

(2004) 03 DEL CK 0027

In the Delhi High Court

Case No : Writ Petition (C) No. 2361 of 1987

Shri Gajendra Kumar

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 26-03-2004

Acts Referred:

Citation : (2004) 110 DLT 591

Hon'ble Judges : D.K. Jain, J;A.K. Sikri, J

Bench : Division Bench

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

Judgement

A.K. Sikri, J.—Factual details of the matter are in a narrow canvass. For this reason the issue involved is also limited. While scanning through the facts, the issue shall also get surfaced. Therefore, it would be apposite to do the exercise of narrating the facts in the first instance.

2. Petitioners claim themselves to be the owners of agricultural land comprising Khasra No.2645/1896/1353 (old) 779 (new) in the revenue estate of Mehrauli, Delhi Administration. In fact, the father of the petitioners, who came to Delhi after partition of the country in 1947, purchased this land in a public auction. The property at that time was an evacuee property.

3. Vide notification dated 13.11.1959 issued u/s 4 of the Land Acquisition Act (hereinafter referred to as the "Act") vast tract of land came to be acquired. The land, subject matter of this notification, measured 34070 acres. This land was marked with block numbers A to T and A in the selected map and the description was given in Annexure-1. However, certain categories of land were excluded from acquisition and description of this exclusion can be found from the notification dated 13.11.1959, itself which is as under:-

a)"Government land and evacuee land;

b)The land already notified, either u/s 4 or u/s 6 of the Land Acquisition Act for House Building Co-operative societies mentioned in Annexure III.

c)The land already notified, either u/s 4 or u/s 6 of the Land Acquisition Act, for any Government Scheme;

d)The land under grave yards, tombs, Shrines and the land attached to religious institutions and Waqf property; is likely to be acquired for the above purpose."

We are concerned with category (a), namely, Government land and evacuee land.

4. Thereafter declaration u/s 6 of the Act was issued vide notification dated 2.1.1969 specifying Mehrauli with total area of 2 bigha 13 bids was and Khasra Nos.2645/1896/1353 (old) 779 (new). This obviously covers the land of the petitioners as well. After issuing notices u/s 9, the Award dated 17.1.1983 was passed by the Land Acquisition Collector and possession of the land belonging to the petitioners was taken on 14.2.1983. Immediately thereafter orders were passed u/s 22 of the Delhi Development Act, 1958, on 28.2.1983 thereby placing these lands at the disposal of the DDA. Few years thereafter, i.e. on 16.7.1987 present writ petition was filed challenging the aforesaid acquisition proceedings.

5. Neat point urged to press this challenge is that the land was not covered by Notification u/s 4 of the Act as it was an excepted land being evacuee land. In order to demonstrate that it was an "evacuee land" even on the date when notification u/s 4 of the Act was issued on 13.11.1959, the petitioners have stated that although auction took place on 11.9.1959 in which the predecessor of the petitioners was highest bidder, this auction was not confirmed immediately. The sale certificate was issued only on 17.7.1965 and mutation of this land was done in favor of petitioners' father on 28.12.1967. On pertinent inquiry, during the arguments, learned senior counsel for the petitioners submitted that a letter dated 14.3.1962 was issued by the Government of India, Ministry of Rehabilitation, Office of Assistant Settlement Commissioner (R) confirming that bid of the petitioners' father had been accepted and he should submit necessary documents specified therein and make the balance payment of Rs.12,200/- in order to get provisional possession of the land. Therefore, on the strength of this letter, the petitioners submit that auction was confirmed only on 14.3.1962 and the balance purchase price was deposited thereafter and sale certificate issued on 17.7.1965. On the basis of these facts it is contended that although petitioners' father became owner of the land only on 17.7.1965 on the issue of sale certificate, even if date of confirmation of the bid is taken into consideration, ownership vested in them on 14.3.1962, at the earliest. Therefore, prior to this date this property remained an evacuee land and this was admittedly the position on 13.11.1959 when notification u/s 4 of the Act was issued. Therefore, the argument proceeds, since the land was evacuee land as on 13.11.1959, it was specifically excluded from the acquisition in the Notification dated 13.11.1959 issued u/s 4 of the Act. It is submitted that Section 4 is the foundation of any acquisition proceedings. Unless notification is issued u/s 4 of

the Act, subsequent action on the part of the Government in issuing declaration u/s 6 or making award in respect of this land would be of no consequence. As sine-qua-non of the acquisition proceedings is the Notification u/s 4, in the absence of such a Notification, all further proceedings would be null and void and of no effect.

