

(2023) 06 J&K CK 0018

In the Jammu And Kashmir High Court

Case No : ?Latters Patent Appeal No. 158, 159 Of 2020

Romesh Chander And Others

APPELLANT

Vs

Union Territory Of J&K And Others

RESPONDENT

Date of Decision : 08-06-2023

Acts Referred:

Jammu And Kashmir State Land Acquisition Act, 1990 — Section 4, 4(1), 4A, 4(b), 5A, 6, 9, 9A, 12, 12(2)
National Highways Act, 1956 — Section 3D

Citation : (2023) 06 J&K CK 0018

Hon'ble Judges : Sanjeev Kumar, J;Puneet Gupta, J

Bench : Division Bench

Advocate : Monika Kohli, Ashish Singh Kotwal, R.K.S.Thakur, Monika Kohli, Ashish Singh Kotwal

Final Decision : Dismissed

Judgement

Sanjeev Kumar, J

1. These intra Court appeals by the appellants (hereinafter referred to as "writ petitioners") are directed against a common judgment dated 29.12.2022 passed by a learned Single Judge of this Court ["Writ Court"] in WP(C) No.589/2020 and 1089/2020 along with other connected petitions, whereby the Writ Court has rejected the challenge of the writ petitioners to the land acquisition notifications issued by respondent No.5- Collector Land Acquisition (Sub Divisional Magistrate), Jammu under Sections 4, 6, 9 and 9A of the J&K Land Acquisition Act, 1990 ["the Act of 1990"] and the final award dated 09.09.2019.

2. Before we advert to the grounds of challenge urged on behalf of the writ petitioners to assail the impugned judgment of the Writ Court, it is necessary to set out few material facts leading upto the filing of the instant appeals. The facts from LPA No.158/2020 are being taken.

3. Bishan Dass, who is now deceased, claimed to be the owner of land measuring

4 kanals falling in Khasra No.137 min, khewat No.73 min and Khata No.762 min situated in village Paloura on the basis of a registered gift deed executed by the erstwhile owner Sh. Punjab Singh. He also claimed to have purchased another piece of land measuring 10 marlas from one Sh. Amar Nath in terms of sale deed dated 17.11.1983 duly registered on 29.11.1989. It was also claimed by said Bishan Dass that on the land owned by him he had constructed a single storeyed house along with four shops. Similarly, writ petitioner No.2-Sukeshi Verma also claimed to be the owner in possession of land measuring 5 ½ marlas underlying Khasra No.138 of village Paloura. He also claimed to have constructed a small house. Similarly, writ petitioner Nos. 3 to 5 claimed that their father, namely, Sh. Bishan Lal had purchased a piece of land measuring 10 marlas comprising of khewat No.23, khata No.762-min and khasra No.137 min situated in village Paloura through a valid sale deed executed by erstwhile owner Sh. Krishan Lal. They also claimed to have constructed a single storeyed house on the said land. Writ petitioner No.6 claims to be owner in possession of land measuring 8 ¼ marlas comprising of Khasra No.137-min situated in village Paloura through gift deed executed by his real uncle on 20.08.2014. He also claimed to be in possession of two more marlas of land. He claimed to have constructed two residential houses on five marlas each.

4. The case projected by the writ petitioners in the writ petition was that it was only on 12.02.2020, the Collector Land Acquisition [SDM), Jammu(North)] along with Tehsildar, Jammu North, Naib Tehsildar, Patwari and other revenue officials came on spot and warned the writ petitioners to vacate their houses and shops and get them demolished by the next day i.e. 13.02.2020. They were also informed that in case they do not demolish their houses of their own, the same would be demolished by using heavy machinery. The respondents, on being asked about the process of acquisition, informed the writ petitioners that land acquisition proceedings stood completed and the final award passed. It is averred that, while the writ petitioners were pursuing the matter with the revenue authorities including Collector Land Acquisition, a team of revenue officers headed by respondent No.5 came on spot with huge contingent of force on 15.02.2020 and demolished the entire constructions by use of JCB machines. It is submitted that on 17.02.2020 also the writ petitioners approached respondent No.5 for providing requisite documents of acquisition proceedings but the same were not provided on that day. It was only on 19.02.2020, the writ petitioners were given Photostat copies of various notifications and final award passed in the matter.

