

(1998) 09 DEL CK 0073

In the Delhi High Court

Case No : Civil Writ No"s. 1628 and 1629 of 1995

Sita Ram Bhandar Society

APPELLANT

Vs

Lt. Governor and Others

RESPONDENT

Date of Decision : 02-09-1998

Acts Referred:

Evidence Act, 1872 — Section 114

Land Acquisition Act, 1894 — Section 16

Citation : (1998) 47 DRJ 30

Hon'ble Judges : K. Ramamoorthy, J;Devinder Gupta, J

Bench : Division Bench

Advocate : R.K. Anand and Lokesh Sawhney, for the Appellant; Jayant Bhushan, for D.D.A. and Pinky Anand, for R. 2 and 3, for the Respondent

Final Decision : Dismissed

Judgement

Devinder Gupta, J.—These two writ petitions have been preferred by the petitioner society, registered under the Societies Registration Act. It is claimed that the petitioner is a non-profit religious institution for carrying out religious, philanthropic, charitable activities; propagation and upliftment of Hindu religion and to look after deserving Hindus poor widows who are in financial distress. A number of Dharamshalas, educational institutions are run by it and is known for its charities. The petitioner claims that a piece of agricultural land comprised in khasra No. 157, measuring 8 bighas and 11 biswas, situate within revenue estate of village Lado Sarai, Tehsil Mehrauli, Delhi was purchased by it through sale deed dated 8.8.1951.

2. The above land has since been the subject matter of acquisition for public purpose, on the basis of notification dated 13.11.1959 issued u/s 4 of the Land Acquisition Act, Award dated 19.6.1980 was passed by the Collector Land Acquisition u/s 11 of the Land Acquisition Act, 1894 (for short "the Act").

3. In C.W.1628/95, the prayers made are for restraining the respondents from acquiring or taking possession of the land for the purpose of implementing the

Master Plan of 1962 and for quashing the notification issued u/s 22(1) of the Delhi Development Act, 1957. The prayer clause read:-

"i)restrain the respondents Delhi Development Authority and others from acquiring or taking possession of the land of the petitioner bearing Khewat No.57, Khasra No. 157, measuring 8 bighas and 11 bids was i.e. 8620 sq. yds (about 1.8 acres) situated in the revenue estate of village Lado Sarai, Tehsil Mehrauli, Delhi, Union Territory of Delhi other than for the purpose of implementing the Master Plan 1862, the Zonal Plan for the Zone F-16, dated 26.5.1964/30.6.1966, the subsequent Master Plan 2001 dated 1.9.1990 and the subsequent Zonal Plan for Zone F (South Delhi) dated 21.9.1993 as the entire area falling in Zone F-16 where the said land of the petitioned is situated has been set apart for the exclusive purpose of recreational/District Park/Major Children park.

ii) Writ, order or directions in the nature of Mandamus directing the respondents not to use the land in village Lado Sarai falling in Zone F/16 as shown in the zonal plan and the Master Plan, contrary to the provisions of the Zonal Plan/Master Plan.

iii)Writ, order, directions in the nature of certiorari thereby quashing the notification issued u/s 22(1) of the DD Act, 1957 as the same is without jurisdiction and illegal and the land never vested in the Central Government."

4. In Civil Writ No.1629/95, it is prayed that directions be given to the respondents to withdraw from acquisition proceedings the petitioner's land as the purpose, which was sought to be achieved by acquiring the property can no longer be implemented. The prayer clause read:-

"Issue a writ and an order or direction in the nature of Mandamus or any other appropriate writ directing the respondents herein to withdraw from the acquisition proceedings the land of the petitioner bearing Khewat No.57, Khasra No.157, measuring 8 bighas and 11 bids was i.e. 8620 sq. yds (about 1.8 acres) situated in the revenue estate of village Lado Sarai, Tehsil Mehrauli, Delhi, Union Territory of Delhi by issuing the necessary Notification u/s 48 of the Land Acquisition Act, as the public purpose of planned development set out in the section 4 notification dated 13.11.1959 and the section 6 notification dated 16.5.1996 and as specified in the Master Plan, 1962, the zonal Plan for the Zone F-16 dated 25.5.1964/30.6.1966 and also the subsequent Master Plan 2001 dated 1.9.1990 and the subsequent Zonal Plan for Zone F (South Delhi) dated 21.9.1993 which plans have been given overriding effect by virtue of the provisions of section 53(2) of the Delhi Development act, 1956 these plans would prevail over all other laws, can no longer be implemented."