6. The respondents have challenged the very maintainability of the writ petition. According to them, the aforesaid factual matrix clearly brings out that the present writ petition has been filed only after the completion of the acquisition proceedings and after the possession of the land was taken and land was placed at the disposal of DDA. Therefore, contend the respondents, no such writ petition is maintainable.

7. On the other hand it is the case of the petitioners that when the entire proceedings are void and of no consequence, any such possession taken pursuant thereto would be illegal, as Government can take possession of the land only in accordance with law and such possession would be violative of Article 300A of the Constitution as well. Therefore, the respondents cannot take advantage of such illegal and void proceedings which are without jurisdiction and then non-suited the petitioner on the specious plea that possession of the land has been taken. Expanding the proposition *Mr.V.P. Singh*, learned senior counsel appearing for the petitioners, contended that in identical circumstances Full Bench of this Court in the case of *Roshanara Begum vs. Union of India* and others allowed one such writ petition being Civil Writ No.783/81. By means of the aforesaid judgment Full Bench had decided number of cases and most of the issues referred to the Full Bench were decided in favor of the Government and against the writ petitioners who had challenged the acquisition proceedings. However, after stating the law generally, the Court had dealt with individual writ petitions. Civil Writ No.783/81 has been dealt with in para 193 of the judgment which gives brief description of the case and it would be useful to quote this para in entirety, which is to the following effect:-

"Civil Writ Petition No.783/81

In this petition, the notification u/s 4 is dated 13th November, 1959 and declaration u/s 6 is dated 2nd January, 1969. The award had been given on 17th January, 1983. The land use prescribed in the Master Plan is zonal park and in the revised plan is District Park. In the original notification dated 13th November, 1959, it is mentioned that it would not cover the evacuee land. The petitioner had purchased this property from its previous owner on 6th August, 1962. However, on the date of notification issued u/s 4 of the Act, this land was evacuee property and vested in the Custodian and stood excluded from the said notification. The name of the previous owner is Kailash Chand Gupta.

Reliance is placed on a judgment of Single Bench of this Court given in Civil Writ Petition No.155/83, *Harbans Kaur v. Land Acquisition Collector* decided on August 12, 1991 in which, on similar facts, it was held that as the original notification

issued u/s 4 excluded its application to the evacuee land, mere fact that the land ceases to be evacuee after the issuance of notification u/s 4 of the Act would not validate the subsequent proceedings taken under Sections 6 and 11 of the Act for acquiring the land as notification u/s 4 did not pertain to the evacuee land.

It is quite evident that if there is notification issued u/s 4 of the Act pertaining to a particular land, then any declaration issued u/s 6 would be by itself not valid in respect of the land which was not subject matter of notification issued u/s 4 of the Act.

It has been urged before us that the writ petition has been brought belatedly as Section 6 declaration had been issued in 1969 whereas the writ petition had been filed in 1981. It is not the case where any defect in the Section notification is being highlighted like that the same was not published in accordance with the provisions of the Act. What has been pointed out is that the notification issued on 13th November, 1959 did not at all pertain to the land in question as it was evacuee land at that time. If the notification on the face of it is not applicable to the land in question the same is no nest and any proceedings taken for acquiring the land on the basis of such a notification issued u/s 4, which did not pertain to the land in question, would be void ab initio and without jurisdiction.

In our view, once it is shown that there was no notification issued u/s 4 pertaining to the particular land, the subsequent proceedings being void, the petitioner would not be debarred from challenging such proceedings even belatedly. So, this petition is liable to be allowed."

