
(2004) 02 DEL CK 0060

In the Delhi High Court

Case No : Civil Writ Petition No's. 5138 and 11984 of 2002 and C.M. No's. 1026 of 2003

Ramjas Foundation

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 06-02-2004

Acts Referred:

Citation : AIR 2004 Delhi 238 : (2004) 110 DLT 10 : (2004) 73 DRJ 128

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

Bench : Division Bench

Advocate : V.P. Singh and S.P. Sharma, for the Appellant; Sanjay Poddar and Sachin Nawani, for the Respondent

Final Decision : Dismissed

Judgement

B.C. Patel, C.J.—Petitioner, a society registered under the Societies Registration Act, 1860, having its office at Delhi, has filed this petition for issuance of a writ of certiorari or any other appropriate writ or directions for quashing the decision of the Lt Governor dated 18.6.2002, whereby representation made u/s 48(1) of the Land Acquisition Act, 1894 (hereinafter referred to as the "Act") for de-notification of the lands belonging to the petitioner, came to be rejected. The action is challenged on the ground of discrimination as also the exercise being arbitrary and without following the policy.

2. It is contended that the representation was made on behalf of the petitioner on 6.9.2000, a copy of which is placed on record at page 153. It is contended that the said representation is in continuation of earlier representations dated 16.11.1995, 3.3.1999 and 1.6.1999, etc. for release of lands owned and possessed by the petitioner society at village Sadhora Khurd, popularly known as Anand Parvat, Delhi. It is the case of the petitioner that one, Rai Sahib Lala Kedar Nath formed Ramjas Society in Delhi for imparting education. The said society changed its name to Ramjas Foundation in the year 1967. It is imparting education through 20 schools and one college in Delhi, where more than 15000

students are being trained with the aid and assistance of 700 teachers/lecturers.

3. It is further contended that the main sources of income to run the aforesaid institutions is the rent of lands measuring 780 Bighas 14 bids was situated in village Sadhora Khurd, where more than 1000 tenants built up their houses, structures, etc and are carrying on business, establishments, shops, household industries and godowns for the last 50 years.

4. Vide notification issued u/s 4 of the Act dated 13.11.1959, large area admeasuring 34000 acres of land was sought to be acquired for "planned development of Delhi". Declarations u/s 6 of the Act, were made on different dates. So far as the lands covered in the present proceedings are concerned, declaration u/s 6 of the Act were made in 1968 and 1969 (five notifications on different dates).

Previous proceedings :

5. From the record, it transpires that the petitioner filed a writ petition No. 106/78 in this Court challenging the notification on various grounds. However, the petition was dismissed on 31.1.1978 by a Division Bench of this Court. Against the said dismissal order, the petitioner filed SLP(C) 2213/78 before the Apex Court, which also came to be dismissed by the Apex Court. The decision of the Apex Court in the aforesaid case is reported as The Ramjas Foundation and Others Vs. Union of India and Others, . From the text of the judgment, it is very clear that earlier the petition, being CWP213/73, was filed in this Court and was dismissed as withdrawn on 30.3.1977. Thereafter, another writ petition No. 106/78 was filed challenging the notification, declaration and notices issued under Sections 4, 6, 9 and 10 of the Act, which was dismissed by the High Court.

6. Before the Apex Court, contention was raised that an opportunity of hearing while deciding the objections was not granted, as contemplated u/s 5A of the Act. Addl. Solicitor General appearing in the matter, during the course of hearing, placed an order of the Collector dated 23.2.1968. A perusal of the aforesaid judgment of the Apex Court The Ramjas Foundation and Others Vs. Union of India and Others, clearly shows that Ramjas Foundation was represented through Mr. Rattan Lal Gupta, Advocate, who was given a personal hearing. On perusal of the document, the Apex Court pointed out that full opportunity of hearing through Counsel was afforded to Ramjas Foundation. It has been further pointed out that Ramjas Foundation Society was also allowed to file their objections, if so desired, but Mr. Rattan Lal Gupta, learned Advocate for the petitioner society, declined and stated that there was nothing more to the previous objection petition. After bringing the said document, to the notice of the learned Counsel for the appellant, the Apex Court pointed out that no satisfactory Explanation or argument came forward on behalf of the appellant. After observing this, the Apex Court with regard to the conduct of the appellant in raising such a plea of not giving an opportunity of personal hearing in respect of the objections filed tinder Section 5A, held that the contention was totally