5. In order to appreciate clearly the purpose for which these two petitions have been filed, firstly the admitted facts, as have been brought on record on affidavits, may be noticed.

6. On 13.11.1959 a general notification was issued by the Chief Commissioner of Delhi u/s 4 of the Act notifying vast tract of land measuring 34,070 acres barring (a) Government land and evacuee land; (b) the land already notified under the provisions of the Act for any Government scheme; (c) land already notified for House Building Co-operative Societies; and (d) the land under grave yards, tombs, shrines and the land attached to religious institutions and waqf properties or likely to be acquired for a public purpose, namely, Planned Development of Delhi.

7. As the petitioner's land aforementioned was also included in the said notification, on 10.12.1959 objections were filed by the petitioner that its land be exempted from the proposed acquisition. After disposal of the objections, the Chief Commissioner proceeded to issue declaration u/s 6 of the Act, which was duly published on 16.5.1966. On 19.6.1980 Collector, Land Acquisition proceeded to make his award No.36/80-81 u/s 11 of the Act, relating to the land situated in village Lado Sarai, which also included the petitioner's land. Within this revenue estate of Lado Sarai, the total area notified for acquisition was 2,153 bighas and 2 biswas, but the award made was only with respect to 1996 bighas and 18 biswas, thereby leaving an area of 156 bighas and 4 biswas, for the time being, from being acquired (details of the area left out from acquisition were given stating that about 146 bighas and 18 bids was built up and was to be acquired on a latter date through a supplementary award, 3 bighas and 3 bids was had already been acquired through award No.4/77-78, an area of 5 bighas and 16 bids was comprised in khasra No.672/48 was stated to have been denotified on 19.9.1967 and 7 bids was stated to have been the variation in area due to carving out of various tatimas). The petitioner's property comprised in khasra No.157 was not the one included in the above 156 bighas 4 biswas, which was the area left out but was included in the total area of 1996 bighas 18 bids was for which award had been made. At this stage it may be pointed out that the petitioner during the course of arguments raised a question that since the award did not include such part of the property, which was built upon and the same had been left out for the time being from acquisition and as in the khasra girdwari the petitioner's land was shown to be built up, Therefore, the petitioner's property also will be deemed to have been left out from acquisition. This question will also be considered in later part of this judgment, in the light of the material placed on record.

8. Pursuant to the making of the award, possession of 1933.2 bids was taken over by the Collector, Land Acquisition from 20.6.1984 to 20.6.1986 after the same was demarcated on the spot. Possession of 61 bighas 6 bids (detail of which is mentioned in the proceedings recorded at the time of taking over of possession), could not be taken over, as the same was found to be built up. Possession proceedings also record that possession of 61 bighas 6 bids was to be obtained after removal of structures with the help of demolition squad. However, physical possession of an area measuring 1933 bighas and 2 bids was after being taken over was delivered to the Land and Building Department.

9. On 29.7.1980 a notification was issued by the Central Government u/s 22(1) of the Delhi Development Act thereby placing the acquired land at the disposal of the Delhi Development Authority. This notification stated that the possession of the land had already been handed over to the Delhi Development Authority.

10. Feeling aggrieved, the petitioner made an attempt to challenge the acquisition proceedings qua its property by filing Civil Writ No.1068/80 in this Court in the month of August, 1980. Legality and validity of the notification u/s 4 and declaration u/s 6 of the Act was challenged in the said writ petition. It was dismissed in limine on 18.8.1980. Still feeling aggrieved, SLP was preferred by the petitioner, which was granted. The appeal was registered as Civil Appeal No. 1738/81, titled as Mandir Sita Ramji alias Shri Sita Ram Bhandar v. Lt. Governor of the Union Territory of Delhi and Ors.