8. Mr. V.P. Singh further submitted that the Government had filed SLP against the aforesaid judgment and the Supreme Court dismissed the said petition in limine. Even review filed by the Government was dismissed. Therefore, once such a view is taken by the Full Bench of this Court and is confirmed by the Supreme Court, doctrine of merger would apply and it should be treated as decision of the Supreme Court which is binding on this Court and following that view present petition should also be allowed. Mr. Singh also referred to another Division Bench judgment of this Court in the case of Major General (Retd.) Kapil Mehra and others vs. Union of India-Civil Writ No.1134/92 decided on 30.1.1996. It was submitted that this was a case relating to the same notification dated 13.11.1959 and the parcel of land which was adjacent to the land of the petitioners. On identical ground, that the land was an evacuee land and, Therefore, not the subject matter of the acquisition u/s 4 of the Act, writ petition was allowed. He submitted that in that case also possession of the land was taken by the Government and the Court directed the respondents to restore back the possession to the petitioners within 90 days. The Court invoked the provision of Article 300A of the Constitution.

9. In support of the proposition that when there is no notification u/s 4 all further proceedings are void, learned counsel relied upon the following two judgments:-

i. Ram Kishan Vs. Union of India and Others, .

ii. Angira Devi Gupta Vs. The Land Acquisition Collector, Delhi,

10. Learned counsel for the respondents, obviously, did not deal with the aspect as to whether land in question was an evacuee land and, Therefore, was excluded from the purview of notification issued u/s 4 of the Act. His entire endeavor was for dismissal of the writ petition on the ground that it was not maintainable and his submission was that at this distance of time this Court is not supposed to go into the question as to whether the land was evacuee land and, Therefore, was excluded from the notification issued u/s 4 of the Act. For this purpose he submitted that the issue was no more rest integra and was decided by catena of judgments of the Apex Court. His first submission was that possession was taken on 14.2.1983 and as per the provisions of Section 16 of the Act once possession is taken the land absolutely vests in the Government and no challenge to such acquisition proceedings is permissible thereafter. No writ petition was filed prior to 1983 and this writ petition admittedly filed in the year 1987 was, thus, not maintainable. He referred to a Division Bench judgment of this Court reported as Ajit Singh and Others Vs. Union of India and Others, . He submitted that Constitution Bench of the Supreme Court decided this issue way back in the year 1974 in the case of Aflatoon and Others Vs. Lt. Governor of Delhi and Others, . The relevant para 9 of the said judgment is reproduced as under:-

"Assuming for the moment that the public purpose was not sufficiently specified in the notification, did the appellants make a grievance of it at the appropriate time? If the appellants had really been prejudiced by the non-specification of the public purpose for which the plots in which they were interested were needed, they should have taken steps to have the notification quashed on that ground within a reasonable time. They did not move in the matter even after the declaration u/s 6 was published in 1966. They approached the High Court with their writ petitions only in 1970 when the notices under S. 9 were issued to them. In the concluding portion of the judgment in Munshi Singh and Others Vs. Union of India (UOI), , it was observed:

"In the matters of this nature we would have taken due notice of laches on the part of the appellants while granting that so far as the present appellants are concerned they have not been guilty of laches, delay or acquiescence at any stage."

We do not think that the appellants were vigilant."

11. This principle of law was reiterated time and again by the Supreme Court in subsequent judgments. Reference was made to the judgment of the Supreme Court in the case of The Municipal Council, Ahmednagar and Another Vs. Shah Hyder Beig and Others, . Relevant paras 14 and 17 of the said judgment are reproduced as under:

"14. The High Court has thus misplaced the factual details and misread the same. It is now a well-settled principle of law and we need not dilate on this

score to the effect that while no period of limitation is fixed but in the normal course of events, the period the party is required for filing a civil proceedings ought to be the guiding factor. While it is true that this extraordinary jurisdiction is available to mitigate the sufferings of the people in general but it is not out of place to mention that this extraordinary jurisdiction has been conferred on to the law courts under Article 226 of the Constitution on a very sound equitable principle. Hence, the equitable doctrine, namely, "delay defeats equitable" has its fullest application in the matter of grant of relief under Article 226 of the Constitution. The discretionary relief can be had provided one has not by his act or conduct given a go-by to his rights. Equity favors a vigilant rather than an indolent litigant and this being the basic tenet of law, the question of grant of an order as has been passed in the matter as regards restoration of possession upon cancellation of the notification does not and cannot arise. The High Court as a matter of fact lost sight of the fact that since the year 1952, the land was specifically reserved for public purposes of a school playground and roads in the development plan and by reason Therefore, the notification to acquire the land has, Therefore, been issued under the provisions of the Act as stated above."

