is no occasion for the petitioner to approach this Court under Article 226 of the Constitution. According to him the appropriate remedy is to make application under S. 18 or claim reference under S. 30 where there is dispute of title.

9. So far as the challenge arising from publication of the notifications under Ss. 4 and 6 on the same date is concerned the learned counsel relies upon the Land Acquisition (Uttar Pradesh Amendment and Validation) Ordinance, 1990 (32 of 1990).

10. In support of his aforesaid pleas the learned counsel has cited authorities which will be noticed hereinafter.

11. Sections of the Act merely defines certain terms. Sections 4, 6 and 11A are important. The validity of the acquisition itself is dependent upon due observance of the provisions of these sections. If there is lack of observance of these provisions the acquisition itself may fall, including the award if any published. We accordingly proceed to examine the requirements of these sections and their compliance or non-compliance. Simultaneous Notifications under Ss. 4(1) and 6.

12. As already noticed, S. 17 has been applied to the present acquisition. Sub-sec. (4) of this section as it stood at the time of the issue of the notifications under Ss. 4 and 6, as amended by Act 68 of 1984, reads as follows :--

"S. 17(4). In the case of any land to which, in the opinion of the appropriate Government, the provisions of sub-sec. (1) or sub- sec. (2) are applicable, the appropriate Government may direct that the provisions of S. 5A shall not apply, and, if it does so direct, a declaration may be made under S. 6 in respect of the land at any time after the date of the publication of the notification under S. 4, sub-sec. (1)."

In view of the emphasised portion in the above sub-section notification under S. 6 had to be issued on a date subsequent to the date on which notification under S. 4(1) was issued. The two notifications could not be issued on the same date. This was so held by a Division Bench of this Court whose judgment was upheld by their Lordships of the Supreme Court in State of Uttar Pradesh v. Radhey Shyam Nigam AIR 1989 SC 681. Accordingly the notification under S. 6 which was issued on the same day on which notification under S. 4(1) was issued was invalid. However, that invalidity has been cured by retrospective amendment of S. 17(4) by the Land Acquisition (Uttar Pradesh Amendment and Validation) Ordinance, 1990. By this amendment proviso has been added to S. 17(4) which reads as follows:--

"Provided that where in the case of any land, notification under Sec. 4, sub-sec. (1) has been published in the Official Gazette on or after September 24, 1984 but before January 11, 1989, and the appropriate Government has under this sub-section directed that the provisions of S. 5A shall not apply, a declaration under S. 6 in respect of the land may be made either simultaneously with, or at any time after, the publication in the Official Gazette of the notification under S. 4, sub-sec. (1)."

13. Section 2 of the amending Ordinance provides that the Proviso shall be deemed to have been inserted on September 24, 1984. The notification under S. 4(1) in the case on hand is covered by the dates 24th September, 1984 and 11th January, 1989 mentioned in the proviso. In view of this amendment acquisition in which notification under Ss. 4(1) and 6 were issued on the same day cannot be quashed.

Violation of Section 11A.

14. Section 11A reads as follows:--

"The Collector shall make an award under S. 11 within a period of two years from the date of the publication of the declaration and if no award is made within that period, the entire proceedings for the acquisition of the land shall lapse."

This provision fixes a statutory period for making award. The period is two years. The consequence of failure to make the award is provided in the Section itself; the acquisition lapses. The only situation in which the period may be extended is provided in the Explanation. Under the Explanation the period during which further action in pursuance of the notification under S. 6(1) remains stayed is to be excluded. There is no such situation in the present case.

15. The learned counsel for the petitioners Sri O.P. Pal points out that Section 11A was inserted on 24th September, 1984 and notification u/s 6 was issued on 8th December, 1984 and the period of two years expired on 8th December, 1986 while the award was made on 25th February, 1987.

16. The legal position under Sec. 11A is beyond doubt. The proceedings for acquisition do lapse if no award is made within two years of the publication of the declaration under Sec. 6(1). The question for consideration is how the period is to be computed. For this we will have to refer to Sec. 6. Sub-sec. (1) of this section requires a declaration to be made to the effect that land is needed for public purpose. Sub-section (2) prescribes the manner of making the declaration. The manner prescribed is-- (1) publication in the Official Gazette, (2) publication in two daily newspapers circulating in the locality in which the land is situate, and (3) causing public notice of the substance of the declaration to be given at convenient places in the said locality. Invariably these three publication will not be made on the same date. Accordingly this sub-section goes on to lay down the date which will be taken as the date of publication; the date laid down is the last of such dates. The period of two years mentioned in S. 11A will, therefore, have

to be counted from the last of such dates.

17. In paragraph-3 of the writ petition the petitioner has stated that the declaration under S. 6 was not published in the local newspapers nor public notice of the substance of the notification was given in the locality. In order to verify the allegation the learned counsel for the State was required, vide order dated 9-5-1991, to produce before the Court the record of the acquisition proceedings. On 24th August, 1991 learned counsel for the petitioners gave up the plea that the award was not made within two years from the date of the publication of the declaration. The statement of the learned counsel is recorded in the order sheet of that date in Writ Petition No. 545 of 1991 and the same reads as follows:--

"Learned counsel for the petitioner submits that the record was summoned in order to Find out the date of the last publication of the notification under S. 6 of the Land Acquisition Act. This was necessary because the petitioner's plea was that the award was not made within two years of the said date and was, therefore, beyond time. The learned counsel has stated today that he is not pressing this point....."

In view of this statement the Court's order is recorded in these terms-

"In view of the above it is not necessary to examine the record"

In view of the above statement and the Court's order the plea based on S. 11A does not require further examination. Despite the statement recorded in the order sheet we have referred to the plea as in the written note of arguments submitted by the learned counsel on 20th January, 1992 he has again referred to violation of S. 11A. If in the absence of the record we are to consider the plea we will have to say that the statement contained in the writ petition is insufficient to uphold the plea. The petitioner has not disclosed the title of the newspapers circulating in the locality in which the land in question is situate and the newspapers consulted (sic) by him. He has also not stated that he has inspected the file of the present acquisition. On the basis of the vague averment contained in paragraph-3 of the writ petition the present acquisition cannot be set at naught.

Determination of compensation and its payment:

18. We may now turn to the alleged nullification of the acquisition proceedings, including the award, on account of the alleged failure to observe statutory provisions relating to determination of compensation and its payment. This requires examination of the scheme of the Act.

19. From the very title of the Act it is apparent that the primary purpose of the enactment is to lay down law which would enable the State to acquire land of others. The Preamble of the Act says "..... for the acquisition of land and for determining the amount of compensation to be made on account of such acquisition...." Compensation follows acquisition. If there is no acquisition there

is no question of determination of compensation. Therefore to lay down procedure for determination of compensation is the secondary purpose of the Act.

20. The first step towards acquisition of land is to issue notification u/s 4(1). This notification can be issued only on the existence of the condition prescribed in the sub-section. The condition prescribed is that it should appear to the appropriate Government that land is needed or is likely to be needed for a public purpose or for a company. The manner in which notification is to be issued is also prescribed in the same sub-section. The manner prescribed is -

(1) publication in the Official Gazette, and

(2) publication in the daily newspapers circulating in the locality. Apart from this, the Collector has also to cause public notice of the substance of the notification to be given at convenient places in the locality. The consequences of the publication of the notification in accordance with sub-sec. (1) are provided in sub-sec. (2). The officers of the Government become entitled to enter upon the land, survey the same and do other things enumerated in the sub-section, including cut down the trees and standing crop. In the absence of notification under sub-sec. (1), these activities would be illegal. Sub-section (2) opens with the word "thereupon". The use of this word shows that the activities mentioned in sub-sec. (2) would be lawful only after the steps mentioned in sub-sec. (1) have been taken. Entry upon the land and doing the prescribed things thereon may cause damages to the land-holder. For this compensation is provided in Section 5. This section lays down that the officer so authorised shall, at the time of entry "pay or tender payment..... and, in case of dispute as to the sufficiency of the amount so paid or tendered, he shall at once refer the dispute to the decision of the Collector..... and such decision shall be final."