5. Faced with the aforesaid situation, the writ petitioners filed WP(C) No.589/2020 challenging inter alia the land acquisition notifications issued under the Act of 1990 from time to time as also the final award passed by the Collector, Land Acquisition with respect to their land and superstructures. Section 4 Notification issued under the Act of 1990 was assailed by the writ petitioners primarily on the ground that there was no publication of the notification in accordance with the procedure laid down under Section 4 of the Act of 1990. The

publication was made by the Collector, Land Acquisition in two lesser known newspapers, namely, 'Truly Times' and 'Nav Jammu', which do not have any circulation in the locality of the writ petitioners. Notification was only in English language and no notification in the regional language as required under Section 4(b) of the Act of 1990 was ever issued. The writ petitioners submitted that no notice under Section 4 was ever affixed at the conspicuous place in the locality and that the substance of notification was not made known to them by beat of drum as well as through local panchayat, patwari etc.

6. Another ground of challenge that was urged by the learned counsel for the writ petitioners was that notifications under Section 9 and 9A were not published in any newspaper. There was no service of notice issued under Section 9 and 9A of the Act of 1990 upon the writ petitioners in the mode and manner as prescribed under Section 9 of the Act of 1990. The final award was also called in question by the writ petitioners on the ground that no notice was ever served upon them of making and passing of the final award. It was, thus, pleaded that the entire proceedings right from issuance of Section 4 notification to the making of final award were vitiated having been conducted in violation of the mandatory provisions of the Act of 1990.

7. The writ petition was opposed by the respondents. The objections on behalf of the respondents were filed by Sh. Pawan Kotwal, who was then SDM North, Jammu. In the objections filed, the respondents highlighted the strategic importance of the road and submitted that in the entire acquisition process, 21 villages under the Sub Division, Jammu North came under acquisition (including village Paloura). In the village Paloura, 95% of the structures coming under the alignment of the Akhnoor-Rajouri-Poonch road were voluntarily demolished by the owners and occupier thereof. They were also paid the due compensation. Regarding challenge to Section 4 notification, it was averred that the notification was duly published in two local daily newspapers. The notification was also pasted at conspicuous place besides wide publication was given in the locality through beat of drum and through the local panchayat. It was, thus, submitted that the answering respondents had completed all the formalities envisaged under Section 4 with regard to publication of the notification. To the similar effect is the stand taken by the Collector Land Acquisition with respect to publication of notification under Section 9 and 9A of the Act of 1990. It was, thus, urged by the Collector Land Acquisition before the Writ Court that after completing all the requisite formalities and working out rates of compensation in a meeting presided over the District Collector, Jammu, final award in terms of the provisions of the Act was passed. It was also brought to the notice of the Writ Court that the plea of the writ petitioners that they had no notice of notification under Section 4(1) of the Act of 1990 is also belied by the fact that even prior to the issuance of formal notification, the writ petitioners along with other inhabitants of Paloura had represented to the Collector Land Acquisition for change of alignment of the flyover so that their residential houses were not affected.

8. The Writ Court considered the rival contentions and material on record and came to the conclusion that the Writ Petitioners had the knowledge of acquisition and that the respondent-Collector Land Acquisition had followed the procedure substantially under the Act. The writ petitions were, thus, found not tenable in law and the same were, accordingly, dismissed vide impugned judgment dated 29.12.2020. The Writ Court has not found merit in the writ petition, as can be culled out from the impugned judgment, for the following reasons:-

a) Because survey for acquisition of the subject land, claimed by the writ petitioners, was started much prior to the issuance of notification under Section 4 of the Act of 1990 and, therefore, the writ petitioners and other land owners of the area had all the reasons to know about the acquisition. A joint representation filed by the writ petitioners and other persons of the locality dated 02.11.2018, that is, just 28 days before the issuance of Section 4(1) notification, seeking indulgence of the authorities to change the alignment of flyover to save their land and superstructures fortifies the stand of the respondents that the writ petitioners were well aware of the issuance of 4(1) notification and the process of acquisition taken by the Collector Land Acquisition.