17. In any event, after the award is passed no writ petition can be filed challenging the acquisition notice or against any proceedings there under. This has been the consistent view taken by this Court and in one of the recent cases (C. Padma and Others Vs. Dy. Secretary to the Govt. of T.N. and Others,) this Court observed as below: (SCC p. 628, para 4)

"4. The admitted position is that pursuant to the notification published u/s 4(1) of the Land Acquisition Act, 1894 (for short "the Act") in GOR No.1392 Industries dated 17-10-1962, total extent of 6 acres 41 cents of land in Madhavaram Village, Saidapet Taluk, Chengalpattu District in Tamil Nadu was acquired under Chapter VII of the Act for the manufacture of Synthetic Rasina by Tvl.Reichold Chemicals India Ltd., Madras. The acquisition proceedings had become final and possession of the land was taken on 30-4-1964. Pursuant to the agreement executed by the company, it was handed over to Tvl. Simpson and General Finance Co. which is a subsidiary of Reichold Chemicals India Ltd. It would appear that at a request made by the said company, 66 cents of land out of one acre 37 cents in respect of which the appellants originally had ownership, was transferred in GOMs No.816 Industries dated 24-3-1971 in favor of another subsidiary company. Shri Rama Vilas Service Ltd., the 5th respondent which is also another subsidiary of the Company had requested for two acres 75 cents of land; the same came to be assigned on leasehold basis by the Government after resumption in terms of the agreement in GOMs No.439 Industries dated 10-5-1985. In GOMs No.546 Industries dated 30-3-1986, the same came to be approved of. Then the appellants challenged the original GOMs No.1392 Industries dated 17-10-1962 contending that since the original purpose for which the land was acquired had ceased to be in operation, the appellants are entitled to restitution of the possession taken from them. The learned Single Judge and the Division Bench have held that the acquired land having already vested in the

State, after receipt of the compensation by the predecessor-in-title of the appellants, they have no right to challenge the notification. Thus the writ petition and the writ appeal came to be dismissed."

12. He submitted that the Supreme Court has gone to the extent of holding that even when the proceedings under the Land Acquisition Act were void but the possession was taken and the acquisition proceedings had been completed by following the procedure under the Land Acquisition Act, no challenge was permissible at this stage and according to him, direct judgment on this aspect was in the case of *State of Rajasthan and Others Vs. D.R. Laxmi and Others*, . He submitted that even void order would remain valid and could be challenged till the stage of its enforcement. Thus, challenge was permissible to the petitioners on this ground at any time till its possession was taken and such an order could not be challenged after it is enforced and for this purpose he relied upon the following passage from the book titled *Administrative Law* by H.W.R. Wade (7th Edn.) at pp. 342-43, which is quoted with approval by the Supreme Court in the aforesaid judgment:-

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

13. He concluded his submission by arguing that if the land is taken possession of, even in void proceedings, the only relief which could be granted to the petitioners was the compensation and they were not entitled to get the land restored.

14. We have given our utmost consideration to the arguments advanced by both the parties. In the first blush, it appears that the contentions of the learned counsel for the petitioners have merit. *Roshnara Begum's* case (supra) dealt with the issue of an evacuee property and it was categorically held that if it was an evacuee property on the date of issue of notification u/s 4 of the Act, it was not included in the said notification and, Therefore, subsequent proceedings would be of no avail. Further this case also answers the issue of delay, as in that case possession was taken and it was directed to be restored. We have already pointed out that the SLP filed against this judgment was dismissed and even review petition was dismissed by the Supreme Court. Again case of *Major General (Retd.) Kapil Mehra* (supra) dealt with this very issue. Referring to the

earlier judgment in the case of Angira Devi Gupta Vs. The Land Acquisition Collector, Delhi, contention was raised that no notification u/s 4 of the Act was issued in respect of the said land and the land in question being exempted from the notification, by notification itself, it could not be "acquired" by the Government of India. Interestingly that writ petition was initially dismissed by this Court in liming on 13.3.1992 on account of long delay and laches. But the appeal preferred against the said order, the Supreme Court allowed the appeal and set aside order dismissing the writ petition in liming and remitted the case to this Court with the request to admit the case and decide it again affording a full hearing to the parties. While allowing the writ petition, the Court held that there can be no question of any legal and valid acquisition proceedings with respect to such a land which was specifically excluded from the acquisition. The Court also took aid of Article 300A of the Constitution, according to which, "no person shall be deprived of his property saved by authority of law", holding that authority of law for acquisition of the property is to be found under Sections 4 and 6 of the Act and as notification issued u/s 4 of the Act exempted evacuee land from acquisition, no proceedings can be said to exist in the eyes of law with respect to this land.