21. Section 5A provides for filing of objection against acquisition and its hearing and disposal. Right to file objections conferred on "person interested" as defined in sub-sec. (3). Sub-section (1) prescribes period of limitation within which the objection may be filed. Sub-section (2) deals with the manner of disposal of the objection. The Collector has to give opportunity of hearing to the objector. After giving this opportunity and after hearing such of the objectors as avail of the opportunity the Collector has to make his report to the Government. The decision on the objection and report, if any made, is taken by the Government. Thus the Collector is only a recommending authority. His report may be accepted or it may not be accepted by the Government. Despite recommendation to drop the acquisition proceedings, the State Government may continue therewith. Subsection (2) authorizes the Collector to make one report in respect of the entire land notified under S. 4(1) or to submit different reports in respect of different parcels of the said land. This is apparent from the use of the expression "either make a report in respect of the land which has been notified under S. 4, sub-sec. (1), or make different reports in respect of different parcels of such land." Thus more than one report is permissible under S. 5A(2). Then comes S. 6 which contemplates issue and publication of another notification. Under sub-sec.

(1) the State Government issues declaration to the effect that the land is "needed for a public purpose". This declaration is required to be made after the Government has obtained satisfaction that the land is needed for a public purpose. Sub-section (1) says "....., after considering the report, if any, made under S. 5A, sub-sec. (2).....". The use of the words "if any," shows that the submission of report by the Collector under S. 5A(2) is not obligatory. Accordingly the notification under S. 6(1) will not be vitiated if it is made without a report from the Collector or in ignorance of such report or in contradiction therewith. This sub-section further provides "and different declarations may be made from time to time in respect of different parcels of any land covered by the same notification under Sec. 4, sub-sec. (1), irrespective of whether one report or different reports has or have been made (wherever required) under S. 5A, sub-sec. (2)." From this it would appear that just as more than one report is permissible under S. 5A, sub-sec. (2) more than one declarations permissible under S. 6(1) in respect of the land notified under S. 4(1). The first proviso to Sec. 6(1) prescribes a period of limitation within which declaration may be made. The period is computed from the date of notification under Sec. 4(1). For the purpose of the present writ petitions this proviso is not material and, therefore, it is not necessary for us to make a detailed examination thereof. We only say that the language of the proviso appears to be mandatory and, therefore, if any, declaration is made after the expiry of the prescribed period the same may not be valid; the proviso opens with the words "provided that no declaration.....".

22. The above proviso is followed by another proviso which reads as follows:--

"Provided further that no such declaration shall be made unless the compensation to be awarded for such property is to be paid by a company, or wholly or partly out of public revenues or some fund controlled or managed by a local authority."

This proviso carries an explanation which reads thus:

"Where the compensation to be awarded for such property is to be paid out of the funds of a corporation owned or controlled by the State, such compensation shall be deemed to be compensation paid out of public revenues."

The obvious purpose of the second proviso and the explanation is to protect the interest of the person whose land is acquired. In view of these provisions the Government cannot deny payment of compensation on the ground that the body for which land has been acquired has not deposited the compensation.

The proviso is a check on the exercise of the power of acquisition by the Government, The Government cannot acquire land at the instance of all and sundry. It can acquire land only at the instance of the specified legal persons. These legal persons are the company, Government owned or controlled Corporations and local authorities. The term "local authority" is defined in Sec. 3(aa) and the term "company" is defined in Sec. 3(e). The language of the proviso is mandatory and, therefore, its requirements cannot be dispensed with.

However, there is no requirement under the proviso that the person at whose instance land is acquired must deposit with the Government or the Collector the whole or part of the actual or estimated compensation before the notification under S. 6(1) is issued or award is made. The acquisition proceedings are between the Government and the person interested. Once compensation is determined, the Government is bound to pay the same, irrespective of the fact whether it has realised the amount from the beneficiary or not and irrespective of the fact whether it is in a position to realise the same or not.

23. Chapter VII containing Ss. 38 to 44B deals with acquisition of land for companies. Section 38A gives extended meaning to the term "company". Sections 39 and 40 require the company to execute agreement with the Government. Unless the agreement is executed Ss. 6 to 16 and 18 to 37 remain unenforceable. These provisions are not attracted in the present case because the Lucknow Development Authority for whom the impugned acquisition has been made is not company but local authority.

24. Chapter III of the Land Acquisition Manual lays down "special procedure in case of acquisition for companies." Paragraphs 61 to 63 also speak of execution of agreement. For the reasons mentioned in the preceding paragraph these provisions are not attracted in the present petitions.

25. In view of the above the present acquisition and the award cannot be assailed on the ground that the Lucknow Development Authority did not enter into agreement with the Government and did not deposit the estimated or actual cost of acquisition.

26. After the notification under S. 6 has been made the State Government or its authorised officer directs the Collector to take (make) order for the acquisition of the land-Under S. 8 the Collector causes the land to be measured and a plan thereof to be prepared, if not already done.

27. Section 9(1) requires the Collector to cause public notice to be given inviting claimants to file claims for compensation. In view of sub-sec. (2) the notice is required to mention the place where and the time at which the claims may be filed. Sub-section (3) speaks of personal notice to interested persons. This section need not detain us long as it is not the case of the petitioners that they did not have opportunity to file claims. The plea is that after the claims had been filed no date was fixed before the award was made and thus they were deprived of opportunity to adduce evidence in support of their respective claims resulting in assessment of inadequate compensation in the award. The award is alleged to be invalid for this reason and not for the reason that no opportunity was afforded to file claims.

28. Section 11 deals with enquiry into claims and making of awards. It lays down that on the date fixed in the notice under S. 9 or on any other day to which the enquiry may be adjourned the Collector shall proceed to enquire into the claims filed by interested persons. After holding this enquiry the Collector is required to

make his Award containing -- (i) the true area of the land, (ii) the compensation which in his opinion should be paid for the land, and (iii) the apportionment of the compensation among all the persons known or believed to be interested in the land, irrespective of the fact whether they have filed any claim or have appeared before him.

29. Under sub-sec. (2) it is permissible for interested persons to compromise their inter se disputes. The first proviso to sub-sec. (1) lays down that "no award shall be made by the Collector under the sub-section without the previous approval of the appropriate Government or of such officer as the appropriate Government may authorise in this behalf." The language of this proviso is apparently peremptory but its peremptory nature is diluted by the second proviso under which it is "competent for the appropriate Government to direct that the Collector may make such award without such approval in such class of cases as the appropriate Government may specify in this behalf." From a combined reading of the two provisos it is apparent that the observance or breach of the mandate contained in the first proviso is a matter between the Collector and the State Government. The person interested does not come in the picture. Therefore, such a person cannot assail the validity of an award on the ground that previous approval of the Government or its appointed officer was not taken. In other words, despite this apparent peremptory language the first proviso is recommendatory. Accordingly failure to obtain approval of the Government will not invalidate the award.

30. By Act No. 68 of 1984 an important amendment has been made in the Act. Section 11A has been added. This section describes a period within which the award must be made. The prescribed period is two years from the date of publication of declaration under S. 6. If no award is made within this period the entire acquisition proceedings lapse. Since the proceedings themselves lapse, it is obvious that the award made beyond the prescribed period would be non est.

