

**(1991) 02 DEL CK 0085**

**In the Delhi High Court**

**Case No :** Civil Writ Appeal No"s. 1816, 2122, 2634 of 1986, 562 of 1987, 914 of 1988 and 1512, 1620, 1945, 2266, 2267, 2268, 2380, 2447, 2534, 2918, 3316 of 1989

Shri Bhagwan and Another

APPELLANT

Vs

Union of India and Others

RESPONDENT

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**Date of Decision :** 14-02-1991

**Acts Referred:**

Land Acquisition Act, 1894 — Section 4

**Citation :** (1991) 02 DEL CK 0085

**Hon'ble Judges :** S. Duggal, J;B.N. Kirpal, J

**Bench :** Division Bench

**Advocate :** V.P. Singh, Mukul Dhawan, H.S. Phoolka, Gulab Chandra, Sanjay Goswami, Pramod Sehgal, L.M. Sanghvi, A.M. Sanghvi, N. Waziri, D.K. Singh and Shahid Rizvi, for the Appellant;

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## **Judgement**

B.N. Kirpal, J.

(1) A bunch of writ petitions has been filed, which are being disposed off by the present judgment, challenging acquisition of land by the respondents under the relevant provisions of the Land Acquisition Act (hereinafter referred to as the said Act).

(2) By Notification dated 27th January, 1984 issued u/s 4 of the said Act, it was notified that land measuring about 3550 Hectares was proposed to be acquired for a public purpose, namely, for planned development of Delhi. This notification was followed by notification dated 18th September, 1984 u/s 6 of the said Act. The aforesaid two notifications related to land situated in 13 different villages which formed a compact plot. It is alleged by the petitioners that there was a news item which appeared on 21st May, 1986 in which it was stated that land would be allotted to different Group Housing Societies in the Palam area. In September, 1986 awards were made with regard to each of the 13 villages. The land which was to be acquired was mentioned therein.

(3) There are 3 sets of writ petitions which have been filed. In October/November, 1986 3 writ petitions were filed being C.W. Nos. 2122, 2634 and 1816 of 1986. One writ petition was filed in 1987, another was filed in 1988 but as many as 11 writ petitions were filed in 1989. Most of the writ petitions which have been filed pertain to village Nasirpur though there are two other petitions which pertain to Kakrola and Badgola. In dealing with the common contentions, in this judgment, we are, Therefore, referring to the award with relation to the village Nasirpur. As we will presently see, the facts with relation to the two other villages are not very different.

(4) The main contention raised on behalf of the petitioners is that on 18th August, 1986 there was a policy decision which was taken by the Delhi Administration, inter alia, to the effect that land will not be acquired which has been built upon and only that vacant land will be acquired if it is 1 Hectare or more. The submission was that on the lands of the petitioners construction had been raised and, Therefore, the lands should not have been acquired. It was also submitted that acquisition of land on which large scale habitation exists for purpose of allotting it to different set of people will be arbitrary and the object of acquisition would be colourable and discriminatory. It was lastly contended that, in the context of Nasirpur village, it was apparent that the land was not intended for planned development. During the course of arguments, it was also submitted by Shri V. P. Singh, one of the counsel appearing for some of the petitioners that "in the award large tracts of land have not been acquired. According to the learned counsel, though the award states that land has not been acquired because of Supreme Court orders, in actual fact this is not so and land has been left out for collateral reasons.

(5) Before dealing with these contentions, it is necessary to notice a few more facts. From the record which has been produced in Court, it appears that on 25th July, 1986, with the approval of the Lt. Governor, a team of officers was deputed to carry out survey of area which had been notified under the said Act. This survey was conducted and a report was submitted by them- Mr. Phoolka informs us that the record discloses that this team identified various parcels of land in different village. "I ... which had been built up. It is thereafter that the policy " statement of 18th August, 1986 was issued. This policy is contained in the letter of Shri Ganga Dass, Secretary (Land & Pwidsz), Delhi Administration which was addressed to the then Deputy Commissioner, Delhi. The said letter is as follows : "GANGA Dass P.O. No. F. 9(1)86 L&B/LALAJ6482 Delhi Administration, P.W.D. & I.S.G. Dntt., Vikas Bhavan, New Delhi. Dear Shri Satish Chandra, Kindly refer to the discussions held in the L.G.'s meeting held today regarding priorities for land acquisition. As bedded therein I am to convey the following priorities : (i) Land lying vacant and if or having some minor structure be acquired on top priority basis. (ii) Vacant land of a hectare or above in the built up areas was also to be acquired within stipulated time on priority basis. (iii) The land for D.D.A.'s special projects measuring over 800 acres falling within Lal Dora, and the lands allotted under 20 Point Programs in this regard the Dda through its