baseless and factually incorrect and such conduct is reprehensible. The Court also pointed out that a person invoking extraordinary jurisdiction of the Court under Article 226 of the Constitution is required to come with clean hands and should not conceal material facts. The Apex Court further observed that the appellant had taken advantage of obtaining a stay order which was continuing for the last 14 years, as SLP was filed in 1978 itself. In para 8 of the judgment, the Apex Court pointed out that the objections were filed on 11.12.59 through Mr. Rattan Lal Gupta, Advocate, which objections were heard in the presence of Mr. Rattan Lal Gupta, Advocate, and disposed of by a common order.

7. The Court examined the matter in detail about delay, laches and acquiescence. In view of the Apex Court judgment dismissing the appeal with cost, the petition is not required to be heard on merits insofar as acquisition is concerned, and in our opinion learned Counsel for the petitioner rightly confined to the question of rejection of application u/s 48 of the Act.

8. It transpires from the record that after possession was taken, the present petitioner filed another writ petition No. 4343/97 and a Division Bench of this Court dismissed the said petition on 26.4.2000. What is observed by the Division Bench is required to be noted at this stage:

"Despite the dismissal of the writ petition by the Supreme Court, the petitioner filed the present writ petition which obviously has the effect of delaying the development of the area in accordance with the Master Plan. The petitioner claims that the possession of the land was not taken over by the acquiring agency. Therefore the acquisition has not been completed and it is open to the petitioner to seek a direction to the respondents not to take possession of the land. The stand of the respondent is that the possession of the land was taken over. Besides, it is submitted that the question whether possession was taken over is a disputed question of fact which cannot be appropriately adjudicated in a writ petition. The learned Counsel appearing for the petitioner submitted that the area in question is a built-up area and according to the policy of the DDA the land cannot be dealt with the Acquiring Agency for the purposes of planned development of Delhi in accordance with the master Plan 2001."

9. The petitioner contended before the Division Bench that possession of the land was not taken over by the acquiring agency and hence acquisition was not complete and, Therefore, it was open to seek a direction to the respondent not to take possession of the land. The Division Bench observed :

"We have not been able to persuade ourselves to accept the contention of the learned Counsel for the petitioner. A policy of the DDA cannot override the statutory provisions of the Land Acquisition Act. For the purpose of acquisition it is immaterial whether the land is built-up or vacant. Once the land is acquired, the acquiring authority cannot be asked not to deal with the land in accordance with the Master Plan. If such a contention is accepted, statutory provisions of the Land Acquisition Act, 1894 will be rendered otiose.

10. Learned Judges have also referred to the case of Roshanara Begum Vs. Union of India, , wherein the Full Bench has held that acquisition proceedings are not vitiated only because the area is built up one. The said decision has been approved by the Apex Court, which is reported as Murari and Others Vs. Union of India (UOI) and Others, .

11. It is also pointed out that a writ petition was filed in this Court by Bhagwan Dass being CWP No. 1811/95. This petition was filed by Shri Bhagwan Das for directing the respondents Union of India to implement the Plan i.e. Plan Development (Delhi 2001) and also for taking possession of 730 bighas of land (land in question) and to put the same to the use for which the lands were required i.e. as per plan of Zone B-5.

