

(2008) 11 DEL CK 0017

In the Delhi High Court

Case No : Writ Petition (C) No. 1151 of 1986

Shri R.D. Bhanot

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 28-11-2008

Acts Referred:

Civil Procedure Code Amendment Act, 2002 — Order 6 Rule 17

Constitution of India, 1950 — Article 226

Land Acquisition Act, 1894 — Section 4, 5A, 5A(2), 6

Citation : (2009) 162 DLT 111

Hon'ble Judges : Manmohan Singh, J;A.K. Sikri, J

Bench : Division Bench

Advocate : Ravinder Sethi and Sumit Bansal, for the Appellant; Sanjay Poddar, for the Respondent

Final Decision : Allowed

Judgement

A.K. Sikri, J.—Short factual matrix in this case is followed by long tale of legal battles. For proper adjudication of the issue involved, it would be necessary to take stock of the legal developments as well, which would be noted while narrating the facts of the case.

2. The respondent issued the notification dated 25.11.1980 u/s 4 of the Land Acquisition Act (in short the 'Act') whereby it was proposed to acquire a large chunk of land situate in the revenue estate of Village Chattarpur, Satbari, Maidan Gari, Shayoor Pur and Rajpur Khurd. Objections u/s 5-A of the Act were invited. Thereafter, declaration u/s 6 of the Act was issued vide notification dated 27.5.1985, inter alia, stating that the Lt. Governor was satisfied that the land is required to be taken by the Government at public expenses for a public purpose, namely, for the planned development of Delhi. In respect of Village Satbari, the land of the petitioner herein was also mentioned, which is covered by Khasra No. 687 min. (4-15), 688 (4-16) and 689 (4-18). The petitioner at that stage filed the instant petition in May, 1986 challenging the aforesaid notifications issued

under Sections 4 and 6 of the Act. The main reason for challenge, as set up in the petition, is that within three years of issuance of notification u/s 4 of the Act, the LAC did not forward his report to the Government as provided under Sub-section (2) of Section 5-A of the Act and because of this non-action the declaration u/s 6 was illegal.

3. We may note at this stage that few hundred writ petitions were filed by various land owners of the aforesaid villages challenging declaration u/s 6 of the Act on various grounds. The issue raised in these writ petitions, as pointed out above, was referred to the Full Bench and decided by it in the case of Balak Ram Gupta Vs. Union of India (UOI), on 25.7.1987. The Full Bench held that issuance of declaration u/s 6 was valid and the period when stay was in operation and to be excluded while computing the period prescribed under the provisions of the Act for this purpose. For deciding other issues the matter was referred back to the Division Bench.

4. The Division Bench after hearing the matter pronounced its judgment on 18.11.1988, which is reported as Balak Ram Gupta v. Union of India 38 (1999) DLT 243. The contention of the petitioners in those writ petitions was that though the Land Acquisition Collector had issued notices u/s 5-A of the Act, but he did not give any opportunity of hearing to the objectors and finally on 4.6.1985, another LAC made a non-speaking report to the authorities u/s 5-A of the Act on the basis of which the Lt. Governor had issued the impugned declaration u/s 6 of the Act. This contention found favour with the Division Bench. Following the aforesaid judgment, in many other cases declarations u/s 6 of the Act were quashed. In some of the cases where even the possession was taken, the respondents were directed to restore that possession and take back the compensation given to the land owners with interest. One such case was Sudan Singh v. Union of India (CWP No. 920/1986) decided on 17.12.1996. In that case, however, the Delhi Development Authority challenged the order passed by this Court. The Supreme Court in DDA v. Sudan Singh (1997) 5 SCC 430 considered the judgment in the case of Balak Ram Gupta and expressed reservations about the same. The issue again came up for consideration before the Supreme Court in Delhi Administration v. Gurdeep Singh Uban JT (1999) 7 SC 44 (hereinafter referred to as ?Gurdeep Singh Uban I?). The Supreme Court in this case held that the judgment in Balak Ram Gupta's case (supra) was not a judgment in rem and would be confined to only those writ petitions which were covered by that judgment. The appeal of the Delhi Administration was allowed and the writ petitions filed in this Court were dismissed on the ground that they had not filed any objections u/s 5-A of the Act and therefore, it was not open to them to raise the issue of non-consideration of the objections and thus, principle in Balak Ram Gupta (supra) would not be applicable to them.