Commissioner (Lands) has been asked to re-examine and re-cast its priorities with a view to avoid as far as possible the built up areas with Kh. Nos, which are not to be acquired. The above priorities are subject to the stipulation that the areas falling within Lal Dora, built up area is that the extended Lal Dora and areas allotted under 20 Point Programme, should not be acquired at all. Besides the areas which are built up to the extent of 90 to 100% and/or the areas which are "particularly built up but there is no vacant pocket bigger than one hectare available need not be acquired as they cannot be put to effectiveness. The above guidelines are also subject to modification at your discretion wherever deemed necessary due Shri Satish Chandra, Deputy Commissioner Delhi

(6) On 19th September, 1986 award in respect of village Nasirpur was announced. In the award it was stated that an area measuring 2337 Bighas and 2 bids was being included as some of that area was under stay from the Supreme Court. We are now informed by Mr. Phoolka that two writ petitions had been filed in the Supreme Court being Civil Writ Petition Nos. 991 and 1264 of 1986. Those petitions were filed in respect of the Gaon Sabha land in village Nasirpur which was sought to be allotted under the 20 Point Programme. The contention of the petitioners was that the 20 Point Programme was not being implemented and that Gaon Sabha land was not being allotted. Interim orders were passed in those writ petitions which covered 1456 Bighas of land. According to the stay orders, land in various Khuasra Nos. totalling 14-56 Bighas could not be acquired. Mr. Phoolka further states that, on the basis of the report of the Special Committee which had been constituted on 25th July, 1986, 1165 Bighas of land in village Nasirpur was left out of acquisition. This land was such on which houses had been constructed and people were residing. The balance area of 574 Bighas and 14 bids was acquired by the said award. The land of the petitioners is included therein.

(7) Before dealing with the Submissions of the learned counsel for the petitioners, we may note that it was contended by Dr. Singhvi that the petitioners are guilty of laches and on this ground alone the writ petitions should be dismissed.

(8) In the writ petitions which have been filed, the first prayer is that the Notifications, issued under sections 4 and 6 of the said Act, should be quashed. The earlier of these writ petitions was filed in 1986 while the last one was filed in 1989. According to Dr. Singhvi, specially in cases of land acquisition, delay in approaching the Court and seeking the quashing of sections 4 and 6 notifications is fatal.

(9) It was submitted by the learned counsel for the respondents that after section 4 notification was issued a survey was conducted and section 6 notification was then issued which was followed by the award. The land which is sought to be acquired formed part of a prestigious project of the respondents which is now known as Dwarka Sub-City (Papan Kala). The land in respect of which sections 4 and 6 notifications were issued is located towards the south-

west of Delhi and the sub-city was to cover an area of about 5648 Hectares The land in the sub-city was to be used for residential, commercial industrial recreational and other purposes including utility and public or semi-public services The land, Therefore, was not to be used only for constructing residential accommodation but the land was to be used to house a sub-city, It is further stated that crores of rupees have been spent by the respondents in developing this land. Accordingly it is contended, third party interests have intervened and. Therefore, if the petitioners approach the Court after a lapse of time then they are not entitled to the equitable relief under Article 266 of the Constitution.

(10) In support of the aforesaid contention, Dr. Singhvi drew our attention to a number of decisions where relief was refused, in land acquisition cases, on ground of laches,.

(11) In the case of "Aflatoon and Others Vs. Lt. Governor of Delhi and Others, notification issued u/s 6 was sought to be challenged by a petition filed in 1972. Dealing with the contention that the petitioner was guilty of laches, the supreme Court, in paragraph II, observed as follows : "Nor do we think that the petitioners in the writ petitions should be allowed to raise this plea in view of their conduct in not challenging the validity of the notification even after the publication of the declaration u/s 6 in 1966. Of the two writ petitions, one is filed by one of the appellants. There was apparently no reason why the writ petitioners should have waited till 1972 to come to this Court for challenging the validity of the notification issued in 1959 on the ground that the particulars of the public purpose were not satisfied. A valid notification u/s 4 is a sine qua non for initiation of proceedings for acquisition of property. To have sat on the fence and allowed the Government to complete the acquisition proceedings on the basis "that the notification u/s 4 and the declaration u/s 6 were valid and then to attack the notification on grounds which were available to them at the time when the notification was published would be putting a premium on dilatory tactics. The writ petitions are liable to be dismissed on the ground of laches and delay on the part of the petitioners. It may here be noted that the writ petition had been filed soon after section 9 notice had been issued but before the making of the award. Similar was the position in the case of Indrapuri Griha Nirman Sahakari Samiti Ltd. Vs. The State of Rajasthan and Others, In that case petition was filed challenging sections 4 and 6 notifications 9 years after the notifications had been issued. Relief was denied on the ground of delay. In Pt. Girdharan Prasad Missir and Another Vs. State of Bihar and Another, the delay in filing the writ petition was more than 17 months after the award had been announced. Because of this delay, the High Court had declined to interfere. The decision of the High Court was upheld by the Supreme Court which observed that the High Court was right in holding that the unexplained delay was good ground for dismissing the writ petition. Similarly, in Babu Singh and Others Vs. Union of India (UOI) and Others, there was a delay of more than six years in filing of the writ petition and the same was dismissed, inter alia, on the ground that the delay was inordinate. In Hari Singh and Others Vs. State of U.P. and Others, notifications issued under