31. Section 12(1) prescribes the legal value attached to the award. It is final and conclusive evidence of the matters specified therein between the Collector and the person interested. The specified matters are-- (i) area and value of the land, and (ii) apportionment of compensation among the persons interested. This consequence follows even though the person interested may not have appeared before the Collector. From this it would appear that an award is not vitiated on the mere ground that information of the date fixed for enquiry under S. 11 was not communicated to an interested person. The finality clause, however, has a rider -- "except as hereinafter provided." The provisions which control the finality are Sections 13A, 18, 28A and 30. Section 13A authorises the Collector to correct clerical or arithmetical mistakes in the award. Section 18 confers right on the interested person, who does not accept the Collector's award, to have his claim decided by Court. For this he has to make application to the Collector. The term "Court" is defined in Section 3(d) to mean "a principal Civil Court of original jurisdiction" or a special judicial officer appointed by the Government to perform

functions of the Court under the Act." Section 28A deals with re-determination of the amount of compensation on the basis of the award given by the Court. Where the Court enhances the compensation awarded by the Collector any person interested covered by the same notification under S. 4(1) can make an application to the Collector claiming enhancement of his compensation in accordance with the award of the Court even though such a person may not have claimed reference under S. 18 earlier. When such an application is made within the period of limitation prescribed in sub-sec. (1) the Collector is required by sub-sec. (2) to hold enquiry and make fresh award in respect of such person. This award is also, under sub-sec. (3), subject to reference under S. 18. Section 30 deals with settlement of disputes relating to apportionment of compensation and entitlement thereto.

32. Sections 20 to 25 deal with procedure before the Court. Section 20 deals with issue of and service of notice. The notice is required to be issued to all who are likely to be affected by the decision of the Court, including the Collector where the claim is for enhancement of compensation. Under S. 22 proceedings are to take place in open Court and lawyers are entitled to represent parties. Section 23 prescribes the matters to be taken into consideration by the Court while determining the quantum of compensation to be paid for the acquired land. In other words, it lays down principles for assessment of compensation. Section 24 is a negative provision. It enumerates matters which will play no role in the assessment of compensation. Sections 23 and 24 relate to proceedings before the Court. They do not relate to proceedings before the Collector, but since the role of the Collector and the Court is almost identical (to assess fair amount of compensation to be paid for the acquired land) the Collector cannot afford to ignore these two sections.

33. Having dealt with the provisions relating to acquisition and assessment of compensation therefore we may now turn to the provisions relating to acquisition of possession over the acquired land as some of these provisions have a bearing on compensation.

34. Section 16 provides that when the Collector has made an award under S. 11, he may take possession of the land, which shall thereupon vest absolutely in the Government free from all encumbrances. From this it would appear that normally the right to take possession arises only after award has been made under S. 11 of the Act. In cases of urgency covered by S. 17 possession may be taken even before the making of the award. Section 17(1) provides that in cases of urgency, whenever the appropriate Government so directs, the Collector, though no such award has been made, may, on the expiration of fifteen days from the publication of the notice mentioned in S. 9, sub-sec. (1), take possession of any land needed for a public purpose. Such land shall thereupon vest absolutely in the Government free from all encumbrances. Possession prior to award may also be taken under sub-sec. (2) of Section 11. Under both the sub-sections the acquired land vests in the Government free from all encumbrances immediately after

possession is taken over. This vesting is not deferred till the publication of the award. Sub-section (3) requires the Collector, at the time of taking possession, to offer to the persons interested compensation for the standing crops and trees, if any, on such land and for any other damage sustained by them caused by such sudden dispossession. It is further provided that if the offered compensation is not accepted the compensation for the damage caused shall be allowed at the time of final award. Sub-sec. (3 A) provides --"Before taking possession of any land under sub-sec. (1) or sub-sec. (2), the Collector shall, without prejudice to the provisions of sub-sec. (3) -- (a) tender payment of eighty per centum of the compensation for such land as estimated by him to the persons interested entitled thereto, and (b) pay it to them, unless prevented by some one or more of the contingencies mentioned in S. 31, sub-sec. (2), and where the Collector is so prevented, the provisions of S. 31, sub-sec. (2), (except the second proviso thereto), shall apply as they apply to the payment of compensation under that section." Sub-section (3B) lays down that the amount paid or deposited under sub-sec. (3A), shall be taken into account for determining the amount of compensation required to be tendered under S. 31. It further lays down that if the amount of compensation paid exceeds the compensation awarded by the Collector under S. 11, the excess amount may be recovered as arrears of land revenue. The amounts referred to in sub-sees. (2), (3) and (3A) have indeed to be paid at the time possession over the land is taken before the making of award.

35. Section 5 of the Act also deals with payment of compensation before the making of award. As already noticed the officers of the Government become entitled to enter upon land and do the acts specified in sub-sec. (2) of S. 4 after notification under S. 4(1) has been published. At this stage also there is likelihood of damage to be caused to the interested person. For such damage S. 5 provides that the authorised officer shall, at the time of entry upon the land, pay or tender payment for all necessary damage. It further provides that in case of dispute as to the sufficiency of the amount so paid or tendered, the concerned officer shall at once refer the dispute to the decision of the Collector or other Chief Revenue Officer of the district whose decision shall be final.

36. At first blush the provisions contained in Section 5 and sub-sees. (3) and (3A) of Sec. 17 appear to be mandatory. However, a closer look of these provisions will show that they are not mandatory in the sense that non-payment of the compensation mentioned therein will result in nullification of the award or acquisition proceedings. This is apparent from the fact that the assessment of compensation at that stage is not final. If assessment of the compensation has not been made at that stage the Collector is not absolved of his obligation to pay compensation for such damage at the time of making award under S. 11. Further the Act does not lay down that non-payment of compensation at the stages contemplated by Ss. 5 and 17 will result in nullification of the award or the acquisition proceedings.

37. We are now left to consider the question of payment of compensation or

recovery of such compensation. Part V of the Act containing Ss. 31 to 34 bears the heading "payment". Sub-section (1) of S. 31 lays down that on making an award under S. 11 the Collector shall tender payment of the compensation awarded by him to the persons interested entitled thereto according to award and shall pay to them unless prevented by some one or more of the contingencies mentioned in sub-sec. (2). The contingencies mentioned in sub-sec. (2) are -

- (i) if the person interested does not consent to receive the compensation,
- (ii) if there is no person competent to alienate the land, and
- (iii) if there be any dispute as to the title to receive the compensation or as to apportionment thereof.

In such contingencies the Collector is required to deposit the amount of compensation in Court to which a reference lies under S. 18. Under the first proviso it is competent for an interested person in whose favour compensation has been determined to receive the compensation under protest reserving his right to challenge the sufficiency of the quantum of compensation. The second proviso debars a person who accepts compensation without protest from making an application for reference to Court under S. 18. The third proviso is not material for the purposes of the present case. Section 32 deals with investment of amount in respect of which dispute has to be decided by the Court. u/s 32A prevailing in the State of Uttar Pradesh it is open to the Collector to make "on account" payment of compensation where there is likely to be delay in the making of award under S. 11 even though possession has been taken under S. 17. Section 34 provides that when the amount of compensation is not paid or deposited on or before taking possession of the land, the Collector shall pay the amount awarded with interest thereon at the rate of nine per centum from the time of taking possession until the amount is deposited or paid. The proviso provides for payment of interest at enhanced rate if the compensation is not paid or deposited within one year from the date on which possession is taken. The enhanced rate of interest is fifteen per centum instead of nine per centum provided for in the main provision.