5. In spite of this judgment, certain cob webs remained which the Supreme Court sought to clear in the case of Delhi Administration v. Gurdeep Singh Uban 2000 (7) SCC 289 (hereinafter referred to as ?Gurdeep Singh Uban II?).

6. The impact of all these judgments came to be considered by a Division Bench of this Court in *Chatro Devi v. Union of India and Ors.* The Bench comprising of Swatanter Kumar, J. (as his Lordship then was, now the Chief Justice, Bombay High Court) and Madan B. Lokur, J., however, differed with each other on the exact nature of principle of law laid down by the Supreme Court in the aforesaid cases. Their two separate opinion are reported as *Smt. Chatro Devi Vs. Union of India (UOI) and Others*, . The matter was accordingly referred to the third Judge, namely, Tirath Singh Thakur, J. (as his Lordship then was). The third Judge concurred with the opinion of Madan B. Lokur, J. and the judgment is reported as *Smt. Chatro Devi and Others Vs. Union of India (UOI) and Others*, . Therefore, this majority view would hold the field in so far as this Court is concerned. The position as summed up by Madan B. Lokur, J. in his judgment is contained in paras 56 to 62 thereof, which is reproduced below:

56. From the above discussion, it appears to me that the following propositions of law are quite well settled:

The right of hearing u/s 5-A of the Act is a substantial right. (See *Nandeshwar Prasad and Another Vs. The State of Uttar Pradesh and Others*, . It is not empty formality but is a substantive right. (See *Union of India (UOI) and Others Vs. Mukesh Hans etc.*,

The right u/s 5-A can be taken away for good and valid reason. (See *Union of India (UOI) and Others Vs. Mukesh Hans etc.*, But, it cannot be taken away as if by a side-wind. (See *Nandeshwar Prasad and Another Vs. The State of Uttar Pradesh and Others*,

57. This being the legal position, I do not think that proceedings u/s 5-A of the Act should have been conducted in such a casual manner as the Respondents have done in respect of village Chhatarpur, Khanpur, Satbari, Tughlakabad, Khirkee and Deoli. Consequently, I would, with respect, follow the view taken in *Balak Ram-III* and hold that the inquiry u/s 5-A of the Act held in respect of the Petitioners in the present batch of cases who had filed objections is vitiated since it was held contrary to the principles of natural justice. Of course, this would not apply to the inquiry held in respect of Tigri village because no case from that village is listed in this batch of cases.

58. In addition to the above, it is also necessary to mention a decision of another Division Bench of this Court in *Hari Ram Kakkar Vs. Union of India and others*, . The petitioner therein had filed objections u/s 5-A of the Act. The Division Bench fully endorsed the reasoning given in *Balak Ram-III* in respect of the inquiry u/s 5-A of the Act pertaining to village Satbari. The Division Bench noted in paragraph 4 of the Report that the facts of the case show that there is no record of any hearing conducted by the previous Collector u/s 5-A of the Act or by the Collector who submitted the report to the appropriate Government. There was, therefore, a complete negation of the right conferred on land owners u/s 5-A of the Act. On the issue whether the inquiry u/s 5-A of the Act is administrative or

quasi-judicial or judicial, the Division Bench held (in paragraph 6 of the Report) that:

It is a basic principle of natural justice that when a hearing is required to be given under a mandatory provision in a statute, it cannot be allowed to be reduced to a farce in the sense that hearing is provided by one officer and decision is taken by another officer. The very argument is reprehensible.

59. Nothing has been shown by learned Counsel for the Respondents to persuade me to disagree with the view rendered by two Division Benches of this Court both of which essentially follow a long line of decisions rendered by the Supreme Court that a hearing u/s 5-A of the Act has to be an effective hearing and that an inquiry u/s 5-A is a valuable right given to a land owner which must be given some meaning and substance.