sections 4, 6 and 17 of the Land Acquisition Act were challenged by a petition which was filed about two and a half years after the promulgation of the same. The Supreme Court came to the conclusion that the petition should be dismissed on the ground of laches alone. In *State of Punjab and Ors. v. Hari Om Cooperative House Building Society Ltd., Amritsar* the High Court had granted relief and had quashed notifications issued under sections 4 and 6 of the Land Acquisition Act. The Supreme Court, however, reversed the decision on the ground that when the writ petition was filed long after the publication of the notification under section 4 and the declaration u/s 6, the Court ought not to interfere. Similar was the view of the Supreme Court in the case of *Improvement Trust, Faridkot v. Jagjit Singh*

(12) Apart from the aforesaid decisions pertaining to Land Acquisition Act, we may notice two other decisions of the Supreme Court where relief was declined even where there was a delay of only a few months. In *Ramana Dayaram Shetty Vs. International Airport Authority of India and Others*, the question was to the enforcement of a contract. The Supreme Court held that that respondent's, in that case, was not warranted by law and was arbitrary but nevertheless the Court declined to give any relief for the reason that the writ petition had been filed more than five months after the acceptance of the tender and the person whose tender had been accepted had incurred a considerable amount of expense. This principle was reiterated by the Supreme Court in the case of *State of M.P. and Others Vs. Nandlal Jaiswal and Others*, where the challenge was to the grant of a liquor license. The Supreme Court did not grant the relief in that case, inter alia, for the reason that the petitioners were guilty of laches as they had approached the Court after a lapse of time during which other license holders had incurred considerable expense.

(13) The aforesaid principles are applicable to the present case. Notification u/s 4 and 6 were issued in 1984. No action was taken by any of the petitioners. Thereafter a survey was conducted and the award was made in September, 1986. When the Government conceives of a project like the present and issues the notification u/s 4, then any person who has a grievance can file objections u/s 5A and thereafter, if he does not get the relief, can challenge the notification u/s 4 or the declaration under u/s 6 by filing a petition under Article 226 of the Constitution. If a declaration u/s 6 is issued and no action, within a reasonable time, is taken by the owners of the property, it is sought to be acquired then the acquiring authorities can legitimately believe that there is no opposition to the said acquisition. Between the issuance of the declaration u/s 6 and the making of the award, the survey was conducted and, apart from the cases covered by the Supreme Court's interim orders, some more land was not acquired. The interest of the Government and in fact of the general public which is to get the benefit of the sub-city would be adversely affected if now the Court was to strike down the notifications under sections 4 and 6 of the said Act. As we have noted, only three petitions were filed in 1986. Most of the writ petitions before us, 11 in number, were filed in 1989 that is to say, nearly three years

after the making of the award. All these petitioners have been sitting on the fence and have sought to challenge the section 4 and 6 notifications five years after the promulgation and they are challenging the award about three years after it. was announced. In our opinion, all the petitioners are guilty of laches and cannot challenge sections 4 and 6 notifications.

(14) It was, however, contended by Shri Arun Jaitley that what the petitioners are seeking to do is not only to challenge the notifications under sections 4 and 6 but they are wanting that the policy of 1986 should be enforced. According to the learned counsel, there is no delay in filing of the writ petitions because the policy itself was announced on 18th August, 1986.

(15) Even if there be no delay in regard to three petitions which were filed in 1986, if this argument of the learned counsel was to be accepted, but the other petitions were filed long thereafter. One petition was filed in 1987, one in 1988 and 11 in 1989. In the meantime huge expenditure had already been incurred by the Dda in developing that land. The land so acquired is ready for being transferred to different cooperative societies for construction. In our opinion, Therefore, at least those of the writ petitions which were filed after 1986 are, in any case, liable to be dismissed on ground of laches even if we were to regard the letter of 18th August, 1986 as giving a fresh cause of action, so to say, to the petitioners.

(16) While seeking to invoke the policy of 18th August, 1986 the learned counsel for the petitioners have placed strong reliance on a decision of the Single Bench of this Court in the case of State of Haryana and Others Vs. K. Vimala Raghavachari and Others, . In that case notification issued u/s 4 on 13th November, 1956 and declaration u/s 6 on 30th December, 1968 were challenged on a number of grounds. One of the contentions raised was that the land in dispute was not vacant as on over 90 per cent of the said land staff quarters had been built for use by the labour force of the mill and, Therefore, the same should not be acquired. This petition had been filed, it appears, after sections 4 and 6 notifications had been issued but prior to the promulgation of the award. Reliance was placed by the Union of India on the decision of the Supreme Court in the case Kendriya Karamchari Sahkari Grih Nirman Samiti Ltd. and Another Vs. New Okhla Industrial Development Authority and Others, and it was contended that a letter fixing the priorities could not be legally enforced. The learned Judge in Birla Cotton Mill, however came to the conclusion that so long as the land acquisition proceedings in respect of a particular land had not been finalised, the guidelines given in the aforesaid letter dated 18th August, 1986 of Shri "Ganga Dass would become applicable.