11. With a view to challenge the acquisition proceedings on additional grounds, separate petition under Article 32 of the Constitution of India was filed by the petitioner in the Supreme Court, namely, Civil Writ Petition No.2220/81, titled as Mandir Sita Ramji alias Shri Sita Ram Bhandar v. Lt.Governor of the Union Territory of Delhi and Ors. It is the petitioner's case that on 15.7,1981 an order was passed by the Supreme Court staying its dispossession, which order was confirmed on 16.9.1982. The said order continued to remain in operation till the disposal of its Civil Appeal No.1738/81 by the Supreme Court.

12. In addition to the above, the petitioner also filed Suit No. 1226/92 on the Original Side of this Court praying for a decree of injunction against the respondents including the Delhi Development Authority not to demolish any structure or to interfere in the petitioner's possession and management of the land. Interim injunction was granted restraining the respondents from demolishing any further structure. It is stated that the said suit now stands transferred to the District Courts, Delhi in which the temporary injunction is still in operation.

13. On the strength of the above facts, the petitioner claims that the possession of the land remained with it and the land is still in its occupation. When the Delhi Development Authority tried to interfere with the petitioner's management and did not desist from interfering with the petitioner's possession, despite the order of 19th May, 1992 directing respondent Authority to ensure the compliance of order of injunction dated 2.4.1992, the petitioner preferred C.C.P. No.36/93 against the Delhi Development Authority and the Police Authorities. Again when the Delhi Development Authority tried to interfere with the management of the petitioner on the land in question, another contempt petition was preferred on 25.4.1995, which is also pending.

14. It is alleged that on 20.7.1993 the Supreme Court dismissed the petitioner's appeal (Civil Appeal No.1738/81) as also its writ petition (C.W.No.2220/81). In the meanwhile, notification had been issued u/s 22(1) of the Delhi Development Act. A challenge was also made by the petitioner to the said notification and to

the provisions of the Delhi Development Act by filing C.W.No.700/94, which was dismissed as withdrawn on 8.9.1995. Another writ petition was filed by the petitioner in this Court on 22.2.1995 concerning the property in question, which was also dismissed as withdrawn on 19.4.1995.

15. The basis for the reliefs claimed in C.W. 1628/95 is that the purpose of acquisition, as disclosed in the declaration made u/s 6 of the Act was public purpose, namely, Planned Development of Delhi. It implies development of land, in accordance with the Master Plan and Zonal Plan. It is alleged that the Master Plan of Delhi, 1962 showed the entire Zone F-15 and F-16 reserved for Recreational/District Park/ Major Children Park. There was no reason to suspect that the respondents would commit breach of their statutory obligations under the Delhi Development Act by not adhering to the Master and Zonal Plans. The Second Master Plan was published on 28.11.1964 and modifications were carried out therein on 15.1.1966 and 1.4.1966 under which the petitioner's land was sought to be partly used for 200 feet wide Mehrauli Road and partly for Recreational Zone. But when Zonal Plan for F-15 was prepared, half of the petitioner's land was shown for recreational Zone. There was change in the proposed 200 ft. Mehrauli Road.

16. The grievance of the petitioner is that the respondents are guilty of playing fraud on the public by committing wholesale breach of Master Plan 1962/2000 and Zonal Development Plans. The respondents are also guilty for not disclosing to the general public the actual development carried out. The decision to carry out further development is illegal and contrary to Zonal Plans and Master plans. The Central Government was not competent to transfer/place the land at the disposal of the Delhi Development Authority as the land never vested in the Central Government. As there have been violation in the Master Plan and Zonal Plans, the petitioner was entitled to seek direction against the respondents not to acquire or take over possession of the petitioner's land and also to seek quashing of the notification issued u/s 22(1) of the Delhi Development Act.