60. As far as the inquiry in respect of villages Shayoorpur, Maidan Garhi and Rajpur Khurd is concerned, the Division Bench in Balak Ram-III set aside that report on merits and not on the ground that there was any violation of the principles of natural justice which would go to the root of the validity of the inquiry. The reason given by this Court in Balak Ram-III for holding the inquiry to be vitiated is that the report was a non-speaking report which did not deal with all the objections and, therefore, the satisfaction of the Lt. Governor suffered from non-application of mind. This reasoning has been found to be incorrect by the Supreme Court in Uban-I and Uban-II and, therefore, to this extent, Balak Ram-III must be deemed to be overruled. Additionally, I am of the view that while dealing with a report u/s 5-A of the Act the appropriate Government is not required to write a judgement, as it were, nor is this Court while exercising its jurisdiction under Article 226 of the Constitution, sitting in appeal over the satisfaction of the appropriate Government. Consequently, the inquiry u/s 5-A of the Act in respect of village Shayoorpur, Maidan Garhi and Rajpur Khurd must be held to be valid as also the satisfaction of the Lt. Governor based on the report submitted by the Collector in respect of these villages. The writ petitions in respect of these three villages must be dismissed.

61. In so far as the writ petitions in respect of village Neb Sarai are concerned, since the Petitioners did not file any objections u/s 5-A of the Act, their writ petitions must be dismissed in view of Abhey Ram, Uban-I and Uban-II.

62. In so far as the present writ petition is concerned, Chatro Devi filed objections u/s 5-A of the Act. Her land is in village Chhatarpur. For the reasons given above, her writ petition must be allowed since the inquiry u/s 5-A of the Act has been held to be vitiated by two Division Benches of this Court. Consequently, the declaration u/s 6 of the Act in respect of her land must also be set aside.

7. It would also be pertinent to point out at this stage that another batch of writ petitions with lead case known as Raghbir Singh and Ors. v. Union of India and Ors. WP (C) No. 3186/2000 was decided by the same Bench on 19.5.2005.

Though both Swatanter Kumar and Madan B. Lokur, JJ. wrote separate judgments, there was an agreement on the final outcome and by that judgment all these writ petitions were dismissed. In the judgment rendered by Swatanter Kumar, J. the issues were discussed under the following five heads:

- (1) Delay and laches
- (2) The issue relating to subsequent purchasers.
- (3) Possession of the acquired land.
- (4) The effect of the inquiry u/s 5-A of the Act.
- (5) Continuing public purpose.

8. In the present petition since we are not concerned with all these facets and our focus is the effect of inquiry u/s 5-A of the Act, we would like to discuss that aspect only. On this aspect Swatanter Kumar, J. reiterated the view taken by his Lordship in Chatro Devi (supra) and Madan B. Lokur differed with him reiterating previous view taken by his Lordship in Chatro Devi (supra). Notwithstanding the same, Madan B. Lokur also agreed with the conclusion that the writ petitions should still be dismissed because of the following reasons:

101. While I believe the principle of law laid down in all these cases is correct, yet I am unable to give the benefit of that principle to the Petitioners in the present batch of cases. The reason for this is that the declaration u/s 6 of the Act was made way back in 1985. The Petitioners objection to the procedure adopted in the Section 5-A inquiry, which led to the issuance of the declaration u/s 6 of the Act, has been made for the first time after a lapse of a minimum of about 14 years, since most of the present batch of writ petitions were filed in 1999-2000-2001. Since the Petitioners did not object to the alleged procedural lapses for such a long period of time, I would assume that they have either waived their rights to raise any such objections or that they were not prejudiced by the Section 5-A inquiry in as much as they felt that they had been given a fair opportunity of placing their point of view or that they had no objection to the procedure adopted. No explanation is forthcoming to even explain this delay in raising the objection.