b) Because the intent and object behind issuance of Section 4 Notification is to make interested persons aware about the proposed acquisition of land for public purpose and such notice can either be actual, implied or constructive. In the instant case, Writ Court found that out of the total land measuring 102 kanals and 16 marlas acquired by the Collector Acquisition, Jammu North, claim of the writ petitioners is only with respect to 6 kanals and 1.5 marlas and therefore, the acquisition process which has already culminated into passing of the final award need not be interfered with on technical issues raised by the writ petitioners.

c) Because the land in the instant case was not acquired for transfer of ownership of the acquired land in favour of the National Highways and Infrastructure Development Corporation Limited (NHIDCL) but was to be provided to NHIDCL as an executing agency engaged for construction of the flyover and therefore, compliance of Part-VII of the Act of 1990 was not attracted.

9. For reaching the aforesaid conclusion, the Writ Court has relied upon the following judgments:-

i) Special Deputy Collector, Land Acquisition, CMDA v. J.Sivaprakasam and others; (2011) 1 SCC 330

ii) Swaran Lata v. State of Haryana, (2010) 4 SCC 532;

iii) May George v. Special Tehsildar and others, (2010) 13 SCC 98

iv) Pratibha Nema and others v. state of M.P. and others, AIR 2003 SC 3140; and

v) Ramniklal N Bhutta and another v. State of Maharashtra and others, AIR 1997 SC 1236

vi) Jaipur Metro Rail Corporation Limited v. Alok Kotalwala and others, AIR 2013

10. The writ petitioners are not satisfied with the impugned judgment and have filed this appeal under Clause 12 of the Letters patent on the ground that the Writ Court has not appreciated either facts or law in right perspective. It is submitted that simply because the project is a strategic one and the same has already been constructed cannot be a ground to deny just and fair compensation to the interested persons, who are uprooted from their home and hearth. It is argued that the land acquisition law lays down certain pre-requisite mandatory formalities which Collector Land Acquisition is obliged to strictly adhere to so as to provide a fair and adequate opportunity to the interested persons to oppose the acquisition or the proposed rates of the land sought to be acquired. The respondents in the exercise of eminent domain cannot by the use of force deprive the people of their lands and houses in the name of constructing a flyover for larger public interest.

11. For asserting his challenge to Section 4 notification, Mr. R.K.S.Thakur, learned counsel for the writ petitioners places strong reliance on the judgment of Supreme Court in the case of J&K Housing Board and another v. Kunwar Sanjay Krishan Kaul and others (2011) 10 SCC 714. He argues that merely because the parties concerned were aware of the acquisition proceedings or served with the individual notices does not alter the position when the statute makes it very clear that all the procedure/modes have to be strictly complied with in the manner provided therein. He, therefore, submits that in Kunwar Sanjay Krishan Kaul (supra) Section 4(1) notification was published in Himalayan Mail and Greater Kashmir and, therefore, none of the two papers was a newspaper published in regional language i.e. Kashmiri. Placing strong reliance on the aforesaid judgment, Mr. Thakur argues that Section 4 notification is vitiated in the matter and, therefore, subsequent proceedings are bad in law and cannot sustain.