12. On 29th October, 1998 writ petition 1811/95 was placed before Court (Y.K. Sabharwal, Acting Chief Justice as His Lordship then was and K.S. Gupta, J.) and disposed of by detailed order. Reading the order in detail it transpires that Mr. P.K. Ghosh, Vice-Chairman, DDA sworn an affidavit dated 23rd October 1998, stating that "the Possession of 563 bighas 7 bids was of land was taken by the Collector and handed over to DDA on "as is where is basis" as the same land was occupied and being used for running industries, shops or godowns. The affidavit specifically pointed out that there was no other way in which the possession of the land could be taken and Therefore it was taken over on "as is where is basis".

13. It was specifically pointed out that "the appropriate Government has decided not to release from acquisition the land of which possession has been taken over whether actual possession or possession on as is where is basis". The Court recorded the submission:

"Mr. Sethi appearing on behalf of the DDA submits that in respect of land which has been decided not to be released from acquisition a development plan is under contemplation. The Court directed that the DDA shall inform the Court the broad aspects of the Development Plan which may be in contemplation."

14. Thereafter the DDA filed its affidavit. On 26th April, 2000. Statement was made by the Learned Counsel for the DDA that "the development of the land shall take place in accordance with the Master Plan 2001". In view of this statement the Court disposed of the Writ Petition. Thus the land is to be used for development plan as stated. The said decision was carried in SLP (Civil) 15216/2000 and the same SLP came to be disposed of on 4/2/2002.

15. As pointed out in the affidavit of Binay Bhushan, Director/OSD, DDA, after dismissal of the appeal by the Apex Court, the Land Acquisition Collector made various awards in respect of the land belonging to the petitioner. The details are given in para 9 of the affidavit. It is further pointed out that possession of 676 Bigha 8 bids was of land has been handed over on various dates by the Land Acquisition Collector from time-to-time. Out of this area 563 bighas 7 bids was found to be built at the site. It is not the case of the petitioner that petitioner carried out construction and thereafter put others in possession. Reading the

application it is clear that the land was given on rent basis and the tenants erected structures.

16. It is also pointed out that after taking over possession of land, sites for fire station and other infrastructure layout plan has been provided for this area. A large number of industrial units have come up unauthorisedly during the litigation period and according to the averment in para 13 "these industrial units have been created by Ramjas Foundation against Municipal bye-laws." According to the respondent this has created health hazard. On behalf of the respondent it was submitted that once possession is taken in accordance with law, the land vests in the Government and, Therefore, there is no question of considering any application u/s 48(1) of the Act. The tenor of the affidavit filed on behalf of the respondent is that for the purpose of development the land is to be used. What development is required and for what reasons is also indicated.

17. It may be emphasised once again that the only scope of this writ petition is validity of order dated 18th June, 2002 made by the Lt. Governor whereby representation of the petitioner for denotifying the aforesaid land has been rejected. Before we answer this question, we may take stock of the admitted facts on the basis of the aforesaid discussion.

(a) Challenge of the petitioner to acquisition proceedings has failed up to the Supreme Court. The Notifications issued under Sections 4 and 6 are upheld which would include the factum that the land is needed for public purpose.

(b) The possession of the land has been taken over by the respondents and the challenge to these possession proceedings made before the Division Bench by the petitioner also failed.

(c) The land is acquired by DDA which is the beneficiary and it is the DDA which is required to put this land to the appropriate use.

(d) To what use the land is to be put is indicated in the counter affidavit of the DDA. As per the layout plan prepared for the area sites for fire station and other infrastructure have been provided.

(e) Existing position of the area is also taken note of. As of today, a large number of industrial units are existing unauthorisedly with haphazard growth creating health hazards as well. Therefore, planned development of this area has become a necessity.

Order dated 18th June, 2002 passed by the Lt. Governor is to be examined in view of the aforesaid admitted position.

Submission with regard to policy for Denotification :

And

Order Made By the Lt. Governor.