102. A somewhat similar situation had arisen in Tej Kaur, which has been referred to by my learned brother Swatanter Kumar, J. and the relevant passage in the decision of the Supreme Court has also been extracted in his judgement. In that case, even though the Supreme Court was satisfied on merits that the objections of the appellants therein were considered by the Collector, yet it was additionally noted that the declaration in that case was made on 18th March, 1992 and the award was passed on 15th March, 1994 while the writ petition was filed only on 12th April, 1994, that is, after a gap of a little over two years from the date of the declaration and after the award was made. This delay was taken into account by the Supreme Court for concluding that, if nothing else, the appellants therein did not have a genuine grievance against the Section 5-A

inquiry held by the Collector.

103. In the present batch of cases, I am dealing with a delay of a minimum period of about 14 years. As already mentioned, there is absolutely no explanation given by any of the Petitioners why they did not raise any grievance about the Section 5-A inquiry for such a long period of time. In view of the silence of the Petitioners for the entire period, I am of the opinion that they must be deemed to have either waived their rights to challenge the Section 5-A inquiry or that otherwise they do not have any legitimate or genuine grievance in respect of the manner in which their objections were considered u/s 5-A of the Act.

104. As already expressed in *Chatro Devi*, the decisions rendered by the Supreme Court in *Commissioner of Income Tax, Madras Vs. M/s. Rambal Private Ltd. etc.*, and *Delhi Administration Vs. Gurdip Singh Uban and Others*, are not concerned with this particular issue and, therefore, do not have any effect on the result earlier arrived at by this Court in *Balak Ram Gupta*, which was later followed in *Hari Ram Kakkar* (after both the decisions rendered in *Gurdip Singh Uban*).

105. Therefore, I am in agreement with the conclusion arrived at by my learned brother Swatanter Kumar, J. that the acquisition proceedings are not liable to be quashed due to a defect in conducting the inquiry u/s 5-A of the Act, though my reasons are entirely different.

We have deliberately quoted from the opinion rendered by Madan B. Lokur, J. only because of the reason that it is the view of Madan B. Lokur, J. in *Chatro Devi* (supra) which found favour with Tirath Singh Thakur, J. as pointed out above.

9. It follows from the aforesaid view is that utmost sanctity to Section 5-A is to be attached as that is a valued right given to the land owners and if the provisions of Section 5-A of the Act are not strictly followed or there is any procedural lapse, in the inquiry conducted into the objections, that would vitiate the acquisition of land. But at the same time there may be circumstances where it is to be assumed or inferred that land owners either waive their rights to raise such objections or they are not prejudiced by Section 5-A inquiry. One circumstance, as noted in the aforesaid judgment, would be assumed when no steps were taken to challenge the declaration u/s 6 of the Act for a long time. Other circumstance mentioned in the aforesaid judgment itself, which would lead to the said presumption, is that when no such objection was taken and in that eventuality it would be inferred that the land owners were not prejudiced by the said inquiry. We have to keep the aforesaid principles, as culled out from the aforesaid judgment, in mind while dealing with the present case.

10. Before undertaking this exercise we may point out that this writ petition was tagged in the batch decided along with WP(C) No. 3186/2000 (*Raghubir Singh and Ors. v. Union of India and Ors.* and the petitions were dismissed.

11. Thereafter, the petitioners moved the application for recall of the order qua this petition on the ground that they had, in fact, filed objection u/s 5-A of the Act and therefore, their case was not similar to the said batch and was wrongly included therein. In this application, order dated 14.3.2008 was passed and the Court clarified that this petition would not be treated as governed by the said decision dated 19.5.2005 and should be separately heard and decided on its own merits as the question to be determined was as to whether the case of the petitioner is covered by the decision rendered in Chatro Devi (supra). This order highlights the controversy between the parties and therefore, it would also be appropriate to reproduce the same:

In so far as the present writ petition is concerned, it has been pointed out by learned Counsel for the parties that in the writ petition the Petitioner did not mention anything about filing objections u/s 5A of the Land Acquisition Act, 1894 to the acquisition of his land in the writ petition. However, subsequently, the Petitioner filed an application being CM No. 10788/2002 and that application came up for consideration on 10th January, 2003. The Division Bench which dealt with the application passed the following order:

On the last date, time has been taken by learned Counsel for the Respondent to file reply. Neither reply has been filed nor counsel for the Respondent is present.