38. The above survey of the provisions of the Act shows that the Act provides for four distinct matters-- (1) acquisition of land, (2) taking over possession of land, (3) assessment of compensation, and (4) payment of compensation. Under Article 300A of the Constitution of India no person can be deprived of his property save by authority of law. In view of this provision a citizen cannot be deprived of his property by an executive fiat. There must be law for it. Land Acquisition Act is the law. This Act, therefore, fulfils a constitutional obligation. In the absence of a provision in the Act for taking over possession of the notified or the acquired land the acquisition would have been futile. Therefore, the Act provides for interference with possession and taking over possession of the notified or acquired land. Acquiring land without payment of compensation would

have been arbitrary, violating Article 14. Accordingly the act provides for assessment and payment of compensation.

39. From the above scheme of the Act it is apparent that the main aim or object or purpose of the Act is to provide a law which will enable the State to acquire land of others. I Therefore, the provisions of the Act relating to acquisition of land are substantive and those relating to taking over of possession and assessment and payment of compensation are subsidiary. Breach of a mandatory substantive provision may result in nullification or invalidation of the Act done to achieve the purpose of the Act, but breach of a subsidiary provision will not, in our opinion, in the absence of a specific provision in that behalf, result in nullification or invalidation of such Act. Accordingly when a mandatory provision relating to acquisition is breached, the acquisition itself falls but when there is breach of a provision relating to taking over of possession, the taking over of possession is " illegal and not the acquisition itself. Similarly if assessment of compensation is not made in accordance with the provisions of the Act, particularly Ss. 23 and 24, it is the compensation assessed which is vitiated and not the acquisition.

40. In the context of the present petitions we may now identify the provisions of the Act which are substantive and the provisions which are subsidiary. There can be no acquisition of land without issue of notification under Ss. 4(1) and 6(1). Not only notifications are to be issued under these provisions, the notifications must also conform to the requirements of these two sections. Accordingly if acquisition is proceeded with, without issuing notifications under one of the sections or with defective notification the acquisition itself will fall. Accordingly these provisions will have to be treated as substantive. Although S. 11A relates to making of award which primarily contains the quantum of compensation that provision will also have to be treated as substantive as it specifically provides that if award is not made within the time prescribed therein the acquisition itself will lapse. As against these provisions Ss. 9, 11, 12, 15, 16, 17(3), (3A), (3B). 17A, 18, 19, 23, 24, 29 31, 32A, 34 and 50 which relate to determination and payment of compensation and interest thereon are subsidiary provisions. If the amount of compensation is not determined in accordance with the provisions of the Act the consequence is provided by the Act itself. The land-holder has the right to apply for reference to Court. The right to have determination of compensation by Court is a statutory right conferred u/s 18.

Accordingly the Collector cannot refuse to refer the cue to the Court when required by the land holder who has not accepted the award. If the Collector refuses to refer or sits tight over the land holder's application this Court has ample jurisdiction to issue a writ of mandamus to command the Collector to make the reference. Delay in determination and payment of compensation is also taken care of by the Act by making provision for payment of interest and enhanced interest in the event of further delay. (See S. 34 discussed above).

41. In the present petitions the only substantive provision which is alleged to

have been violated is S. 11A. If S. 11A is violated the entire acquisition proceedings will indeed lapse but the relevant facts attracting that provision have not been placed on record by the petitioner. As already noticed S. 11A requires the award to be made within a period of two years from the date of the publication of the declaration. If the award is not made within this period the acquisition lapses. The period of two years is to be calculated from the date of the publication of declaration. In the present case, as already noticed, initially the petitioner pressed this point but subsequently gave up. Accordingly in the present petitions it is not possible to quash the acquisition itself. The other provisions of the Act which are alleged to have been breached are Ss. 3(a), 9(2), 11, 13, 15A (proviso) and 23. These are subsidiary provisions. Their breach does not nullify the acquisition.

42. The view that we have taken has the support of authorities which may now be noticed.

43. In *Raja Harish Chandra Raj Singh Vs. The Deputy Land Acquisition Officer and Another*, their Lordships have discussed the legal status of the award made by Collector under S. 11. It has been held that the award is merely an offer. In this case the Collector made his award on 25th March 1951 but did not give notice to the claimant under S. 12(2). The claimant filed application under S. 18 on 24th February, 1953 alleging that he acquired knowledge of the award on 13th January, 1953. The proviso to S. 18(2) provides period of limitation for filing the application, Computed from 25th March, 1951 the period had expired but computed from 13th January, 1953 the period had not expired. Their Lordships held that since notice under Sec. 12(2) was not issued the period of limitation will have to be counted from the date claimant acquired knowledge of the award. Although the question involved in this case was only of limitation their Lordships have observed in paragraph 5 of the report as follows:--

"5. In dealing with this question it is relevant to bear in mind the legal character of the award made by the Collector under S. 12. In a sense it is a decision of the Collector reached by him after holding an enquiry as prescribed by the Act. It is a decision, inter alia, in respect of the amount of compensation which should be paid to the person interested in the property acquired; but legally the award cannot be treated as a decision; it is in law an offer or tender of the compensation determined by the Collector to the owner of the property under acquisition. If the answer accepts the offer no further proceeding is required to be taken; the amount is paid and compensation proceedings are concluded. If, however, the owner does not accept the offer S. 18 gives him the statutory right of having the question determined by Court, and it is the amount of compensation which the Court, may determine that would bind both the owner and the Collector. In that case it is on the amount thus determined judicially that the acquisition proceedings would be concluded. It is because of this nature of the award that the award can be appropriately described as a tender or offer made by the Collector on behalf of the Government to the owner of the property

for his acceptance."

In *Shivdev Singh v. The State of Bihar*, AIR 1963 Patna 201, the acquisition and award were stated by the petitioner to be ultra vires and void for non-service of notice upon him of notice under S. 9 of the Land Acquisition Act. In paragraph 12 of the report it has been observed: --

"In response to notice under S. 9, the only matter which can be agitated before the Collector by any person interested relates more or less to the question of compensation in respect of the land sought to be acquired. The order of acquisition or the act of taking possession cannot be challenged in a reference to Court either under S. 18 or S. 30 of the Land Acquisition Act. This also finds support from the rules as to the amount of compensation provided in S. 25 of the Act. In my opinion, the petitioner, even if not served with a notice under S. 9 of the Land Acquisition Act, could claim such compensation, if he was entitled to any, by asking the Collector to make a reference to the Court under S. 18 of the Act."

Again in the same paragraph it is observed:--

"But it is clear to me that the proceeding or the award in relation to the acquisition of the premises in question cannot be held to be illegal or void or without jurisdiction for non-service of a notice on the petitioner under S. 9(3) of the Land Acquisition Act. The Collector's right and as a matter of that, the right of the Chairman of the Improvement Trust to take possession of the property is consequently not affected."

From the above observation it is apparent that even if notice under Sec. 9 is not served and possession is taken neither the taking over of the possession is vitiated nor the acquisition. All that is affected is the quantum of compensation for which the remedy lies in making application under Sec. 18. If no notice under S. 9 and S. 12(2) was served the period of limitation prescribed in Sec. 18(2) will obviously run from the date of knowledge about the making of the award as laid down by their Lordships in *Raja Harish Chandra Raj Singh's case* (supra).

44. In *the State of Tamil Nadu v. P. Kanagamani*, AIR 1975 Madras 303, the role of the Collector in land acquisition proceedings was held to be purely administrative. Relying upon the decision of the Supreme Court in *Raja Harish Chandra Raj Singh's case* (supra) it has been held that no writ of certiorari can be issued against the Collector's award as it is not a judicial decision but only an administrative offer.