15. It is also repeatedly held that in the absence of notification u/s 4 subsequent acquisition proceedings initiated under Sections 6 and 11 of the Act are illegal and cannot be sustained [See Ram Kishan and Ors. v. Union of India (supra)]. Following passage from the judgment in the case of Angira Devi Gupta Vs. The Land Acquisition Collector, Delhi, succinctly brings out the legal position:-

"The process of acquisition must start with the notification u/s 4 and the notification u/s 4 is sine qua non. In the absence of Section 4 notification no acquisition proceedings can subsist as neither the Collector can enter upon the property for the purposes mentioned in sub-section (2) of Section 4, nor can the Collector hear the objections u/s 5A, nor can it submit the report to the appropriate Government for consideration and issue of the declaration u/s. 6. The essential mandatory requirement of initiation of acquisition proceedings is the issuance of notification u/s 4 of the Act covering the land proposed to be acquired. The award of the compensation is on the basis of the market value as on the date of Section 4 notification. Where there is no notification u/s 4, the machinery provided by the Act for determination of compensation obviously cannot apply."

16. This is not the view of this Court alone. It is trite law having a stamp of approval by the Apex Court in various cases.

17. The Land Acquisition Act, a Central Statute, has conferred power on public authorities to acquire the land by imposing conditions about procedure. It starts with publication of Notification u/s 4 of the Act, wherein the persons whose land is sought to be acquired are given a notice to this effect. They are given valuable right to file objections u/s 5A of the Act. After consideration of these objections if the public authorities do not find any merit therein, Declaration u/s 6 is issued

whereby the Government signifies its intention to acquire the said land. Condition of issuing notice u/s 4 of the Act is clearly mandatory and cannot be treated as directory. Non-observance of a mandatory condition would be fatal to the validity of the action. Procedural safeguards, which are so often imposed for the benefit of persons affected by the exercise of administrative powers, are normally regarded as mandatory, so that it is fatal to disregard them. Where there is a statutory duty to consult persons affected, this must genuinely be done and reasonable opportunity for comment must be given. Where a proposal or scheme is required to be public it must be accurately described and any one entitled to object must be allowed adequate time. All such procedural safeguards are treated as mandatory. [See: Grunwick Processing Laboratories Ltd.Vs. ACAS (1978) AC 277, Port Louis Cpn.Vs. A.-G. of Mauritius (1965) AC 1111]

18. In the instant case, if it is found that Section 4 did not cover the land of the petitioners as the same came in `excepted" category any further proceedings by the respondents were clearly without jurisdiction and thus ultra vires. An act or order which is ultra virus is a nullity, utterly without existence or effect in law. That is the plain meaning of "void", the term most commonly used. Thus, normally, it could be argued that when the respondents did not follow mandatory procedure and there is absence of Section 4 Notification qua the land of the petitioners and the entire proceedings are without jurisdiction, the respondents have acted without any authority of law. Thus there is also a violation of Article 300A of the Constitution.

19. Under Article 226 of the Constitution of India, High Courts are given power of judicial review and while exercising this power the courts can examine whether an administrative action is valid or not. In fact power to examine the validity of any administrative order, namely, power of judicial review is inherent in any court and for this no statutory authority is necessary. The court is simply performing its ordinary function in order to enforce the law. Judicial review is thus a fundamental mechanism for keeping public authorities within due bounds and for upholding the rule of law. No doubt there are self-imposed limitations on the exercise of this power. However, it is well established that if administrative action is in excess of power and is thus ultra vires, the court can quash such an order. In Boddington Vs. British Transport Police [1999] 2 AC 143, Lord Steyn remarked that the simple proposition that a public authority may not act outside its powers (ultra vires) might fitly be called "the central principle of administrative law". In the same judgment Lord Browne-Wilkinson observed that ` the juristic basis of judicial review is the doctrine of ultra vires". H.W.R.Wade has approached this issue in the following manner:-