Allowed to the extent that hearing of the main writ petition is expedited. learned Counsel for the Petitioner can urge all other points mentioned in the application while making submissions in the main writ petition.

Application stands disposed of.

It is clear from the above order that the Petitioner was entitled to urge all points raised in the application including the fact that he had filed objections u/s 5A of the Land Acquisition Act, 1894.

For the present, we are not concerned with the consequence of the Petitioner having filed objections u/s 5A of the Land Acquisition Act, 1894.

When this writ petition came up for hearing along with the main case of Raghubhir, the Petitioner was not represented. The Petitioner has given absolutely no reason why he was not present on that date. We find this to be a little unfortunate and are also a little unhappy that the application has been drafted in such a casual and cavalier manner.

Be that as it may, according to learned Counsel for the Petitioner, this writ petition was wrongly heard and decided along with the main case of Raghubhir. It is submitted that the writ petition is actually similar to Writ Petition (C) No. 2591/1985 which was delinked from the batch of cases concerning Raghubhir. Therefore, this writ petition should also have been delinked along with Writ Petition (C) No. 2591/1985 and it should actually have been referred and heard along with the case of Chatro Devi.

According to learned Counsel for the Respondents, who is opposing this application, the application is really in the nature of a review although it has been styled as an application for recalling the order dated 19th May, 2005.

We do not propose to go into this issue because it has been noted by the Supreme Court in Rameshwar Prasad Vs. Managing Director U.P. Rajkiya Nirman Nigam Limited and Others, that an application for clarification, modification or recall would be maintainable in appropriate circumstances. The present is an application for recall and we feel that since an error has been committed while disposing of the writ petition, it will be appropriate if the Petitioner is allowed to contest it and submit that it is covered by the decision rendered by this Court in the case of Chatro Devi.

The Respondents, on their part, would be entitled to raise the objection that the case of the Petitioner is not covered by the decision in the case of Chatro Devi.

In any event, both the parties can agitate their respective points of view only if the application is allowed and the matter is left to the appropriate Division Bench to determine whether the case of the Petitioner is covered by the decision rendered in the case of Chatro Devi or not.

If the Petitioner is not given an opportunity of placing his point of view, the result would be that the case of the Petitioner would have been dismissed by a decision which is not at all applicable to the Petitioner. Surely, it is not possible to permit this to happen. Therefore, the application deserves to be allowed.

There is no dispute about the fact that the Petitioner has filed objections u/s 5A of the Land Acquisition Act, 1894, as has been admitted by the Respondents in their reply to the application. This clearly shows that the case of the Petitioner is not covered by the decision rendered in the case of Raghubhir.

Under the circumstances, we allow this application with costs of Rs.15,000/-, which will be paid by the Petitioner to the Respondents within a month from today.

12. The aforesaid order, in fact, sets down the respective contention of the parties. It is not in dispute that the petitioner in the writ petition had not raised any plea that he had filed objection u/s 5-A of the Act. This petition was originally filed in the year 1986. However, CM under Order VI Rule 17 of the CPC seeking amendment of the petition was filed in the year 2002. By this CM the petitioner wanted to incorporate the plea to the effect that he had preferred objections u/s 5-A of the Act. In this application, order was passed permitting the petitioner to raise the plea regarding Section 5A of the Act in the following manner:

The petitioner can urge all other points mentioned in the application while making submissions in the main writ petition.