45. In *E. Ramasubbareddy Vs. State of A.P. and others*, , it was held that non-payment of compensation within the period specified under S. 11A does not result in lapse of acquisition proceedings. It has been observed that making of the award is complete the moment it is drawn and signed by the Collector and payment of compensation pursuant thereto does not form part of the award."

46. As against the above authorities the learned counsel for the petitioners has

cited certain authorities which may also be noticed.

46-A. In *Smt. Saroj Kumari Vs. The State of Madhya Pradesh and Others*, a Division Bench of the Madhya Pradesh High Court quashed an award as the same was given without giving opportunity to the claimant to adduce evidence in support of his claim. This was a writ petition filed by the claimant against the award given by the Land Acquisition Officer. The case of the petitioner was that the award was given without fixing date for adducing evidence and after the award was made the petitioner applied for reference under S. 18 on which no action was taken. The award was challenged on the ground that the same had been made in violation of the principles of natural justice. The case of the State was that on the basis of the application under S. 18 reference had been made to Court and that appropriate compensation may be made by the Court but there was no occasion to quash the award. In paragraph 6 of the report the Bench has observed thus:--

" The claimants are entitled to get adequate compensation fixed in proceedings before the Land Acquisition Officer after producing appropriate evidence. If they are dissatisfied with the award, then alone they are required to move the Civil Court. When they do so, they are also entitled to receive the compensation awarded by the Land Acquisition Officer. Had appropriate opportunity been given to the petitioner and other claimants, they would have produced proper evidence and the award might have been different and acceptance to them and they would not have been forced to go to the Civil Court. The Land Acquisition Act makes it incumbent on the Collector to give a proper award. That duty cannot be avoided and cannot be allowed to be improperly discharged on the ground that adequate relief may be sought from the Civil Court."

With utmost respect to the learned Judges constituting the Division Bench we are unable to subscribe to the view taken by them. The judgment neither notices the legal character of the award as discussed by their Lordships if the Supreme Court in *Raja Harish Chandra Raj Singh's* case nor it takes notice of S. 12(1) of the Act which specifically uses the words -- "whether they (claimants) have respectively appeared before the Collector or not."

47. In *Mohinder Singh Sharma and Others Vs. State of Haryana and Others*, a learned single Judge quashed the notifications whereby land was acquired on the ground that compensation determined by the Collector had neither been deposited in R.D. nor with the District Judge. This judgment is based on S. 31 of the Act which provides for payment of compensation on making the award under S. 11(1). It also does not take note of the law laid down by their Lordships of Supreme Court in *Raja Harish Chandra Raj Singh's* case. It also does not taken note of S. 34 under which interest is payable on delayed payment of compensation. The provision of compensation itself shows that S. 31(1) which provides for payment of compensation on making the award is not substantive. If this provision is not substantive the acquisition cannot be quashed on the mere

ground that payment is neither made to the claimant nor it is deposited in R.D. or with the District Judge. We are accordingly, with utmost respect to the learned Judge, unable to subscribe to the view taken by him.

48. In Sharan Pal Singh and others Vs. State of Punjab and others, , separate awards were made in respect of land and superstructures and trees. The two awards were made on two different dates. By the time the award in respect of the land was made assessment had not been received by the Land Acquisition Officer from the concerned department regarding superstructures and trees. The award in respect of superstructures and trees was made after the period of two years referred to in S. 11A had expired. Accordingly the award in respect of superstructures and trees was quashed while the award in respect of land was maintained. In paragraph 9 of the report it has been observed :--

" the land, buildings standing thereon and the standing crops and trees on the land constitute one unit, and the value of the entire unit has to be determined with all its advantages and potentialities. Necessary consequence will be that only one award has to be rendered for the unit."

This authority has been relied upon by the learned counsel for the submission that in awarding compensation to the petitioners, compensation for trees and standing crops has not been determined. This authority has no application to the facts of the present case. There are no two awards in the present case. The petitioner's claim is that in respect of certain items for which he was entitled to compensation, compensation has not been assessed. This is a dispute which can be raised in proceedings under S. 18 of the Act. Even in this case the award which was made within the time referred to in S. 11A was not quashed. The applicability of this authority may arise if the Land Acquisition Officer makes a second award in respect of the items for which, according to the petitioner, no compensation has been assessed.

49. The land authority relied upon by the learned counsel is Ram Avadh Singh (deceased) v. State of U.P., 1990 RD 319 (DB). In this case the acquired property comprised land as well as trees, plants and nursery. One award was made on 30th September, 1974 in respect of part of the land only. Another award was made on 31st March, 1977 in respect of the remaining part of the acquired land. It is mentioned in the award that award, in respect of trees and improvements would be made later. The acquisition was not quashed, but allowing the writ petition, the Special Land Acquisition Officer was directed to dispose of the claim of the claimant by one award taking into consideration the rate fixed by the High Court in respect of other land covered by the same notification. On the basis of this authority also the acquisition itself cannot be quashed, The opposite parties do not admit that they have not assessed compensation in respect of Any item. Therefore, this authority is of no assistance to the petitioners.

50. In the light of the legal position discussed above we may now consider whether any relief can be granted in any of the petitions.

51. In some of the petitions quashing of the entire acquisition proceedings including the award has been prayed on these grounds -- (1) notifications under Ss, 4 and 6 were issued on the same day, (2) award was not made within the period of two years mentioned in S. 11A, (3) compensation was not determined in accordance with the provisions of the Act, and (4) determined and accepted compensation was not paid at the time of the publication of the award or even thereafter. As already noticed the first ground has been unavailable on account of amendment in law and second ground is not available on account of the concession made by the learned counsel for the petitioners and also on account of lack of material. If compensation has not been assessed in accordance with the provisions of the Act which has resulted in assessment of inadequate compensation the remedy lies only in claiming reference to Court: the award cannot be quashed on that ground. If determined and accepted compensation is not paid it may be possible for this Court to issue a mandamus commanding the opposite parties to make payment of the same. Grounds 3 and 4 even if factually correct do not result in nullification of the acquisition proceeding, as already noticed. Accordingly the relief for quashing the acquisition proceeding and the award cannot be granted in any of the petitions.

52. The next type of reliefs claimed in various petitions are-- (1) to command the State of U.P. to re-issue notification under S. 4(1) and to hold acquisition proceeding in accordance with the provisions of the Act, (2) a writ of mandamus be issued to command the Collector/Land Acquisition Officer to refer the petitioner's application under S. 18 of the Act to the Court, (3) to command the Collector/Land Acquisition Officer to pay the accepted compensation with interest mentioned in S, 34, and (4) in cases of disputed title the Collector be ordered to forward the matter to the Court and deposit the compensation money with it.

53. It has already been held hereinabove that neither the acquisition proceedings can be quashed in the present case nor the award. Accordingly there is no occasion to command the State of U.P. to re-issue notification under S. 4(1). Further even if we were to quash the acquisition proceeding there was no occasion to issue mandamus commanding the State to re-issue notification under S. 4(1). To revive the acquisition proceedings is the discretion of the State Government. For the exercise of discretion no mandamus can be issued.

54. Right to have compensation determined by Court is a statutory right and, therefore, the Collector can neither refuse to make reference to Court nor he can sit tight over an application made in accordance with law under S. 18. Therefore, in cases where application under S. 18 has not been forwarded to the Court it will have to be examined whether there is justification therefore. In the absence of justification, the petitioners may be entitled to a mandamus to command the Collector to forward the application without further delay.