"Any administrative act or order which is ultra virus or outside jurisdiction is void in law, i.e. deprived of legal effect. This is because in order to be valid it needs statutory authorisation, and if it is not within the powers given by the Act, it has no legal leg to stand on. Once the court has declared that some administrative act is legally a nullity, the situation is as if nothing had happened. In this way the

unlawful act or decision may be replaced by a lawful one. If a compulsory purchase order is quashed as being ultra vires, there is nothing to prevent another order being made in respect of the same land, provided that it is done lawfully. Thus a public authority or tribunal is often given locus poenitentiae and is able to correct an error by starting afresh-something which it might otherwise be unable to do."

20. When an act or decision would be termed as outside jurisdiction or ultra vires? The English courts have gone to the extent of holding that errors such as bad faith, wrong grounds, and breach of natural justice all necessarily involve excess of jurisdiction and Therefore nullity. There is a classical exposition of the doctrine of ultra virus or lack of jurisdiction by House of Lords in Anisminic Ltd. Vs. Foreign Compensation Commission [1969] 2 AC 147 in the words of Lord Pearce:-

"Lack of jurisdiction may arise in many ways. There may be an absence of those formalities or things which are conditions precedent to the tribunal having any jurisdiction to embark on an inquiry. Or the tribunal may at the end make an order that it has no jurisdiction to make. Or in the intervening stage, while engaged on a proper inquiry, the tribunal may depart from the rules of natural justice; or it may ask itself the wrong questions; or it may take into account matters which it was not directed to take into account. Thereby it would step outside its jurisdiction. It would turn its inquiry into something not directed by Parliament and fail to make the inquiry which Parliament did direct. Any of these things would cause its purported decision to be a nullity."

21. Once we hold that notification u/s 4 of the Act is sine-qua-non for any acquisition proceedings and in the absence of Section 4 Notification, issue of any further Notification u/s 6 or passing of the award would be without the authority of law. Those proceedings would naturally be void. Therefore, legal hypothesis would be this: if we were to return the findings that the land in question was evacuee land on the date when Notification u/s 4 of the Act was issued, the consequence would be that it was not covered by the said Notification as specifically excepted from the said Notification. And if Section 4 Notification does not cover this land, the consequence would be that the Declaration u/s 6 and subsequent proceedings including the award in question is void.

22. However, it is at this stage, the respondents put in their caveat by arguing that this court should not go into the question as to whether the land in question was an "evacuee land" on 13.11.1959 when the Notification u/s 4 was issued. The submission was that the respondents treated the land as that of the petitioners' father and not the evacuee land and thus covered by the Notification dated 13.11.1959. Proceeding on that basis the respondents issued Declaration u/s 6 wherein this land was specifically referred to. It also carried out further proceedings culminating into passing of the award and pursuant thereto even the possession of this very land was taken and placed at the disposal of the DDA in the year 1984. This writ petition was, Therefore, according to them, not

maintainable.

23. On the other hand, as pointed out above, learned senior counsel for the petitioners submits that if there is no Notification u/s 4 and further proceedings are void, then even if award is passed and possession is taken, the same is done without authority of law and Therefore the writ petition would be maintainable.

24. This brings us to the next question, namely, whether void orders/proceedings are to be necessarily quashed in all the circumstances? Here, sometimes a distinction is drawn between "void" and "voidable" order. Generally speaking, a voidable order means that the order was legally valid at its inception and it remains valid until it is set aside or quashed by the Court, i.e., it has legal effect up to the time it is quashed. On the other hand, a void order is no order at all from its inception; it is a nullity and void ab initio. However, the controversy between void and voidable order has been getting curiousest and curiousest. Even in respect of a void order, it is stated that although an order may be deemed to be void ab initio, the uncertainties of Administrative Law are such that in most cases a person affected by such an order cannot be sure whether the order is really valid until the Court decides the matter. Therefore, affected person cannot, thus, ignore the order treating it as nullity. He has to go to a Court for an authoritative determination as to the nature of the impugned order. Thus, a Court action becomes necessity even when an order is void. At what stage the affected person is supposed to approach the Court.