12. The next judgment relied upon by Mr. R.K.S. Thakur is also a judgment of the Supreme Court in the case of Madhya Pradesh Housing Board and another v. Mohd. Shafi, (1992) 2 SCC 168, wherein the Supreme Court in para 8 of the judgment has held that "it is settled law that the process of acquisition has to start with a notification issued under Section 4 of the Act, which is mandatory, and even in cases of urgency, the issuance of notification under Section 4 is a condition precedent to the exercise of any further powers under the Act. Any notification which is aimed at depriving a man of his property, issued under Section 4 of the Land Acquisition Act has to be strictly construed and any serious lapse on the part of the acquiring authority would vitiate the proceedings and cannot be ignored by the Courts....." He further submits that in the same judgment, the Supreme Court has observed that if notification under Section 4(1) of the Act is defective and does not comply with the requirements of the Act, it not only vitiates the notification but also renders all subsequent proceedings connected with the acquisition bad. To substantiate his argument with regard to the non-compliance of Para-VII of the Act of 1990, Mr. Thakur

places reliance on a judgment of the Supreme Court in the case of Valjibhai Muljibhai Soneji and another v. State of Bombay (now Gujrat) and others, 1963 AIR SC 1890. In this five- Judge Bench judgment, the Supreme Court has held as under:-

“Even though that may be so, the Corporation is certainly not a department of Government but is a separate legal entity and, therefore, money coming out of public revenue whether invested, loaned or granted to it would change their original character and become the funds or assets of the Corporation when they are invested in or transferred or loaned to it. While, therefore, the terms of the proviso could be said to have been satisfied because compensation is to be paid by the Corporation, the acquisition will be bad because the provisions of Part VII of the Land Acquisition Act have not been complied with.”

13. Mr. Thakur has also relied upon couple of other judgments like Greater Noida Industrial Development Authority v. Devendra Kumar and others, (2011) 12 SCC 375 and Uddar Gagan Properties Ltd. V. Sant Singh and others, AIR 2016 SC 2526 to hammer his argument that acquisition of land is a serious matter and it does not only result in depriving the interested person of his property but may also deprive him of his profession, livelihood and social security and, therefore, the laid down procedure must be strictly adhered to.

14. Lastly, Mr. Thakur places reliance upon a Division Bench of this Court in Kaka Ram v. State of J&K and others, 2017 (2) JKJ HC 560 and submits that any award passed without complying with the provisions of Section 12(2) of the Act of 1990 is vitiated in law and, therefore, cannot sustain.

15. Per contra, Ms. Monika Kohli, learned Senior AAG appearing for the respondents, supports the judgment of the Writ Court and places reliance only on the judgments already referred to and discussed by the Writ Court. She produces original record of acquisition to demonstrate that the allegation of the writ petitioners that Section 4 notification was sans compliance with mandatory requirements of publication is not factually correct. She would further submit that most of the interested persons including the writ petitioners have received compensation without any protest and, therefore, are estopped from challenging the acquisition process, which has since culminated into issuance of final award. She would even dispute the fact that the writ petitioners were the actual owners of the subject land acquired by the Collector Land Acquisition. Attention of this Court was invited by Ms. Kohli to the agreements executed between owner of the subject property Mahant Sh. Rammi Vairagi of the first part and the writ petitioners of the second part, which agreements have been submitted to the Collector Land Acquisition claiming their share in the compensation in the ratio of 40:60. She, therefore, submits that the writ petitioners having accepted the award cannot be allowed to turn around and call in question the entire acquisition proceedings, more particularly, when the land and superstructures have already been taken over and utilized in the construction of flyover.

16. Having heard learned counsel for the parties and perused the material on record, we are of the considered opinion that the impugned judgment passed by the Writ Court, in the given facts and circumstances of the case, does not call for interference.

17. Mr. R.K.S.Thakur, learned counsel appearing for the writ petitioners has substantially raised three questions for determination:-

i) Whether Section 4(1) notification has not been published in the manner provided in the said Section and that vitiates the entire acquisition proceedings?

ii) Whether in the instant case the acquisition of the land was for the Corporation (NHIDCL) and, therefore, compliance with Part-VII of the Act of 1990 was mandatory?

iii) Whether the final award has been passed by the Collector Land Acquisition without complying with Sub Section (2) of Section 12 of the Act of 1990 and, therefore, vitiated in law?

Question No.(i)

18. Indisputably, in the instant case, Section 4(1) notification has been published by the following modes:- (i) in two daily newspapers i.e. 'Truly Times' and 'Nav Jammu'. Both are published from Jammu in English language; (ii) copy of the notification was pasted at conspicuous place in the locality concerned; and (iii) wide publicity was given in the locality through beat of drum and through the concerned panchayat.