(17) In our opinion, the petitioners cannot ask for any relief on the basis of the aforesaid policy of 18th August, 1986.

(18) It is not in disputes that the decision contained in the aforesaid letter dated 18th August, 1986 is an Administrative decision. We will assume, for the suite of

argument, that that decision has been taken with the concurrence of the Lt. Governor. It is, however, well established that an administrative decision can always be altered, modified or abrogated by the competent authority. It is not in dispute that the impugned order was announced after approval had been obtained from the Lt. Governor. Even if, Therefore, there was a policy decision of the Lt. Governor which was incorporated in the aforesaid letter dated 18th August, 1986, this stood varied by the Lt. Governor himself when within one month of that policy decision, he gave his assent to the promulgation of the awards. It is further to be noted that whereas the policy of 18th. August, 1986 was, at best, an administrative policy, the L. Government while granting approval was exercising its statutory functions and duties u/s 11 of the said Act. No policy decision could, in our opinion, vary or curb the jurisdiction of the Lt. Governor u/s 11 of the said Act.

(19) We further find that the aforesaid decision of the Supreme Court in the case of Kendriya Karamchari Sahkari Grih Nirman Samiti Ltd. (supra) is clearly indistinguishable. In that case the challenge was to the acquisition of land cooperative house building societies under the provisions of the U.P. Urban Planning and Development Act, 1973. Under that Act power was given to the Noida Authority to acquire land for development of industrial and urban township. The petitioner society had land and it sought permission of the Noida Authority to the lay out plan which was submitted by it. This permission had been refused. The refusal was challenged by a writ petition filed in the Allahabad High Court which stayed the dispossession of the petitioner. During the pendency of the writ petition the Government issued a letter dated 9th April, 1980 wherein it was stated that the Government had decided that it was not desirable that the lands of cooperative house building societies should be acquired. A representation was then made by the petitioner to the Chief Executive, Noida to consider the aforesaid Government order dated 9th April, 1980. No relief was, however, granted as the Noida Authority wrote to the petitioner to the effect that the said letter dated 9th April, 1980 was an administrative instruction and it could not be construed as mandatory. The High Court dismissed the writ petition and an appeal was filed to the Supreme Court. It was urged before the Supreme Court that the said decision of the Government. was binding on the Noida Authority and the land of the society could not be acquired. Repelling this argument, the Supreme Court held that the letter of 9th April, 1980 stated that the lands of the cooperative societies may not be acquired "as far as may be". the Government order was directory and not mandatory and the same was not statutory as it was not issued under any statutory provision. The court further observed that the said order dated 9th April 1980 was administrative instruction and "The contention that this order creates an express bar on the power of the Government to, acquire lands of co-operative house building societies is without any substance. The sole object of the 1976 Act is to develop certain areas in the State into industrial and urban township in a planned way by the Authority constituted under the Act and as such the cooperative societies cannot be

permitted to develop their lands for the purpose of building houses haphazardly. This will frustrate the entire object of the act. The contention that the lands of the societies are exempted from acquisition cannot be sustained being devoid of any merit. The Government has power to acquire land for public purposes under the Land Acquisition Act, 1894."

(20) It is clear from the aforesaid that neither the High Court nor the Supreme Court allowed the cooperative society to invoke the Government order dated 9th April, 1980. The Supreme Court clearly held that the power of the Government to acquire land could not be taken away by reason of the aforesaid administrative decision of 9th April, 1980. Similar is the position here. The letter of Shri Ganga Dass of 18th August, 1986 is, at best, an administrative instruction. Furthermore this letter itself states that "The above guidelines are also subject to modification at your discretion wherever deemed necessary due". Even if it be assumed that these guidelines were applicable, though according to the respondents they are not, nevertheless the same were subject to modification and the modification in fact did take place when the Lt. Governor, in exercise of his powers u/s 11 of the said Act, gave his approval to the awards which were announced in September, 1986.