25. The Supreme Court in some pronouncements has provided the answer in land acquisition matters. It has been held in D.R.Laxmi (supra) that there can be no challenge to the acquisition proceedings after possession of the land is taken and the land is vested in the State. For this proposition, apart from relaying upon its earlier judgments, the Supreme Court quoted with approval the passage from H.W.R.Wade, 7th Edn. With some modifications, while keeping the essence, the passage in 8th Edition of the Book reads as under:

"Such an absolute result depends, however, upon the willingness of the court to grant the necessary legal remedies. The court may hold that the act or order is invalid, but may refuse relief to the applicant because of his lack of standing, [Gregory V.Camden LBC (1966) 1 WLR 899] because he does not deserve a discretionary remedy, [Lovelock v. Minister of Transport (1980) 40 P&CR 336] because he has waived his rights, or for some other legal reason. In any case the 'void' order remains effective and, must be accepted as if it was valid. It seems also that an order may be void for one purpose and valid for another; [R. v. Wicks (1998) AC 92] and that it may be void against one person but valid against another. [Agricultural etc.Training Board V.Aylesbury Mushrooms Ltd. (1972) 1 WLR 190]. A common case where an order, however void, becomes valid for practical purposes is where a statutory time limit expires after which its validity cannot be questioned. [Smith v.East Elloe RDC (1956) AC 736] The statute does not say that the void order shall be valid; but by cutting off legal remedies it produces that result. [O'Reilly v.Mackman (1983) 2 AC 237] As Lord

Diplock said of a compulsory purchase order alleged to be made in bad faith but challenged after the expiry of the limitation period, the order 'had legal effect notwithstanding its potential invalidity.[Hoffmann-La Roche]"

26. We may point out at this stage that Mr.V.P.Singh, learned senior counsel for the petitioners had attempted to distinguish the aforesaid judgment by arguing that D.R.Laxmi's case (supra) related to the irregularity in not publishing the Notification u/s 4(1) of the Act in a local publication. He submitted that in that case Notification u/s 4(1) of the Act had in fact been issued and the observations as well as decision of the court were in the light of those facts. On the other hand, he argued, in the present case there was complete absence of Section 4 Notification in so far as land of the petitioners is concerned, i.e. Section 4 Notification did not cover the land of the petitioners. However, a recent judgment of the Supreme Court in the case of Delhi Development Authority Vs. Shyam Sundar Khanna and Others has clinched the issue providing answer to this submission. In this case also the acquisition was challenged on identical ground, namely, land in question was an evacuee land and in same Notification dated 13.11.1959 issued u/s 4(1) of the Act it was excluded. The writ petition was allowed by the High Court. In appeal the Supreme Court, after relying upon D.R.Laxmi's case (supra) held that once the acquisition proceedings were complete and the land vested in the Government, the writ petition was not maintainable and the court refused to go into the question as to whether the land was an evacuee land or not as can be found from the following passage from the said judgment:-

"The Writ Petition challenging the acquisition proceedings was filed on 30th April, 1987. By the impugned judgment , the High Court has allowed the writ petition and set aside the acquisition proceedings on the ground that on the date of Section 4 Notification, this land was evacuee property and Therefore not covered by that Notification. The High Court notes that the sale certificate was issued on 31st January, 1961 and holds till that date the land continued to be evacuee property. On the question of delay and laches on the part of the respondents, the High Court holds that as the Notification u/s 4 excluded evacuee property, all subsequent proceedings were void and Therefore the petitioner would not be debarred from challenging the acquisition proceedings even belatedly.

This Court has in the case of Vishwas Nagar Evacuee Plot Purchasers Association and another Vs. Under Secretary, Delhi Admn. and others, , held that delay and laches in challenging the land acquisition would debar a person from filing a writ petition. In that case also the acquisition, which was challenged, was pursuant to the same Notification u/s 4. In that case also, the property was evacuee property. The Court still held that due to delay and laches, the writ petition could not be entertained.