19. If we examine the compliance of the provisions, as reported by the respondents, one would find that the respondents have substantially complied with the provisions with regard to publication of notice. As is claimed, there is a public notice of the proposed acquisition affixed at the conspicuous place in the locality. People of the locality have also been made known by beat of drum. It has also been found from the record that people of the locality whose land was likely to come under acquisition have also been informed by the Municipal Councilor of the area. There is no dispute raised by the writ petitioners that the notification was not published but the only point put forth by Mr.Thakur is that the notice was published in lesser known two English daily newspapers and not in a newspaper published in regional language. We can take judicial note of the fact that the regional language of the locality in question is Dogri and there is hardly any newspaper published in Dogri, which has some circulation in the area and in that sense and eventuality, the doctrine of necessity, would come into play.

20. In the absence of any daily newspaper published in Dogri language and having circulation in the area, requirement of publishing notification under Section 4(1) atleast in one newspaper in the regional language is to be taken as dispensed with. As is rightly held by the Writ Court, the idea and object behind publication of Section 4 Notification through multiple means is to ensure that the interested persons are made aware of the process of acquisition so that they

could object to the acquisition of land on available grounds.

21. Viewed, thus, we concur with the view taken by the Writ Court that the writ petitioners were well aware about the process of acquisition and also knew about issuance of Section 4(1) notification. Making of representation by the writ petitioners to the Collector Land Acquisition on 02.11.2018 i.e. 28 days before issuance of Section 4 notification goes a long way to fortify the conclusion drawn by the Writ Court.

22. As is evident from a reading of Section 4 of the Act of 1990, the object of publication of notice is to apprise the interested persons about the process of acquisition and provide them an opportunity to object to the acquisition. The writ petitioners had in anticipation objected to the acquisition when they made representation to the Collector Land Acquisition seeking his indulgence to change the alignment of the flyover so as to save their lands and the houses constructed thereon from coming under the process of acquisition. Had the writ petitioners been served with the notification under Section 4(1) through publication in widely circulated newspaper including one in regional language, it would not have improved their position in any manner. Their protest to the acquisition already stood registered with the Collector Land Acquisition. The judgment passed by the Supreme Court in the case of Kunwar Sanjay Kishan Koul (supra) is distinguishable on facts. The aforesaid judgment is rendered by a two-Judge Bench in the context of peculiar facts and circumstances of the case. The judgment is distinguishable for the following reasons:-

i) That in the aforesaid case it was found that the publication was not done in a daily newspaper in the regional language but it was not pleaded before the Supreme Court nor there was any material on record to indicate that there was hardly any publication of daily newspaper in the regional language i.e. Kashmiri in Kashmir.

ii) That the interested persons who were original residents of Kashmir had migrated and were staying in New Delhi due to disturbance in the area in question and that there was no effort made by the authorities to send them proper notice.

iii) That like in the present case it was not the case of the Collector Land Acquisition in Kunwar Sanjay Kishan Koul (supra) that the interested persons otherwise had a proper notice and knowledge of the land acquisition notice.

iv) That the judgment of the Coordinate Bench of the Supreme Court in J. Sivaprakasam (supra) relied upon by the Writ Court was not brought to the notice of the Division Bench, which decided Kunwar Sanjay Kishan Koul's case (supra).

23. We have gone through both the judgments, which are by the Benches of coequal strength i.e. Kunwar Sanjay Kishan Koul (surpa) and J. Sivaprakasam and find that the judgment passed by the Supreme Court earlier in point of time

in J.Sivaprakasam (supra) is fully attracted to the given facts and circumstances of the case. We, therefore, go by the reliance placed on J.Sivaprakasam and conclusion drawn by the Writ Court that there was substantial compliance of the provisions of Section 4(1) of the Act of 1990.