18. On behalf of the petitioner, it was submitted that there is a policy of the

Government for de-notification of land and thus in view of this policy, an application was made to the Lt. Governor which was required to be decided in the manner indicated in that policy. It was also contended that a sub-committee was required to examine this matter and thereafter it was the duty of that Committee on examination to submit a detailed report, as indicated in sub para 2 of para 4 of the policy. According to the petitioner, the de-notification committee was required to be guided by the report of the sub committee and, thereafter, recommendation was required to be made to the Lt. Governor for considering or rejecting the proposal. It may be noted that this policy is merely a guideline to the officers, hut in no way the said policy can override the provisions of the Act. In any case, in view of the admitted position noted above, it cannot be said that the order of the Lt. Governor would be vitiated on this specious ground. Learned Counsel for the petitioner submitted that the question of possession is irrelevant in this matter, as application was made in 1995 and at the relevant time the possession was not taken over and Therefore without being influenced by what happened subsequently, the application was required to be considered. We do not agree. Lt. Governor was required to take into consideration all such developments which had taken place when he passed the order. Ultimately the Lt. Governor, was required to take a decision and if that decision is taken by him, it cannot be faulted on the ground that the matter was not considered by the Special Committee or by the committee or there was no recommendation.

19. The order dated 18.6.2002 made by the Lt. Governor is placed on record vide Annexure P17 at page 175 of the petition. The Lt. Governor has noted as under:

"I have gone through all the papers on record and have considered the matter at length. Possession of area admeasuring 563 bighas 7 bisws was taken by DDA on "as is where is" basis as land was not physically vacant. The said area is replete with factories. The Anand Parbat Industrial Area as it has come to be popularly known has come up in a haphazard and unplanned manner and has over the years, also become degraded and decrepit. The congested and unsystematic growth of factories in the area has turned it into a veritable public hazard. Safety considerations are wanting. Most of the lanes are too narrow for a fire tender to enter. The electricity distribution system is problematic. The other infrastructure and basic services are also inadequate. Apart from being a congested and degraded cluster of factories operating in sub-optimal conditions, the area is also hazardous where public safety requirements warrant early remedial measures. The area is mentioned in the Master Plan of Delhi as "industrial".

20. Emphasis is placed on re-development of the area in public interest. It requires planned roads and lanes, new infrastructure is required as per plans. Institutional services are wanted and are required to be properly located such as fire, electricity sub-station, etc. It is pointed out that it is not desirable or safe to delay any longer. It is also pointed out in the earlier part of the order that 87 bighas and 13 bids was vacant land is with the DDA since long. It is also pointed

out that 67 bighas and 14 bids was has been denotified in favor of the petitioner. It was stated before us that f6r the institute/imparting education, this parcel of land was denotified.

21. Rejection of an application u/s 48(1) of the Act would mean that the need and public purpose, both continue to operate. In absence of proved mala fide can a decision of Lt. Governor be challenged, more particularly by a speaking order while rejecting the application, it is pointed out that the land js required for development and before the Court beneficiary has pointed out to put the land to use for development strictly according to Master Plan.

22. Aforesaid aspect we have referred with a view to indicate that on the basis of the material placed before the competent authority, which on examination of the record arrived at a satisfaction that the land is needed for a public purpose. Then is it open on mere ipse dixit to ask the Government to exercise the power u/s 48(1) of the Act to de-notify the land from acquisition? One should note that this Court is not required to sit as an appellate Court to examine the decision rendered by the Lt. Governor. Power under Article 226 of the Constitution are required to be exercised in furtherance of interest of justice. The Lt. Governor while passing an order was required to apply his mind to all relevant aspects and was not required to be swayed away by irrelevant aspects. The Lt. Governor has arrived at a conclusion which cannot be said to be perverse. On the basis of the material on record, when the Lt. Governor was satisfied that it is a case which requires no exercise of power, u/s 48 of the Act, and the land is required for development, it cannot be said that the Court is required to question the decision. As the respondents have pointed out that the land is required for a public purpose and that purpose is not abandoned, then in such a case it would not be permissible to the applicant to ask the authority to reopen the case by the State and in this situation it would not be open for this Court to interfere with the decision which is under challenge. In the matter of land acquisition, the Court will have to consider public interest as the paramount interest. Private interest has no place in the matter of land acquisition when a person is to be compensated. In the instant case, acquisition proceedings have been completed and unsuccessfully the petitioner has challenged the proceedings twice which has caused delay in development of land in accordance with the development plan. When the Lt. Governor has rejected the application after considering the material on record, Court should not interfere.