(21) It appears to us that the decision of the learned single Judge in Birla Cotton Mills case (supra) does not lay down the correct law. When the Supreme Court had clearly stated in Kendriya Karmachari Sahkari Grih Nirmaan Samiti's case (supra) that such an administrative instruction could not create a bar to the power of the Government to acquire land, then we fail to appreciate as to how in Birla Cotton Mills case the learned single judge could come to a contrary decision. By observing that so long as the land acquisition proceedings have not been finalised, the guidelines, even in the letter of 18th August, 1986 would become applicable is clearly contrary to the decision of the Supreme Court in Kendriya Karmachari Sahkari Grih Nil-man Samiti's case (supra). Further more, the learned single Judge's attention was not drawn to the fact that the Lt. Governor, u/s 11 of the said Act, exercise statutory power and that statutory power cannot be curtailed by administrative instructions. That apart, even if the decision of 18th August, 1986 can be considered to be that of the Lt. Governor, there is nothing in law which can prevent an administrative authority from changing or modifying its earlier administrative decision. The only exception to the rule is one where the principles of promissory estoppel come into play. If on the basis of the administrative decision contained in the letter dated 18th August, 1986 any of the petitioners had acted to their detriment then they could have invoked the principles of promissory estoppel but the policy of 18th August, 1986 dealt with the structure which existed prior to that date. As we shall presently see, in the case of the petitioners this is not so. Moreover, the principles of promissory estoppel have not been invoked, in the present case and they could not have been for the simple reason that, for all practical purposes, the principles of promissory estoppel could only have been invoked between 18th August, 1986 and 19th September, 1986 when the award was announced.

This is for the reason that the policy of 18th August, 1986 in so far as the lands in question are concerned was not continued once the Lt. Governor gave his approval and the award was announced on 19th September, 1986.

(22) Relying upon the observations of the Supreme Court in Ramana Shetty's case (supra) at page 1635, it was contended that the executive instructions which were issued could not be breached by the Administration. We may notice that at page 1635 the Supreme Court in Ramana Shetty's case had observed that it was a well settled rule of administrative law that an executive authority must be rigorously held to the standards by which it professes its actions to be judged and it must scrupulously observe those standards on pain of invalidation of an act in violation of them. In our opinion the said observations are of little assistance to the petitioners. In the present case, as already noted, there is no breach of the executive instructions. They have simply been altered. In any case, the executive instructions cannot control the exercise of a statutory power. The observations of the Supreme Court were made in the context of the exercise of the executive power being contrary to the executive instructions which were issued earlier. Just as there can be no estoppel against a statute, similarly the executive instructions cannot be contrary to or, in any case, curb the exercise of statutory power.

(23) We will now deal with the second and the third submission on behalf of the petitioners. It was submitted that there was a large scale habitation on the lands in question and acquisition of land for the purposes of allotting the same to cooperative societies was an arbitrary exercise of power. It was also contended that in and around the neighborhood there was large scale construction and a lot of built up areas had been released from acquisition and, Therefore, there was no reason as to why the lands of the petitioners should be acquired. It was sought to be contended that the planned development could not take place by acquisition of small parcels of land belonging to the petitioners which land is situated in the midst of various colonies which have been regularised. The learned counsel referred to the decision of the Gujarat High Court in the case of Musamiyan Imam Haidarbux Razvi and Others Vs. The State of Gujarat and Others, . It was observed by the Court that acquisition of land for construction of houses for a particular cooperative housing society could not be said to be an acquisition for public purpose. Furthermore, it was held that the basic concept underlying the expression "public purpose" is general interest of the community. The test was whether the purpose is primarily and predominantly for general interest of the community or it is mainly or primarily to serve the interests of a few individuals. In our opinion, the aforesaid observations clearly support the case of the respondents. What the respondents are doing is to acquire the land in question for establishing a sub-city. The number of inhabitants of the sub-city would be far larger than the persons who are occupying the lands in question at the present moment. It is in the general interest of the community that the land should be acquired for an orderly and planned development so that the pressure on the main city of Delhi is reduced as much as possible. This is not a case where

the acquisition of land is being, made for any particular group housing society. The acquisition in fact is being effected for planned development of Delhi which, it is not disputed, has been held by a series of decisions of this Court and of the Supreme Court to be a public purpose.

(24) Reference was also made to the case of Hitendra Kumar Thakordas Raval & Ors. v. State of Gujarat and Ors. 1980 Guj LR 83.(13) It was held in that case that the policy which is laid down by the Government for acquisition must be followed uniformly and the Government cannot follow irrational method of pick and choose. There can, in our opinion, be no dispute with this proposition. We are, however, not satisfied that in the present case the Government has acted arbitrarily. There is no allegation that there has been any colourable exercise of power by the Government. The land which has not been acquired is that which was covered by the Supreme Court orders and the other land which has not been acquired so far is that which had been built upon. As we shall presently see, the policy of 18th August, 1986 has, in a sense, been given effect to by the respondents when over 1165 Bighas of land have been left out of acquisition because of the fact that there were residential houses which had been constructed thereon.