55. An award under the Act is a statutory offer of the compensation mentioned therein. Implicit in this order is the right to accept or reject it. This is an implied statutory right vested in the interested person. The Act recognises acceptance

under protest also. Thus when the interested person accepts the amount of compensation mentioned in the award, either unreservedly or under protest, a statutory contract comes into existence. Under the statutory contract he has the statutory right to insist on payment of the amount mentioned in the award. There can be no right without remedy. The remedy may be enforced by filing civil suit or petition under Art. 226 of the Constitution. In the present case the petitioners have chosen the latter remedy. Accordingly if there be any petitioner who has failed to receive payment of the accepted amount he will be entitled to a writ of mandamus to command the Collector to make the payment together with statutory interest prescribed in S. 34. Similarly if there be a case where there is dispute of title and the Collector has not forwarded the matter to the Court, and has not deposited the compensation money with it, a mandamus can be issued commanding him to discharge these statutory obligations.

56. In view of the above observations we have now to consider only three questions --(1) whether in any case application under S. 18 was moved by the petitioner and the same has not been forwarded to the Court without justification, (2) whether any petitioner has not received the accepted compensation with interest under S. 34 and whether there is justification therefore, and (3) whether in any case involving dispute of title reference under S. 30/33 has not been made by the Collector to the Court and the determined compensation has not been deposited with the Court. For determination of these questions each individual petition or group of petitions will have to be examined separately.

57. Writ Petitions Nos. 545 of 1991, 763 of 1990, 764 of 1990, 539 of 1991, 6598 of 1990 and 540 of 1991: A common counter affidavit has been filed on behalf of the Collector to cover all these six petitions. This counter affidavit is on the record of writ petition No. 545 of 1991. Annexure B-1 to this counter affidavit contains necessary details in respect of each petition. To this counter affidavit no rejoinder affidavit has been filed and, therefore these petitions can be disposed of on the basis of the averments made in the counter affidavit read with Annexure B-1.

58. Writ Petition No. 545 of 1991 is by Ram Jiyawan. In column 4 of Annexure B-1 it is mentioned that Rs. 27,031.02 was determined as the compensation payable to the petitioner. This amount has not been paid to the petitioner because of dispute of title. However, it is stated in column 6 that the amount has been sent to Court. In the last column it is mentioned that petitioner's application under S. 18 could not be forwarded to the Court as he did not furnish the requisite number of copies. It has not been asserted that the petitioner was intimated about the deficiency in the number of copies to be furnished by him. It is also not the case of the Collector that on account of want of sufficient number of copies the application has been rejected. Accordingly the application is still pending. A mandamus can be issued requiring the Collector to forward the application after the petitioner furnishes the requisite number of copies within

the time fixed by the Collector. Accordingly this writ petition is allowed to the extent that a writ of mandamus is issued commanding special Land Acquisition Officer, Sharda Sahayak Pariyojna, Lucknow, opposite party No. 2, to fix a time within which the petitioner shall submit the requisite number of copies and intimate him and if the petitioner submits the requisite number of copies of his application under Sec. 18 of the original application and the copies shall be forwarded to the Court within one month of the petitioner making good the deficiency. There shall be no order as to costs.

59. Writ Petition No. 540 of 1991 is by Rameshwar, son of late Holi. According to Annexure B-1 Rs. 1,19,034.35 was determined as compensation. Against this amount he was paid in all Rs. 1,36,617.25 in two installments, the first installment having been paid on 8th January, 1987 and the second on 28th August, 1989. In the 1st column it is mentioned that his application u/s 18 also could not be forwarded to the Court on a count of want of requisite number of copies. He also is, therefore, entitled to mandamus in the same terms as granted to Ram Jiyawan. This writ petition is, therefore, allowed to the extent that a writ of mandamus is issued commanding the Special Land Acquisition Officer, Sharda Sahayak Pariyojna, Lucknow, opposite party No. 2, to fix a time within which the petitioner shall submit the requisite number of copies and intimate him and if the petitioner submits the requisite number of copies of his application u/s 18 the original application and the copies shall be forwarded to the Court within one month of the petitioner making good the deficiency. There shall be no order as to costs.

60. Regarding the petitioners in Writ Petitions Nos. 763 of 1990, 764 of 1990, 539 of 1991 and 6598 of 1990 it has been stated that these petitioners have not submitted any" application under S. 18. From columns 4 and 5 of Annexure B-1, it appears that these petitioners have already been paid the compensation determined in their favour. Accordingly no relief is to be granted in these petitions. All these four petitions are, therefore, dismissed but without any order as to costs.

61. Writ Petitions Nos. 10183 of 1989, 10186 of 1989, 6876 of 1990 and 7450 of 1990:

In each of these petitions separate short counter affidavits have been filed by the Land Acquisition Officer. To these counter affidavits no rejoinder affidavit has been filed. Accordingly the averments made in the counter affidavit will have to be treated as correct. We decide these writ petitions in accordance with the averments made in the short counter affidavit.

62. In Writ Petition No. 10183 of 1989 filed by Sunder Lal son of late Ram Lal, the grievances of the petitioner are-- (1) his application u/s 18 has not been forwarded to the Court, (2) he has not been paid the entire amount of compensation accepted by him under protest and interest. He has been paid only a part of the compensation and he has not been paid interest in accordance with

Section 34 of the Act. On these grievances the reliefs claimed are -- (1) to command the Land Acquisition Officer/ Collector- to forward the petitioner's application u/s 18 to the Court, (2) to command the State of U.P. and the Collector/Land Acquisition Officer to pay the balance amount of compensation accepted by the petitioner, and (3) to command the Land Acquisition Officer to deposit with the State Government the requisite amount.

63. In paragraph-5 of the writ petition the petitioner has stated that he submitted his application under S. 18 on 12th January, 1988. In the counter affidavit the filing of the application has not been denied and it has not been asserted that the application has been forwarded to the Court. Therefore, the petitioner is entitled to the mandamus commanding the Land Acquisition Officer/ Collector to forward his application to the Court.

64. In paragraph-3 of the counter affidavit it has been stated that the petitioner has been awarded Rs. 89,811.50 as his one half share in the plot about which there is no dispute and out of this amount Rs. 72,500/-have been paid and Rs. 17,311.50 will be paid on receipt of money from the Lucknow Development Authority. As already held, payment of compensation cannot be deferred on account of failure of the Lucknow Development Authority to deposit the requisite amount. Accordingly the petitioner is entitled to mandamus for payment of the balance amount with interest. This mandamus the petitioners is entitled to irrespective of the fact whether money is deposited by the Lucknow Development Authority or not.

65. In view of the above Writ Petition No. 10183 of 1989 is allowed to the extent that a writ of mandamus is issued commanding opposite parties 1 and 2, namely the State of U.P. and the Special Land Acquisition Officer, Nagar Mahapalika, Lucknow, to pay to the petitioner a sum of Rs. 17,311.50 together with interest mentioned in S. 34 within two months of the presentation of a certified copy of this judgment before opposite party No. 2. Opposite party No. 2 is further commanded to forward the petitioner's application u/s 18 to the Court within the same period. The petitioner will be entitled to costs from opposite parties 1 and 2.

66. In Writ Petition No. 10186 of 1989 filed by Rameshwar Prasad and Ram Kishan, sons of late Poley, the only relief claimed is to forward petitioners application under S. 18 to the Court. In the counter-affidavit filed by the Land Acquisition Officer it has been stated that no reference application has been filed by the petitioner. This petition is, therefore, liable to be dismissed and is hereby dismissed with costs to the opposite parties.