After vesting no invocation of Section 48 of the Act:

23. On behalf of the respondent it was submitted that the petitioner has no locus standi to make an application u/s 48 of the Act. In view of the decision rendered by the Division Bench in this case, it is clear that possession was taken and hence there is vesting in the Government and, hence, application u/s 48 is not maintainable. What is considered by one of us (Sikri, J.) in the case of Union of India (UOI) and Others Vs. Parshadi and Others, is required to be considered. After considering various decisions, in para 71 the Court pointed out:

"71..... Undoubtedly, legal position is that if the possession of the land has been taken, the denotification was not legally permissible. In such a situation, legal position is that the land owner has no right in the land after acquisition is complete. Only a beneficiary has a right to object to any order/consideration for Denotification. After the possession of the land and placing the same at the disposal of the DDA, it is the DDA which becomes beneficiary. Once such a beneficiary raises objection to the denotification, the competent authority is within its power to review the decision. [See (1) M/s. Larsen and Toubro Ltd. Vs. State of Gujarat and Others, , (2) State Houseless Harizan Employees Assn. v. State of Karnataka and Ors. 2000 (9) AD SC 412 and (3) Special Land Acquisition Officer, Bombay and Others Vs. Godrej and Boyce,]"

24. On behalf of the respondent it was submitted that there is no question of unilateral decision of the State Government for withdrawal from the acquisition as notifications u/s 4 and 6 of the Act were issued and thereafter the acquisition process is completed and has attained the finality after award and taking possession. In the case of M/s. Larsen and Toubro Ltd. Vs. State of Gujarat and Others, , the Apex Court pointed out that there may be sufficient reasons to withdraw from acquisition but it must be known to the beneficiary, who may have equally sound reason or principles more to stick to decision of acquisition. In the instant case, lands are required to be used as per Delhi Development Act and the Master Plan/Zonal Plan. The Division Bench in Writ Petition 1811/95, directed to put the land to use according to Master Plan. The use, contrary to the permissive use is absolutely illegal. The Lt. Governor in his order has pointed out the fact situation and the purpose of development. In our opinion, the Lt. Governor has committed no error even if it is assumed that possession was not taken.

25. In the case of Special Land Acquisition Officer, Bombay and Others Vs. Godrej and Boyce, the Apex Court pointed that Section 48 gives liberty to the State Govt. to withdraw from the acquisition at any stage before possession is taken. By such withdrawal no prejudice is caused to the owner of the land and if at all has suffered any damage in consequence of the acquisition proceedings or incurred cost in relation thereto he will be compensated Therefore u/s 48(2) of the Act. The Court also pointed out that the State can be permitted to exercise its power to withdraw unilaterally and there is no requirement that owner of land should be given an opportunity of being heard before doing so should be read into the provisions. The Government had intended to acquire the land for construction of houses by the State Housing Board. If the Government is reluctant to go ahead with the acquisition in view of the genuine difficulties it can hardly be blamed. When the power does not smell of mala fides there is no question of interference. Keeping these aspects in mind when the Lt. Governor has rejected the application for the reasons stated and when there is no mala fide it would not be correct to say that order is bad or illegal.

26. Learned Counsel for the respondent submitted that after the possession is taken by the government whether it is open to exercise the power u/s 48(1) of

the Act, came to be considered by the Apex Court in the following cases:

1. 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.