13. It is clear that if the plea regarding filing of the petition u/s 5-A and non-

consideration thereof in an appropriate manner was taken by the petitioner in the writ petition, the result in *Chatro Devi* (supra) would have followed in this case as well. Therefore, the entire controversy boils down to the issue as to whether the petitioner can take shelter of order dated 10.1.2003 and contend that objections were filed by him and therefore, his case should be treated as covered by *Chatro Devi* (supra). According to the learned Counsel for the petitioner, this course of action is required more particularly when in the affidavit dated 3.12.2007 filed by the respondent it is specifically admitted that the petitioners had filed objection u/s 5-A of the Act. Mr. Poddar, learned Counsel appearing for the respondent, on the other hand, made a vehement plea that the averments made in the application for amendment under Order VI Rule 17 CPC cannot be taken into consideration. This plea of the learned Counsel for the respondent was on the premise that the averments regarding filing of the objection was taken for the first time in the year 2002, i.e., more than 16 years after the filing of the writ petition. Since this plea was not taken initially in the writ petition, this Court should infer that the petitioner was not aggrieved by non-consideration of his objections u/s 5-A of the Act. To buttress this submission he referred to two judgments of this Court in *Vinod Kapur and Ors. v. Union of India* and Ors. 145 (2007) DLT 328 and *Mr. H.K. Kapoor Vs. Union of India (UOI)*, Lt. Governor of Delhi, Delhi Administration, Land and Building and Land Acquisition Collector, He also handed over certain unreported judgments in support of the same plea.

14. In *H.K. Kapoor* (supra), the petitioner had filed the writ petition in the year 1986, which was dismissed relying upon the judgment in the case of *Gurdeep Singh Uban II* (supra) on the ground that there was no plea in the writ petition that objections u/s 5-A of the Act were filed. The petitioner thereafter filed application seeking review of the order dated 14.12.2004 vide which the writ petition was dismissed. This review was filed stating that the petitioner had, in fact, filed objections u/s 5-A of the Act, though at the time of filing of the writ petition this fact was inadvertently could not be highlighted. The review petition was dismissed by the Division Bench in the aforesaid judgment, inter alia, on the ground that no such plea was taken by the petitioner after filing the writ petition in the year 1986 and no steps were taken even for amending the writ petition, which was heard finally on 14.10.2004. The Court further observed that:

6. It is unbelievable that an owner/purchaser of the land who had filed objections u/s 5A of the Land Acquisition Act, raising serious objections to acquisition of his land, would not even whisper this fact in the body of the writ petition. On the contrary, the petitioner had specifically stated in the writ petition and has even admitted in the writ petition that the land owners in the Revenue Estate of the Village, where the land of the petitioner was situated, also received notices in the first week of January, 1984 purporting to be u/s 5A of the Act and directing them to appear before the Collector for a personal hearing on the objections.

7. Having made these specific averments in the writ petition, the petitioner

cannot be permitted to withdraw the said admissions, that too to the prejudice of the other side. Normally, withdrawal of an admission is not permissible in law. At best, it could be explained unless there were such compelling circumstances which would persuade the Court to permit the party to withdraw an admission. For such a permission, it is necessary for a party to place on record, proper and reasonable explanation for making such an admission. It will be contrary to the conduct of a party with common prudence, to not disclose in the writ petition that it had filed objections u/s 5A, as it is likely to be divested of its property with due process of law. The petitioner who claims to be owner of the land is certainly not an illiterate farmer or villager who can take shelter of lack of knowledge and legal procedure. The mere fact that in other cases record of the Land Acquisition Collector is alleged to have been filed, where name of the petitioner is shown in the list, would be no ground for review of the judgment because the said records were available to the petitioner, besides his own personal knowledge. The conduct of the petitioner in approaching the Court after a delay of nearly 19 years, by itself would be a sufficient ground for rejecting this application for review. Case of the petitioner was heard in presence of the Counsel for the petitioner and the writ petition was dismissed in the light of the judgment of the Supreme Court in the case of Abhey Ram (dead) by LRs. and others Vs. Union of India and others, and Anil Hada Vs. Indian Acrylic Limited, . learned Counsel for the petitioner relied upon a Division Bench judgment of this Court in WPC No. 1115/1987 decided on 27th April, 2005 wherein in some other matters, application under Order VI Rule 17 CPC was allowed and the petitioner was given opportunity to amend the writ petition incorporating the plea of filing objections u/s 5A and the acquisition proceedings being bad on that account. That case has no application to the present case. The application was filed in that case during the hearing of the writ petition itself, while in the present case writ petition has already been dismissed. In the present case, there was a specific averment on behalf of the petitioner that he did not file objections u/s 5A while in that case no such averment was made in the writ petition, but in the counter affidavit filed and the list placed on record, it was admitted that the petitioner had filed objections. In these circumstances, we cannot draw any parity, even on fact, with that case.