17. On the same facts in Civil Writ No. 1629/95, it is claimed that the petitioner's land was acquired for a definite public purpose, namely, planned development, as per Master Plan/Zonal Plan. After the finalization of Zonal Plan and much before the issuance of notification 6 of the Act, there have been numerous modifications. As per the Master Plan 1962, Master Plan 2001 and Zonal Development Plan for Zone F/16 and also in the Draft zonal Plan published in January 1994, the petitioner's land is shown as acquired, partly for the 200 feet wide Mehrauli Road linking All India Medical Institute crossing and Mehrauli Badarpur Road and partly for Recreational area. But 1969 Plan indicate change of land use of one khasra number just opposite to the petitioner's land, wherein land use was changed from Regional Park/District Park to Service Industry and the land adjacent to the petitioner's land was converted into a Petrol Pump. These changes do not find mention in the Zonal Plan published in January, 1994. The Delhi Development Authority changed the land use of the petitioner's

property illegally. Instead of 200 feet road and recreational area, the land has been earmarked for college site. The land just behind the petitioner's land and in possession of the Delhi Development Authority has been duly fenced wherein board has been displayed showing "Site for College".

18. Thus it is claimed that the Delhi Development Authority has actually and physically changed the land use, illegally without proposing any amendment to the Zonal Plan, thereby circumventing Section 11A of the Delhi Development Act. It is stated the Master Plan being contrary to the provisions of law is nullity. The petitioner's land was acquired for definite public purpose, as per the Master Plan prepared in 1962, which is still operative and continues to be a document u/s 11A of the Delhi Development Act. The initial proposal for 200 feet wide road, passing through the petitioner's land has altogether been abandoned. Road going right through the Southern Side of the petitioner's land and existing petrol pump and connecting 120 Delhi Mehrauli Road has already been constructed, thereby abandoning all further proposals for altering the road position and widening the same. Therefore, the purpose of acquisition, namely, to utilize part of the land for the purpose already notified stands defeated. There being a change in public purpose for acquisition midstream illegally and the respondents having excluded vast tracts of land in the close vicinity, Therefore, direction deserves to be issued to the respondents to withdraw the petitioner's land from acquisition.

19. The respondent/D.D.A. in its reply stated that notification dated 13.11.1959 was issued with respect to a vast track of land, when the said land was sought to be acquired for Planned Development, which is a public purpose. The petitioner filed objections. The Collector made the award, after declaration u/s 6 of the Act was made. The award left out only a small portion of built up land, clearly stating that the built up portions will be acquired by supplementary award(s). However, the petitioner's land is fully covered by the award dated 19.6.1980 and pursuant to the said award physical possession of the, petitioner's land was taken over on 20.6.1980. After the possession had been taken over, the same was handed over to the Delhi Development Authority. A notification u/s 22(1) of the Delhi Development Act was issued on 29.7.1980 placing the said land at the disposal of the Delhi Development Authority.

20. After the award had been made and possession obtained, the petitioner challenged the acquisition proceedings by filing Civil Writ No. 1068/80, which was dismissed. The petitioner further appealed to the Supreme Court and also filed a separate Civil Writ petition under Article 32 of the Constitution of India making a grievance of non-issue of notice u/s 9 of the Act. The same were dismissed. The petitioner had obtained an order of stay of its dispossession but the said order was ineffective and meaningless, as possession had already been taken over much prior to filing of the proceedings in Supreme Court. With malafide object a civil suit was also filed by the petitioner claiming a decree for injunction not to demolish the construction on the land. The petitioner was not in

possession. The land stood vested in respondents. There was no construction on the land. As such the very act of filing of the instant petitions, after the petitioner's challenge to the acquisition proceedings had failed and after the petitioner had withdrawn Civil Writ No.700/94, is nothing but abuse of the process of law.

21. It is stated that in C.W.700/94, while challenging the constitutional validity of Section 22A of the Delhi Development Act, the petitioner also sought relief for alternative allotment. Alternative allotment, if at all could be made, would be only because of acquisition of the petitioner's land and that also in terms of the policy of the State Government. On withdrawal of the said writ petition No.700/94, the petitioner will be deemed to have accepted valid acquisition of its property, as on behalf of the petitioner it was stated that the petitioner would apply for alternative allotment of land in Institutional Area.