2. In the case of *Rajasthan Housing Board and Others Vs. Shri Kishan and Others*, , in para 26 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."

3. 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 u/s 11A, it would not lapse.

4. 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.

27. It is in view of these decisions, powers u/s 48 of the Act cannot be exercised after vesting. Law prohibits withdrawal of acquisition after possession is taken. One cannot and should not be heard in this behalf, when powers are exercised in accordance with law.

28. For denotification of the land, the question of symbolic possession was examined by this Bench in *Nagin Chand Godha v. Union of India And Ors.* 2003 (7) DRJ 721, this Court after examining various decisions pointed out:

"It is not possible for this Court to agree with the submission of the learned Counsel that possession is not taken. Suffice it to say that after symbolic possession is taken, if the petitioner is enjoying the possession, he is enjoying the possession as a trustee on behalf of the public at large and that by itself cannot be considered to be a ground to contend that possession is not taken. It is the duty of the person who is occupying the property to look after the property and to see that the property is not defaced or devalued by himself or by others. He cannot subsequently come to the Court to say that actual possession is not taken and Therefore he should be protected and land be denotified."

29. This decision also deals with the contention with regard to discriminatory treatment given to the petitioner. In para 15 we have examined what the Division Bench stated in *Shanti Sports Club and another Vs. Union of India and*

others, as under:

"The learned Counsel for the petitioners also argued that the petitioners have been subjected to discrimination as certain other lands which were subject matter of acquisition have been denotified u/s 48 of the Land Acquisition Act. We find no force in the contention since the land is still needed for the housing project. Similar argument advanced before the Full Bench in *Roshanara Begum v. Land Acquisition Collector* for challenging the acquisition was rejected and it was held that there cannot be any question of discrimination merely because some of the lands were denotified in exercise of the powers u/s 48 of the Act, it seems to us that in case some land is wrongly denotified for showing favor to a party, such action of the State can be challenged. But a party cannot seek denotification of the land on the analogy of a case where State withdraws from acquisition on extraneous grounds as two wrongs cannot make a right."

Policy and the Law :

30. In the case of *Radhey Shyam Gupta Vs. Union of India (UOI)*, , decided on 29th October, 2003 with regard to withdrawal from acquisition Court pointed out as under:

"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.

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.

xxx xxx xxx 71. In *Roshanara Begum (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 v. UOI*, 1991 (2) DL 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 v. 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) DL 59. This decision has been affirmed by a Full Bench of this Court in Roshanara Begum v. UOI 1996(I) AD Del 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."

Reading the provisions of law for acquisition of land for public purpose, it is very clear that law must prevail and policy cannot override the law. Acceptance of policy would render provisions of law nugatory.

31. In the instant case, the petitioner miserably failed twice in challenging the acquisition proceedings including declaration u/s 6 of the Act.

32. Any delay in non-implementation of the zonal or development plan would amount to permitting unauthorised erection of building or industries which would add unnecessary burden on the people. Haphazard activities of building construction has raised several problems. On account of bottle neck, vehicles are causing pollution which is health hazard for the people living in a particular area. There must be industrial development according to plan otherwise it would cause damage by polluting the air and water, resulting in health hazard. Every citizen has a right to fresh air and to live in pollution-free environment. Therefore, it is absolutely necessary to allow development authorities to carry out development as per Delhi Development Act. When the acquisition proceedings are completed in accordance with law and the land which is required by the development authority even today, any interference in the process of development would amount to nothing but creating hazard in well designed planning which is in the interest of public at large.

33. Interveners, who are running industries in the area in question are before the Court. Their say is that the land must be used as per Master Plan i.e. industrial use. We see good reasons in insisting for the use of land as per Master Plan.

34. Over and above, in view of not permitting the development in accordance with law, for one or the other reason, the people for whose benefit development is to be made for their need will try to settle anywhere they get space and this is one of the reasons for encroachment or unauthorised construction and hazardous planning done by the persons dealing in the land. Would it be proper to permit such hazardous development which may cause health hazard. Therefore, it is a fit case wherein the development authorities should develop the land immediately so as to see that the people are not required to spend money at escalated cost and to reduce the haphazard planning.