15. This case is clearly distinguishable as in the present case petitioner's application for amendment was, in fact, filed during the pendency of the writ petition itself. In Vinod Kapur (supra), the factual position was almost the same as in H.K. Kapoor (supra). In that case also, writ petition was filed in the year 1986, but no averments regarding filing of the objections u/s 5-A of the Act was made in the writ petition. The writ petition was dismissed on 7.12.2004. Thereafter, the petitioner filed review petition on the ground that the petitioner had, in fact, filed objection u/s 5-A of the Act and there was an inadvertent omission in not mentioning this fact to the predecessor of the petitioner. While dismissing the review petition, following observations were made:

7. The judgment of this Court disposing of the petition was rendered in a batch

of cases where one of the contentions raised was that the declaration of law in Balakram-II operated as a judgment in rem, thus, entitling all land owners whose lands were notified for acquisition to relief. This Court had negative the contention on the basis of three rulings of the Supreme Court, namely, Delhi Administration Vs. Gurdip Singh Uban and Others etc., (hereafter called 'Uban-I') and Delhi Administration Vs. Gurdip Singh Uban and Others, (hereafter called 'Uban-II'). In those judgments, the Supreme Court clearly ruled that the declaration as to invalidity of the notifications enured only in favour of the petitioners before the Court, in Balak Ram-II.

8. The facts of this case would disclose that the notification in question was published on 25.11.1980. Initially, the question raised was whether the validity of that period lapsed automatically after three years. That doubt was cleared by a Full Bench ruling in Balak Ram Gupta Vs. Union of India (UOI), . The respondents proceeded to issue a declaration u/s 6 of the Land Acquisition Act on 7.6.1985. The petitioner admittedly was not the owner of the lands. Neither the averments in the writ petition nor in the review petition furnish any details as to when the present petitioner acquired title. Admittedly, the present petitioner did not file any objections u/s 5A; no documentary evidence is forthcoming in the review petition. The only basis on which relief has been claimed now is that its predecessor-in-interest had preferred an objection u/s 5A.

9. It is well settled law that review jurisdiction is available to a litigant where he can satisfy the Court that despite due diligence he could not secure material evidence or documents which would have otherwise altered the decision of the Court. A review is also maintainable if new evidence comes to light which has material bearing on the decision. In the present case neither of these prerequisites have been satisfied. The circumstances urged in support of the claim for review are those which were always available to the petitioner. He did not choose to urge them in the petition or during the course of the proceedings.

16. The aforesaid observations are also in the context of review jurisdiction and therefore, it would not be apt to rely upon this judgment for deciding the controversy before us.

17. On the other hand, in all those cases where the amendment was allowed and the petitioners were permitted to raise the plea predicated on Section 5A of the Act, writ petitions were earlier allowed. Some such petitions are covered by Chatro Devi (supra) itself.

18. In the present case also during the pendency of the writ petition, application for amendment was filed and order dated 10.1.2003 was passed permitting the petitioner to urge all these points mentioned in the application. The necessary implication of this order would be that the amendment application was allowed as the petitioner was permitted to urge the contention that he had filed objections u/s 5-A of the Act, but those objections were not properly considered by the Land Acquisition Collector. That order attained finality as it was not

challenged by the respondents. Therefore, it would not even be permissible for the respondents to contend to the contrary and argue that the petitioner should not be allowed to raise the issue of filing of the objections u/s 5-A of the Act. The necessary consequence would be that the case of the petitioner would be covered by the judgment in Chatro Devi (supra).

19. We accordingly, allow this petition and make the rule absolute and quash the declaration u/s 6 of the Act in so far as it relates to the land of the petitioner on the ground that inquiry u/s 5-A of the Act has been held to be vitiated by the Division Benches of this Court earlier. There shall be no orders as to costs.