67. Writ Petition No. 6876 of 1990 is by Ramu Giri and Shyamu Giri, sons of late Hansa Giri. In the counter-affidavit filed by the Land Acquisition Officer it has been stated that Rs. 4,31,342.72 were determined as compensation payable to both the petitioners. Petitioner No. 1 Ramu Giri has already been paid Rs. 2,15,678.88 as his half share and petitioner No. 2 Shyamu Giri has been paid only a part of his half share and the balance of Rs. 35,568.25 still remains to be

paid to him. Non-payment of this balance amount is attributed to the failure of the Lucknow Development Authority to deposit the requisite amount. On these facts only petitioner No. 2 is entitled to a mandamus for payment of the balance amount. Accordingly this writ petition is allowed to the extent that a writ of mandamus is issued to the Special Land Acquisition Officer, Nagar Mahaalika/Collector, Lucknow, Opposite party No. 2, commanding him to pay to Shyamu Giri, petitioner No. 2 a sum of Rs. 35,568.25 together with interest under S. 34 of the Land Acquisition Act within two months of the presentation of a certified copy of this judgment before him. There shall be no order as to costs.

68. Writ Petition No. 7450 of 1990 is by Jamna Prasad son of Deoki Nandan. In the counter-affidavit it has been stated that the petitioner was awarded Rs. 4,97,211.22 as compensation out of which Rs. 4,31,719.60 have been paid to the petitioner on 4-2-1988 and the balance will be paid to him on receipt of money from the Lucknow Development Authority. Thus admittedly Rs.65,491.62 still remain to be paid to the petitioner. The petitioner is entitled to a writ of mandamus for payment of this amount together with interest under S. 34. Accordingly this petition is allowed to the extent that a writ of mandamus is issued commanding opposite parties 1 and 2 to pay a sum of Rs. 65,491.62 together with interest mentioned in S. 34 within two months of the production of a certified copy of this judgment before opposite party No. 2. There shall be no order as to costs.

Writ Petitions Nos. 3915 of 1990, 9805 of 1989, 9851 of 1989, 10029 of 1989, 10030 of 1989, 10031 of 1989, 10032 of 1989, 10033 of 1989, 10036 of 1989, 10037 of 1989, 10144 of 1989, 10185 of 1989, 10188 of 1989, 10190 of 1989, 10187 of 1989, 10419 of 1989, 10418 of 1989, 10420 of 1989, 10421 of 1989, 10422 of 1989, 10651 of 1989, 703 of 1990, 760 of 1990, 761 of 1990, 765 of 1990, 4833 of 1990, 3916 of 1990, 3917 of 1990, 3918 of 1990, 3919 of 1990, 3920 of 1990, 7046 of 1990, 8597 of 1990 and 7718 of 1990.

69. One counter-affidavit has been filed in writ petition No. 3915 of 1990 to cover these 34 petitions. Annexure CA-1 to this counter-affidavit contains details in respect of each petitioner. No rejoinder affidavit has been filed to controvert the details given in the counter-affidavit. Accordingly all these petitions can be disposed of on the basis of the facts contained in the said counter-affidavit.

70. In Annexure CA-1, it is stated in respect of the following petitions that the amount of compensation has already been paid:--

Sl. No.

Name of the petitioner

Writ Petition No

I.

Chheda

9805 of 1989

2.

Sohan Lal

10029 of 1989

3.

Smt. Parvati

10036 of 1989

4.

Smt. Tikana

10037 of 1989

5.

Babu Lal

10184 of 1989

6.

Ghastte and two others

10185 of 1989

7.

Sant Ram and four others

10190 of 1989

8.

Fakire

10187 of 1989

9.

Ram Prasad

10419 of 1989

10.

Smt. Jagdei

703 of 1990

11.

Ram Chander and three others

760 of 1990

12.

Sharwan Kumar and Mahesh Prasad

761 of 1990

13.

Hari and Pachoo

765 of 1990

14.

Mangal Prasad and three others

4833 of 1990

15.

Asharfilal and two others

3915 of 1990

16.

Har Deo Prasad and four others

3918 of 1990

17.

Maiku

3920 of 1990

18.

Smt. Pjyara and two others

7046 of 1990

In view of the fact that the entire amount of compensation has already been paid these writ petitions are liable to be dismissed and are hereby dismissed but without any order as to costs.

71. In respect of the following petitions it has been stated that on account of dispute of title the matter has been referred to Court:--

Sl No.

Name of the petitioner

Writ Petition No.

1.

Jagannath and Babu Lal

10030 of 1989

2.

Om Prakash

10031 of 1989

3.

Jagannath and three others

10033 of 1989

4.

Narain

10418 of 1989

5.

Brij Lal and Sunder Lal

10420 of 1989

6.

Ram Chandra and three others

10421 of 1989

7.

Rabi Deen and Ekadashi

10422 of 1989

8.

Niyaz Ahmad

3917 of 1990

9.

Kishore Lal

3919 of 1990

10.

Smt. Hardei and three others

6597 of 1990

In view of the fact that there is dispute of title and reference has already been

made to the Civil Court no relief is to be granted in these petitions which are accordingly dismissed but without any order as to costs.

72. In respect of the following petitions it has been stated that the undisputed amount has been paid and in respect of dispute reference has already been made to the Court :--

Sl. No.

Name of the petitioner

Writ Petition No.

1.

Rabi Deen and Ekadashi

9851 of 1989

2.

Purushottam

10032 of 1989

3.

Parmeshwar

10188 of 1989

4.

Mohd. Haseen and ten others

10651 of 1989

5.

Sardar Ali and another

3916 of 1990

The correct course has been adopted in the above cases and, therefore, these petitions are liable to be dismissed and are accordingly hereby dismissed but without any order as to costs.

73. In respect of Writ Petition No. 7718 of 1990 filed by Mohd. Saeed it has been stated that the entire amount of compensation has been paid to him except interest which he has not come to collect despite intimation. For this petitioner himself is to blame if he has not been able to get the interest. He can still go to the office of the Land Acquisition Officer and collect the amount. In view of the willingness of the Land Acquisition Officer to pay the amount of interest on direction is required to be issued by this Court. This writ petition is accordingly dismissed but without any order as to costs.

74. Writ Petitions Nos. 762 of 1990 and 6600 of 1990.

Writ Petition No. 762 of 1990 is by Smt. Sukhdei widow of Poley. In the counter-affidavit filed by the Special Land Acquisition Officer it has been stated that Rs. 5,90,037.94 were awarded as compensation. Petitioner's name is not mentioned in the Award and she did not make any application asserting her right as successor to Poley. It is in these circumstances that the compensation mentioned in the Award has not been paid to the petitioner. No rejoinder affidavit has been filed by the petitioner to controvert the averments made in the counter-affidavit. Indeed the Special Land Acquisition Officer could make payment of the compensation determined in favour of Poley only if the petitioner established before the Special Land Acquisition Officer her right as successor to the interest of Poley. She could also have produced succession certificate, probate or letters of administration establishing her right. Without satisfying the Land Acquisition Officer about her succession to the right of Poley the petitioner has approached this Court. In the circumstances the writ petition is entirely misconceived. It is still open to the petitioner to satisfy the Special Land Acquisition Officer that she is the widow of deceased Poley and is sole successor to his estate. With this observation the petition is dismissed.