(25) Our attention was then drawn to the decision of the Supreme Court in the case of Ghaziabad Sheromani Sahkari Avas Samiti Ltd. and another etc. Vs. State of U.P. and others etc., . In that case, cooperative societies had already acquired land before the same was notified for acquisition by the Ghaziabad Development Authority. The High Court dismissed the writ petitions and an appeal was filed to the Supreme Court. Without going into the legal contentions "which had been raised, the Supreme Court held that the members of the cooperative societies should not be denied residential accommodation for which they had taken" effective steps before the acquisition for the Development Authority was notepad been raised, the Supreme Court held that the uncooperative societies should be provided with plots of land limited to an area of 80 sq. yards. It will be seen that the said decision" was confined to the facts of that particular case. No proposition of law was laid down to the effect that land which had been acquired by she cooperative societies should not. be. acquired under the provisions of the Land Acquisition Act. What weighed, with the Supreme Court in" ordering release of the land in their favor was that effective steps had been taken by the cooperative society prior to the acquisition by the Development Authority. In the present case, no cooperative society is a petitioner before us. On the contrary, the land which is sought to be acquired will ultimately be used by the cooperative societies. In other words, the acquisition in question is also for the benefit of cooperative societies which arc to be accommodated in the sub-city of Dwarka.

(26) Dr. Singhvi drew our attention to the decision of the Supreme Court in the case of Bharat Singh and Others Vs. State of Haryana and Others, . This decision is important for two reasons. Firstly, it had been contended before the Court that

the acquisition of land was contrary to the policy decision of the Government which had stated that in the matter of State's need for land for its development activities utmost restraint should be exercised in the acquisition of land. It had been contended that as the land which was sought to be acquired was agricultural it should not have been acquired in view of the said notify decision of the Government. This contention was rejected by the Supreme Court which observed that in the welfare State it was the duty of the Government to proceed with the work of development and take steps for the growth of industries which are necessary for the country's progress and prosperity. While noting that agricultural land was necessary and should not ordinarily be converted to non agricultural use, the Court, nevertheless, observed that keeping in view the progress and prosperity of the country, the State has to strike a balance between the need for development of industrialisation and the need for agriculture. The acquisition was accordingly, upheld. Another contention which was repelled by the Supreme Court in that case was "that the petitioners therein had been discriminated against inasmuch as land of other persons in the village had not been acquired. It was observed by the Court that "The government will acquire only that amount of land which is necessary and suitable for the public purpose in question. The land, belonging to the petitioners have been acquired obviously considering the same as .suitable for the public purpose. The petitioners cannot complain of any discrimination because the land of other persons has not been acquired by the government. The contention is devoid of any merit whatsoever". The aforesaid decision is clearly applicable to the present case. Merely because about 2337 Bighas of land have not been acquired by the Government in the present case does not mean that the acquisition of the petitioners' land was not warranted. We are not satisfied that in the present case the action of the respondents is arbitrary or bad in law. As will be presently seen most, if, not all, of the land belonging to the petitioners was agricultural in nature at the time when sections 4 and 6 notifications had been issued. In fact the nature of the land did not materially change even when the award was made in September, 1986. The land which has not been acquired is the land which, as per the report "of the survey committee, had been constructed upon and which was inhabited by a number of families. Furthermore, land of the Gaon Sabha to which the 20 Point Programme was applicable was also not acquired because of the stay orders of the Supreme Court. The acquisition" of land of the petitioners for the planned development of Delhi, under these circumstances, cannot be regarded as being arbitrary or bad in law. It is for the Government to decide which is the land which it needs for the planned development of Delhi" and if, out of some compulsion or some valid consideration, certain parcels of land are not acquired it would not mean that the acquisition" of the petitioners' land was arbitrary.

(27) As we have already observed, in the present case the lands in question were agricultural in nature, at least when the notifications under sections 4 and 6 were issued. This would be evident when we refer to the relevant facts in each case. Furthermore, reference to each petition will also show that Dr. Singhvi is