35. Escalation cost is an important aspect to be borne in mind. Amendment in Sections 4, and 6 indicates that within a prescribed period procedure must be completed. If there is emergent situation for acquisition of land, specific provision is made in the Act. If there is delay in acquisition proceedings, on account of increasing cost index every year, and, the land is not used within a reasonable period after declaration u/s 6, the State Government will have to spend much more amount for development. What was the price prevailing for construction of the area of 1 sq mtr in the year 1994 and in the year 2003 is required to be borne in mind.

36. How the city suffers, is pointed out in *Jai Narain and Others Vs. Union of India and Others*, and particularly in para 11 (that was a case with regard to construction of STP). It is also pointed out by the Apex Court, in the said case, about the increase in population. The population of Delhi was about 17 lakhs in 1961. It reached approximately 94 lakhs as per 1991 Census. In fact, 4 lakhs people are added to the population of Delhi every year out of which about 3 lakhs are migrants. If city is not developed, the people are likely to face many problems such as the air pollution on account of vehicular traffic, erection of industries without any planning and not providing proper treatment plant. It is in view of the haphazard planning which effects the quality of environment and that cannot be permitted. Every citizen has a right to fresh air and to live in pollution free environment. Work must be carried out by development authorities so as to see that it is a planned city. The areas are planned as per Development Act, Master/Zonal Plan. When our economy is in competition with the world market it should not be forgotten that to attract foreign investment to the maximum extent is most important aspect. In the present highly competitive system if the development is not permitted and facilities are lacking then public at large will suffer. There is need of substantial improvement, expansion and modernization. These things very often call for acquisition of land and that too without any delay. The Courts have to weigh the public interest vis-a-vis the private interest while exercising power under Article 226 of the Constitution of India -indeed in exercise of their discretionary power. When acquisition has not been vitiated on account of non compliance with some legal requirements there is no question of not permitting the development to proceed in the manner in which it must. It should not be forgotten that on account of escalating cost day-to-day, the persons for whose benefit development is proposed will have to pay higher price. During the pendency of the proceedings unauthorised occupants have enjoyed the property only on account of stay obtained by petitioner. If a person has no case and comes to the Court and if others are required to suffer then we see no reason as to why heavy cost should not be imposed.

37. In the instant case, petition was filed earlier challenging notification under Sections 4, 6 and notices under Sections 9 and 10 of the Act, and having failed in this Court, the matter was taken to the Apex Court, where also the petitioner failed. Thereafter another petition came to be filed by a public spirited person wherein direction was given to make use of the land as per the Master Plan. That order was also challenged by the petitioner. Again petition was filed which was dismissed by the Division Bench of this Court against which appeal was filed before the Apex Court. This unsuccessful petitioner again filed a petition and has failed. The development of this land could not take place on account of proceedings initiated by the petitioner who has failed at all the stages. We have examined the order made by the Lt. Governor. Even if the possession was not taken and the Lt. Governor was required to examine the application, in our opinion, considering the facts and circumstances of the case and the reasons recorded by the Lt. Governor, it is not a fit case where this Court should

interfere. Therefore, in the opinion of the Court it would be a fit case if costs of Rs. 50,000/- is imposed on the petitioner.

38. CM 11984/2002 has been filed by one Bhagwan Dass for being imp leaded as a party to make a prayer to the effect that the said land be developed as per Master Plan-2001 by DDA. Another C.M. 1026/2003 has been filed by Anant Parbat Residents Welfare Association (Regd) strongly objecting the claim and prayer of the petitioner while seeking prayer for permitting it to be joined as a party to the proceedings. These applications are not required to be entertained in view of dismissal of the writ petition and consequently these applications are disposed of.