75. Counter-affidavit has been filed by the Special Land Acquisition Officer in Writ Petition No. 6600 of 1990 also. This petition has been filed by Sri Anil Kumar Agarwal. In the counter-affidavit it has been state)) that a compensation of Rs. 3,63,296.85 was determined in favour of the petitioner but the same could not be paid to the petitioner as the Lucknow Development Authority had not deposited the necessary funds. The State and the Land Acquisition Officer, as already held hereinabove, cannot deny payment of compensation on the ground of failure of the Lucknow Development Authority to make available the necessary funds. Accordingly this petition is allowed to the extent that the State of U. P. and the Special Land Acquisition Officer, Nagar Mahapalika, Lucknow, opposite parties 1 and 2 are hereby commanded through a writ of mandamus to make payment of the sum of Rs. 3,63,296.85 to the petitioner along with interest mentioned in S. 34 within two months of the presentation of a certified copy of this judgment before the Special Land Acquisition Officer. There shall be no order as to costs.

76. Writ Petition No. 643 of 1991.

This petition has been filed by Nattha and Dasha. The prayers made in the petition are -- (i) to quash the award dated 23-9-86, (ii) the opposite parties be directed to acquire petitioners" land by issuing fresh notification and taking acquisition proceedings in accordance with law, (iii) the Special Land Acquisition Officer be commanded to award compensation at the rate of Rs. 3.00 per sq. ft., and pay 80% of the compensation in advance, (iv) any other relief that may be considered fit and proper by this Court, and (v) costs of the petition be awarded to the petitioners.

In view of the legal position discussed above none of these reliefs can be granted to the petitioner. Accordingly this petition is dismissed but without any order as to costs.

77. Writ Petitions Nos. 3921 of 1990, 3922 of 1990, 3923 of 1990 and 6601 of 1990.

In these writ petitions despite opportunity no counter-affidavit has been filed, by or On behalf of the Land Acquisition Officer. Accordingly these petitions will have to be disposed of on the basis of the facts stated in the petition and the reliefs claimed in each petition.

78. Writ Petition No. 3921 of 1990 is by Bhagwandin and Dhani Ram. Material relief claimed in this petition is to command the opposite parties to make reference in respect of the balance amount under S. 31(2) and also to forward their application under S. 18 to the District Judge. A further prayer made is to release from acquisition the land comprised in Mandir and Dharmashala. In the body of the writ petition it is stated that the Award was published on 12-2-1985 and thereafter on 8-5-1986 petitioners' father refunded Rs.31,500/- in lieu of the land which was released from acquisition. From these facts it is apparent that the Award had been made in favour of the petitioners' father and petitioners' father received the full amount of compensation and out of this full amount he refunded Rs. 31,500.00 in lieu of the land which was released from acquisition. The petitioners claimed to be legal representatives of Gurdeen in whose favour the Award had been made. It is stated in paragraph-11 of the petition that opposite party No. 2 did not send the application under S. 18 submitted by petitioners' father to the District Judge. Neither a copy of the application has been filed nor the date on which it was submitted has been mentioned". It is then mentioned that the petitioners made an application on 8-7-1988 for substitution of their names in place of Sri Gurdeen on which no action has been taken by the Land Acquisition Officer. If Gurdeen had already received full amount of compensation and he had not preferred any application under S. 18 no action was required on petitioners' application dated 8-7-1988. From the material on record it is not established that Gurdeen had filed any application under S. 18 within the prescribed period of limitation. Accordingly no relief can be granted in the present petition which is dismissed but without any order as to costs.

79. Writ Petition No. 3922 of 1990 is also by Bhagwandin and Dhani Ram sons of Gurdeen. The material grievance in this petition is that the balance amount of compensation has not been paid and application under S. 18 filed by the petitioners' father has not been forwarded to the District Judge. It appears that the Award in this case was published on 23-6-1981. In this Award compensation had been determined in favour of Gurdeen. Gurdeen made application under S. 18 on 4-7-1981. Thereafter he died on 24-6-1988. The petitioners claim to have moved application dated 8-7-1988 for their substitution in place of Gurdeen. The case of the petitioners is that neither application under S. 18 filed by Gurdeen

has been forwarded to the District Judge nor petitioners" own application dated 8-7-1988. In the absence of any justification for not forwarding these applications to the District Judge a mandamus will have to be issued in favour of the petitioners. Accordingly a writ of mandamus is issued commanding the Special Land Acquisition Officer, Nagar Mahapalika I, Lucknow, opposite party No. 2, to refer application dated 4-7-1981 filed by Gurdeen under S. 18 of the Act and also the application dated 8-7-1988 filed by the petitioners for their substitution in place of Gurdeen. The mandamus shall be complied with within two months of the presentation of a certified copy of this judgment. There shall be no order as to, costs. "

80. Writ Petition No. 3923 of 1990 is by Ram Bhajan and Bajrang sons of Jagdeo. Material prayers made in this case are-- (i) to refer the dispute to court under S. 30 of the Act (ii) to refer the application under S. 18 to the Court, and (iii) to pay the balance amount of undisputed compensation to the petitioners.

81. Petitioners" plea is that Award was made on 23-6-1981 and their mother made application under S. 18 of the Land Acquisition Act on 4-7-1981. In this application it was also prayed that the undisputed compensation be paid to the petitioners. The petitioners" further plea is that there is dispute in respect of a portion of the land for which reference has to be made under S. 30. On 1-10-1988 the petitioners made an application to the Land Acquisition Officer for making reference under S. 30 and to forward the application under S. 18. Despite this application no reference has been made. The figure of undisputed amount has not been disclosed by the petitioners. Accordingly no mandamus can be issued requiring the opposite parties to pay any amount to the petitioners. In the absence of any counter-affidavit petitioners" assertion that an application under S. 18 was made on 4-7-1981 will have to be accepted. In the absence of any justification for not forwarding this application to the court a mandamus will have to be issued.

82. Accordingly the writ petition is allowed to this extent that a writ of mandamus is issued commanding the Special Land Acquisition Officer, Nagar Mahapalika, I, Luck-how, Opposite-party No. 2 to refer the case to the court under S. 30 and forward the application dated 4-7-1981 filed under S. 18 of the Act and also the application dated 1-10-1988 to the court for decision in accordance with law. The mandamus shall be complied with within two months of the presentation of a certified copy of this judgment before the opposite party No. 2. There shall be no order as to costs.

83. Writ Petition No. 6601 of 1990 has been filed by Smt. Badala and Smt. Jasoda, daughters of late Param. Material relief claimed in this petition is to quash the Award dated 7-3-1987. The basis for making this prayer is that the Award has been made without deciding the question of entitlement. The petitioners" case is that the plots in question belonged to their father and on his death they were inherited by their mother" Smt. Sukhraj who's name was recorded in relevant Government records. On the death of petitioners" mother

the plots in question were inherited by the petitioners and their sister Hubraji. Hubraji got her name recorded in revenue records in collusion with the Lekhpal. On acquiring knowledge of mutation having been effected in favour of Smt. Hubraji, the petitioners applied for inclusion of their names and the said proceeding was pending when the Award was made. During the acquisition proceedings the petitioners made an application to the Land Acquisition Officer requesting him to make separate Awards in favour of the petitioners and their sister Smt. Hubraji. It is claimed that without disposing of the application, Award was published on 7-3-1987. From the averments made in the application the petitioners' case appears to raise a dispute relating to apportionment of compensation and entitlement thereto. Such a dispute deserved to be referred to the court under S. 30. The Land Acquisition Officer has not submitted any justification for not making the reference. Accordingly a writ of mandamus is issued commanding the Special Land Acquisition Officer, Nagar Mahapalika, I, Lucknow, opposite party No. 2, commanding him to make reference to the Court under S. 30 of the Act. The mandamus shall be complied with within two months of the presentation of a certified copy of this judgment before opposite party No. 2.

84. All the writ petitions are decided in accordance with the directions contained hereinabove.

85. Order accordingly.