right in contending that the petitioners have sought to mislead the Court by not giving full and true facts. As we will presently notice, in all the petitions the impression which has been sought to be conveyed to the Court is that the land in question has been built upon and that the petitioners are residing there. In fact the opening argument of the counsel before us was that the petitioners will be rendered homeless and thousands, if not lakhs, of families will be uprooted, if the acquisition is not quashed. As we will presently see, the facts as they appear from the record are quite to the contrary. In paragraph 2, the petitioners, Shri Bhagwan and another, have contended that the petitioners have raised construction" on the lands and are using the same of residential purpose. The land belonging to the petitioners, which is sought to be. acquired, measures 29 Bighas 3 Biswas. It has further been slated in the writ petition that the Delhi Administration has "provided .all facilities to the colonies in and around the lands of the petitioners". In paragraph 4 reference is made to the fact that some colonies have been regularised and then it is contended that "upon such regularisation, the petitioners believed that their lands will be like any other approved and regularised colonies and the petitioners have since 1977 spent huge amounts in bettering their conditions". Curiously enough, in paragraph 10 itself the petitioners have submitted that the lands sought to be acquired have constructions existing and some parts are agricultural lands. In support of their contention that the land leas been constructed, the petitioners have filed an Annexure purporting to be true copy of the Khasra Girdawari. This shows that on an area of 2 bighas 17 bids was (here was abadi but on the rest of the area there was a wheat crop which was growing. This document which has been filed does not show in respect of which year the Khasra Girdawari pertains. Furthermore, this document itself belies the contention of the petitioners that they have raised residential construction on the aforesaid lands on 29 bighas 3 bids was and they were using the entire land for residential purpose. nor is there any document or averment on the record as to in which colony, authorised or unauthorised, does the said land fall. The impression which is sought to be created is that the petitioners land formed part of an unauthorised colony and that is why the petitioners were hoping that the same would be regularised whereas in fact there is no categorical averment to the effect that the petitioners land falls in any particular colony. Mr. Phoolka has placed before us the Khasra Girdawari for the year 1983-84 which shows that even. on that land measuring 2 bighas 17 bids was there was wheat which had been planted. No part of the petitioners" land was under any house, building or other construction. In respect of the year 1986-87 the Khasra Girdawari which has been filed in respect of khasra No. 755186 measuring 2 bighas 17 bids was it is stated that it is vacant land on which 5 safedas are growing There is no mention of any abadi. This year is relevant because it is during this year that the award .was made in September, 1986. It is clear, Therefore, that the averments made in the writ petition are false to the knowledge of the petitioners and they have deliberately tried to mislead the Court.

(28) Another serious infirmity in the petition of Shri Bhagwan is that a document has been placed on record stated to be the objections filed u/s 5A of the said Act. In fact this document is not a full copy of the objections which have been filed which, we are told, run into 15 pages. Furthermore, the document which is placed on record is the objections which are stated to have been filed and consists of 3 paragraphs, spread over 2 pages. Mr. Phoolka drew our attention to the original objections which were in fact filed by Shri Bhagwan and the said objections are different from what has been placed on the record. In the document which has been filed in the present petition, in paragraph 3 it is contended that the land in question formed one block and is opposite Mahavir Enclave colony and is surrounded by hospital and other colonies. In the original objections which have been filed this averment is not there, in fact in the claim which was filed by the petitioners under sections 9 and 10 of the Act, the petitioners did not make any claim for compensation for any construction having been carried out on the land in question. C. W. 914188. This case is similar to Shri Bhagwan's case. Averments have been made that construction has been raised on the land in question and that the construction has been expanded due to spending of families. It is also stated in the petition that the first petitioner has made a Farm House where he is residing. We have no hesitation in coming to the conclusion that these averments are absolutely false. Firstly, no compensation has been awarded for any construction alleged to have been carried on the land in question and, secondly, no reference has been made u/s 18 of the said Act against the award of the Collector. Furthermore, the petitioner, has not filed the copy of any Khasra Girdawari. The respondents, however, have produced before us the original record including the Khasra Girdawari. In respect of the year 1983-84 as per the Khasra Bhawan, the entered land is under cultivation. In respect of the year 1986-87 the Girdawari does not show any house or building having been constructed on the land and the only installation there is that of a tubewell. Except for Khasra No. 180 the rest of the land is stated to be under cultivation. What is more important, however, is that Dharam Vir had filed another writ petition for electric connection bearing C.W. No. 3316 of 1989 in that case this court appointed a commissioner to give a report, after visiting the site, with regard to the possession of the land there. Report dated 5th April, 1990 of Shri A.M. Dittia, Advocate is on the record in which he says that he visited the land consisting of 5 khasras estimated to be 5 acres including khasra No. 180. The 5 khasras in respect of which the petition has been filed are Khasra Nos. 37, 38, 39, 180 and 182. While reporting that it is not possible to inform the Court as to who is in actual possession of the entire area, the only construction which is reported on the land is that of a pump house. The Commissioner has further stated that the land is completely dry and is used solely for defecating purpose and that no agricultural activity has been carried out for a long time. The petitioner had constructed a farm house, as has been alleged in the present petition, the same would have existed there and that would have shown the petitioner's possession, as claimed by the petitioner. C.W. Nos. 2447, 2918, 2267, 2228, 2380, 1945, 2534, 1512, 1620 of 1989. All

these cases are similar to those of Shri Bhagwan and dharam vir. The Khasra Girdawaris which have been placed on record for the year 1983-84 show that land of all these" petitioners is put for agricultural use. Even in respect of the year 1986-87 in Raj Karan's case the land is shown to be vacant or under crops. In the case of Shubh Ram. only on Khasra No. 46 measuring 3 bighas 5 bids was it is stated that there is a house and plot. Furthermore, in Khasra No. 127 on 2 bighas a "kotha" is shown but the rest of the land over 2 Hectares has no construction on it. In the case of Lakhi Ram, for the year 1986-87 the entire area has vegetable crop grown on it, as per Khasra Girdawari. Same is the position in the case of Kashi Ram,. In the case of Chander Bhan, who incidentally is a retired Revenue official, the entire area except Khasra No. 69 is under cultivation. It is only with regard to Khasra No. 69 measuring 5 bighas .7 bids was that a house is shown but according to the respondents, vide order dated 7th February. 1985 passed by the Revenue Assistant this land of Khasra No. 69 has vested in the Gram Sabha. It is only in the case of Raj Pal that the Girdawari for 1986-87 shows that a house has been constructed on the land in question. In the case of Mukhtiar Singh, for the year 1986-87 there is only a boundary wall on the land in question.