24. The question as to whether newspapers in which Section 4(1) notification was published have or do not have wide circulation is a question of fact which we cannot determine in the exercise of writ jurisdiction. Otherwise also, as per the procedure envisaged under Section 4(1), notifications issued by the Collector Land Acquisition were sent to the Directorate of Information for their publication in two daily newspapers having wide circulation in the area. Unless contrary is shown, it is presumed that the Directorate of Information, which has the record of circulation of newspapers, published these notifications in the daily newspapers having adequate circulation in the concerned area.

25. What is laid down in paragraph Nos.25 and 30 of the judgment rendered in J.Sivaprakasam (supra) is quite relevant in the matter. Even at the cost of repetition, we would like to reproduce these paragraphs of the judgment hereunder:-

"25. We have held that the object and purpose of the amended section 4(1) of the Act is to provide for publication of the preliminary notification in two daily newspapers having reasonably wide circulation in the locality so that people (persons interested) in that locality may become aware of the proposals for acquisition. We have also held that publications in two newspapers having regular and steady circulation, but having a market share of only 2% to 3% of the total newspapers cannot invalidate the acquisition proceedings automatically, on the ground that such publication violates the requirement of section 4(1) relating to newspaper publication. As the said two findings are slightly contradictory, it is necessary to harmonize the consequences.

26. This leads us next to the consequences of publication of the notification in two newspapers having reasonably wide circulation and consequences of bona fide publication of the notification in two newspapers which do not have a wide circulation in the locality.

27) If there is failure to publish in two daily newspapers or if the publication is in two newspapers that have no circulation at all in the locality, without anything more, the notification under section 4(1) of the Act and the consequential acquisition proceedings will be vitiated, on the ground of non-compliance with an essential condition of section 4(1) of the Act.

28) If the two newspapers carrying the publication of the notification have reasonably wide circulation in the locality, (apart from the publication of the notification in the Gazette and causing public notice of the substance of the notification to be given at convenient places in the locality), then the requirements of section 4(1) are complied with and all persons concerned in the locality shall be deemed to have notice of the notification. (For this purpose, the

publication need not be in newspapers having the widest or largest circulation, but it is sufficient if the publication is in newspapers having reasonably wide circulation). In that event, neither the notification under section 4(1), nor the consequential acquisition proceedings would be open to challenge, on the ground of violation of Section 4 of the Act.

29) If the newspapers in which the notification is published were circulating in the locality, but did not have a reasonably wide circulation in the locality, then neither the notification under section 4(1) nor the consequential acquisition proceedings, will become vitiated automatically. If the person aggrieved, apart from demonstrating that the two newspapers did not have reasonably wide circulation in the locality, also asserts that as a consequence, he did not have notice of the proposed acquisition that was provided for in Section 4(1) of the Act, in the absence of evidence to the contrary, the acquisition to the extent of the land of such person will be vitiated. But if such assertion is rebutted by the acquiring authority by placing evidence to show that the person concerned had in fact notice (as for example where he participated in the enquiry under section 5A of the Act), the acquisition will not be vitiated on the ground of violation of section 4A of the Act.

30) If the person challenging the acquisition is able to establish that the notifications were deliberately and with malafides, published in newspapers having negligible circulation, to avoid notice to the persons concerned, then section 4(1) will be violated."

The Writ Court has already reproduced the said paras in the judgment impugned to substantiate its conclusion that there was substantial compliance of the provisions of Section 4(1) of the Act of 1990 in respect of publication of the notifications.

26. In the case of Mohd, Shafi (supra), Hon^{ble} Supreme Court was dealing with altogether different situation. Section 4 notification was found defective not on the ground that it was not properly published but on the ground that the description of land proposed to be acquired was very cryptic providing no opportunity to the interested persons to object to the acquisition proceedings. The other judgments relied upon by the learned counsel for the writ petitioners are required to be appreciated in light of the law elaborately laid down in J.Sivaprakasam (supra).