Thereafter in the case of The Ramjas Foundation and Others Vs. Union of India and Others, a three Judge Bench of this Court also considered the question of delay and laches in respect of this very same Notification. In this case also the

contention was that the concerned property was not covered by Section 4 Notification as it was a wakf property. Yet this Court held that the delay and laches barred the petitioners from maintaining their writ petition.

In the present case, we have gone through the averments in the writ petition and the counter affidavit. In the writ petition, there is no averment that the respondents were not aware of the Section 6 Notification dated 2nd January, 1969. There is no averment that they were not aware of the Award dated 17th February, 1982. In the writ petition it is admitted that possession of one of the lands was taken on 4th March, 1982. In the writ petition there is no averment that the respondents were not aware of the supplemental Award passed on 19th September, 1986. In the writ petition, it is admitted that possession of the other piece of land was also taken on 22nd September, 1986. The respondents have filed counter affidavit in the writ petition wherein all these facts have been set out and it is averred that there is gross delay and laches. No rejoinder was filed. Thus, facts of this case clearly indicate that the respondent were aware of the acquisition proceedings from as far back as 1969. They only chose to challenge acquisition in 1987. There is no Explanation as to why even after 23rd March, 1982, when possession was actually taken of one of the lands, respondents did nothing till 1987. It is clear that there has been gross delay and laches on the part of the respondents. The High Court was clearly in error in entertaining such a writ petition. On this ground itself, the writ petition deserved to be dismissed.

We accordingly set aside the impugned order and dismiss the writ petition.

It is clarified that we have not gone into the disputed contention as to whether or not, on the date of Section 4 Notification this was evacuee property. It is further clarified that the respondents will be entitled to receive the compensation under the Award. They will also be entitled to additional statutory benefits, if available to them under law."

27. As bound we are by the aforesaid decisions of the Supreme Court, we have no option but to hold that challenge to acquisition proceedings and award is not maintainable after possession was taken and land put at the disposal of the DDA. We may point out that it is not a case where there is no notification u/s 4 of the Act. Government had, in fact, issued the notification wherein the land in question was included. However, in the excepted category evacuee lands were excluded. Thus, the petitioner's land could get excluded only if it was an evacuee property. Determination on this aspect is required. However, the petitioner does not move the Court at appropriate stage seeking this determination. On the other hand, the respondents proceeded with the matter on the premise that it was not an evacuee land and took further steps required under the Land Acquisition Act.

28. In view of the aforesaid pronouncements, including the recent judgment of the Supreme Court in the case of Delhi Development Authority Vs. Shyam Sunder Khanna (supra), the principle which can be deduced is that even in the case of void order, the aggrieved party has to approach before such an order is

enforced. Till the order is enforced (in the instant case to mean that till possession is taken) the aggrieved party may challenge the order and at that stage the question of delay, laches or waiver would not come in his way. However, after the order is enforced, namely, possession is taken and the writ petition is filed thereafter, considerations like delay, laches or waiver would become relevant even when contention raised is that the impugned order was void. No doubt, in Civil Writ No.783/81 decided in the case of Roshanara Begum (supra), Full Bench of this Court allowed the said writ petition holding that the subject matter of the land being evacuee property was not covered by notification u/s 4 and as the proceedings are void, writ petition could not be dismissed on the ground of delay, laches and waiver and was maintainable even when possession was taken, as the proceedings were void. We are also conscious of the fact that against the said decision the Supreme Court dismissed the SLP in limini. Again similar view was taken by the Division Bench in the case of Major General (Retd.) Kapil Mehra (supra) and in that case also the respondents were directed to restore back the possession to the land owner. However, as against the aforesaid judgments, we have the later judgments of the Supreme Court taking contrary view and Article 141 of the Constitution mandates us to follow the later judgments. The petitioners are seeking quashing of Notification u/s 4 and Declaration u/s 6 of the Act (it is not understood why the petitioners have prayed for quashing Notification u/s 4 of the Act when according to them it does not cover their land as it is excepted thereto) and notices under Sections 9 and 10 of the Act and also award bearing No.60-82/83 in respect of the land of the petitioners. Such a prayer cannot be granted in a petition filed in the year 1987, i.e. much after the award, which was passed in the year 1983 and possession taken in the year 1984.

29. This writ petition is accordingly dismissed.

30. There shall, however, be no order as to costs.