(29) From the aforesaid, it is evident that in the year in which the notifications under sections 4 and 6 were issued the entire land was under cultivation. There has been some change brought about thereafter but when the award was made in .September, 1986 except in one or two isolated cases relating to very small parcels of land, the rest of the land in question was still under agricultural cultivation. It is clear, Therefore, that in the writ petitions which have been filed, false averments have been made to effect the all the petitioners have constructed houses on the lands in question and they along with members of their families are living there. These) false averments have been made solely with a view to mislead the Court and secure interim orders. Learned counsel for the respondents are, Therefore, justified in contending, and we agree with them, that the petitioners are liable to be dismissed on this ground as well, namely, false averments having been made in the writ petitions and a deliberate attempt has been made to mislead the Court.

(30) With regard to the petitions filed earlier than 1989, the position is no better. In the case of Hukam Chand (C.W. 2634/ 86) the land in the year 183-84 was under cultivation. The petitioner has filed copy of the Girdawari for the year 1985-86 which shows that in respect of Khasra Nos. 14 and 15 there was a house which was constructed. Khasra No. 15, however, is not the subject matter of the petitioner's writ petition. Rest of" the land is stated" to be vacant. Be that as it may, it is clear that at the time when sections 4 and 6 notifications were issued, there was no construction on the land in question and the construction, if any, was effected thereafter.

(31) In the case of Bharat Singh (C.W. 21221 S-6) also the girdawari for the year 1983-84 shows that the land was under cultivation .For 1986-87 the girdawari

shows that Bharat Singh's land continued to be under cultivation. Therefore, the averment made in the writ petition that house had been constructed on the land in question is clearly false.

(32) In the case of B. S. Solanki (C.W. 1816186), for the year 1983-84 the Khasra girdawari shows that wheat had been grown on the land in question. For the year 1986-87 the land in question, which measured 9 bighas 2 biswas, according to girdawari, was put to different uses. 8 bighas 10 bids was vacant, 4 bids was had a tubewell and there was habitation on 8 bids was alone. This again shows that the entire land had, not been constructed upon and, secondly, the alleged construction was raised after the notifications under sections 4 and 6 had been issued.

(33) In the case of Mohar Singh (C.W. 562187) for the years 1983-84 and 1984-85 the land, as per Girdawari, was under cultivation. For the year 1985-86 it was on 2 khasras that boundary wall was constructed and the rest of the land was vacant except that there was one samadhi also. For the year 1986-87 one room is shown to have been constructed on 1 bigha 8 biswas. This again shows that whatever construction was raised that was long after notifications under sections 4 and 6 had been issued and, furthermore, the construction was not on the entire land which has been acquired.

(34) From the aforesaid facts, it is clear that in order to secure favorable interim orders from this Court, false averments have been made. The petitioners in most of the cases have not mentioned that claims under sections 9 and 10 had been filed. In most of them the claims of the petitioners were that the land was agricultural in nature and in none of the awards is any compensation awarded for any built up area. The awards appear to have been accepted by the petitioner because as already observed, no reference has been sought u/s 18 of the said Act.

(35) The facts stated above would also show that even though the respondents were not bound to do so, nevertheless they, in effect, acted according to their Policy of 18th August, 1986. The land which has been acquired is that which was agricultural in nature and on which very little construction, if any, had been erected. Wherever the land mentioned in the said sections 4 and 6 notifications was built up, the same was not acquired and was left out of the award. It is true that in the award it is not stated that built up land has been left out, nevertheless counsel for the respondents has shown us the Government record which clearly shows that built up land which had been identified by the special committee set up in July, 1986 has not been acquired. It is after the report of the special committee that the Secretary (Land & Building) had issued the letter of 18th August, 1986 and the award was announced about a month thereafter. In our opinion Therefore there is no factual basis for the petitioners to contend that the Policy of 18th August, 1986 has been breached. This is apart from the fact that we have already held that it is open to the respondents to act in variation to the aforesaid policy of 18th August, 1986 for the reason which we have already

enumerated.

(36) For the aforesaid reasons, we find no merit in these writ petitions. The same are accordingly dismissed with costs. Counsel's fee Rs. 1000 per edition .Interim orders, stand vacated.