Question No.(ii)

27. This question too has been elaborately discussed by the Writ Court. The NHIDCL is only an agency of the Government for execution of the project and the moment the project is executed the acquired land would vest in the central government. If that be the undisputed position, it cannot be said that the acquisition in question was for acquiring the land for NHIDCL to be vested in it. Though, the indent appears to have been issued by the NHIDCL for acquisition of the land, this indent is required to be viewed and treated as an indent for and on

behalf of the Government of India. National Highways and Infrastructure Development Corporation is a fully owned company of the Ministry of Road Transport & Highways, Government of India and is enjoined the job of promoting, surveying, establishing, designing, building, operating, maintaining and upgrading National Highways and Strategic Roads including interconnecting roads in parts of the country which share international boundaries with neighboring countries. It is a company fully owned and financed by the Ministry of Road Transport and Highways, Government of India. Needless to point out that any land required for constructing any national highway project is required to be acquired under the National Highways Act and, thus, the land acquired, whether on the indent of the Central Government or NHIDCL, for the construction of a national highway project vests in the central government.

28. We, however, find that in the instant case the respondents instead of proceedings for acquisition of the land under the National Highways Act have embarked upon the land acquisition proceedings under the State Land Acquisition Act, which course was, in any case, not permissible. Since the writ petitioners have not called in question the acquisition on that ground, as such, we refrain from taking note of the aforesaid aspect. We are, however, of the firm opinion that the acquisition in question is and was for the construction of a National Highways project, which project, on completion, will vest in the central government in terms of section 3D of the National Highways Act.

29. Viewed, thus, it is beyond any figment of doubt that the land in question which was acquired at the instance of NHIDCL was the land actually acquired for the Central Government and, therefore, Part VII of the Act of 1990 was not attracted.

30. Judgment of the Supreme Court in the case of Pratibha Nema and others (supra) (para 21) and Srinivasa Cooperative. House Building Society. Limited v Madam G.Sastry, (1994) 4 SCC 657 (para 12) substantiate the aforesaid position. As is held in Madam G Sastry (supra) that in the case of an acquisition for a company simpliciter, the declaration cannot be made without satisfying the requirements of Part VII. But that does not necessarily mean that an acquisition for a company for a public purpose cannot be made otherwise than under the provisions of Part VII, if the cost or a portion of the cost of the acquisition is to come out of public funds. In other words, the essential condition for acquisition for a public purpose is that the cost of acquisition should be borne, wholly or in part, out of public funds. That being the clear position of law envisaged in the aforesaid case, we have no doubt in our mind that in the instant case compliance to Part VII was unnecessary and not required to be made. The Writ Court has correctly decided this issue as well.

31. Regarding the publication of the award in terms of Section 12, nothing has been brought on record by the writ petitioners to substantiate the aforesaid fact. The reply affidavit of the Collector Land Acquisition that the award was made and duly published cannot be doubted on the basis of bald assertion made by the writ

petitioners. We are in agreement with the Writ Court that in the cases of such like nature where acquisition is for raising requisite infrastructure in public interest that too in the strategic area, the Courts should be loath in interfering with the process of acquisition, particularly, when it has attained finality. In the instant case, not only land and houses which were subject matter of acquisition have since been acquired and the final award passed, project has also been taken up for execution and completed. The majority of land owners/interested persons have already received their compensation. As a matter of fact, writ petitioners during the pendency of appeals have also received the entire compensation by submitting requisite affidavits to the Collector Land Acquisition and this receipt of compensation is not under protest. If the writ petitioners wanted to receive compensation under any protest, least that was required on their part was to bring this fact to the notice of this Court by filing some application.

32. The writ petitioners having accepted the entire compensation payable under the final award are estopped by their conduct to call in question the acquisition proceedings. Even if we were to agree with all or any of the submission made by Mr. R.K.S.Thakur, and find some infraction of law, we would still refrain from interfering in the process of acquisition in view of the conduct of the writ petitioners post filing of the writ petition(s) viz. accepting of compensation without protest and also having regard to the fact that the issues raised before the Writ Court as well as before us have become a fait accompli.

33. For the foregoing reasons, we find no merit in these appeals, the same are, accordingly, dismissed.