22. In reply, it is further stated that the Planned Development of Delhi is a purpose for which the land was acquired. The same was public purpose. The same did not have any reference to Master Plan or Zonal Plan, which were prepared before issuance of notification u/s 4 of the Act. Master Plan and Zonal Plan by their very nature cannot be static and are liable to be changed, depending upon exigencies. Award having been made, compensation having been deposited, possession having been taken, the petitioner absolutely has no right to claim that acquisition be withdrawn with respect to the area in question on the grounds alleged in the petition and also has no right to seek direction not to acquire the land.

23. We have heard learned counsel for the parties and been taken through the entire record.

24. At the very outset, we may observe that the facts as brought on record and as noticed above, makes one thing clear that an attempt has been made by the petitioner to continue with endless litigation, when all other remedies have failed with the sole object of thwarting a valid acquisition. The very act of filing of the petitions is nothing but gross abuse of the process of law. The writ petitions on this score are liable to be dismissed.

25. The first submission on behalf of the petitioner is as regards delivery of possession. It was contended that the petitioner's property was recorded in khasra girdawari as built up property. The award made on 19.6.1980 had kept the built up properties out side the award. As such the petitioner's property was also kept out side the award or in any case there has been no actual delivery of possession between 20.6.1980 and 24.6.1980, Therefore, the property has not vested in the State. This submission in view of the material available on record is totally misconceived.

26. The petitioner has relied only on an entry in the khasra girdawari for the period from 13.10.1980 to 11.3.1981 (Annexures-P.10 and P.11 in Civil Writ No.1629/95) wherein the property in question is recorded as "Gair Mumkin Kotha

Pukhta and Char Diwari". Reliance placed upon the entry in the khasra girdwari is meaningless, in view of the contents of the award No.36/80-81 (Annexure-P.8). Nature of the petitioner's property comprised in khasra No.157, measuring 8 bighas and 11 bids was in the award has been described as "ROSLI" and not as built up property. Full details and particulars of those properties, which were notified but were not included in the award, for which it was stated that supplementary award would be made, are given in the award. It has not been the petitioner's case earlier that there was any construction standing upon the land. No such plea was taken by him, though the said plea was available, when writ petition No. 1068/80 was filed, before which date the award had already been made. Had it been the petitioner's case that its property was built upon and the award had not included those properties, which were built upon and for that reason its property ought not to have been included in the award, it was open for the petitioner, at that stage, to challenge the said award or the act of the State of including its property in the award. This plea was also open for the petitioner at the stage when writ petition under Article 32 of the Constitution was filed in the Supreme Court, namely, Civil Writ No.2220/81. It was not done. Failure to take such a plea clearly debars the petitioner to raise this plea now at this stage, after a period of almost 12 years. It is too late in the day now for the petitioner to contend that the petitioner's property was built up. Otherwise also, it is not the petitioner's plea that the property was built up, but the plea is that as in the khasra girdawari, the nature of the land in question is recorded as built up, Therefore, the property stood excluded from the award. Such a plea is also untenable in as much as the award has given description of the petitioner's property as "Rosli" and not built up. When no challenge was made to this part of the award, the objection raised now on behalf of the petitioner is without any substance.

27. Annexure-P.9 (in C.W.1629/95) is the translation of the proceedings of taking over of possession, prepared by Shri Lal Singh, Naib Tahsildar, Land Acquisition, which are duly witnessed by various other officials. The proceedings record that as per the order of the Land Acquisition Collector, he reached at the site on 20.6.1980 along with Jai Gopal, Patwari; Dilbagh Singh, Patwari (L.A) and Zile Singh, Peon. Two other officials, namely, N.N.Seth, Patwari and Khazan Singh, Patwari from Land and Building Department were also present. Shri Gulab Singh, Tehsildar and Shri Raj Bahadur, Naib Tehsildar represented the D.D.A. The report further states that actual physical possession of 1933 bighas 2 bids was of land (khasra numbers and measurement of this land is recorded therein) was taken over and thereafter the possession was also handed over on the spot to Shri N.N.Seth, Tehsildar (L&B). These proceedings record the manner in which the possession of the land was taken over and handed over. It is state that the area of 1933 bighas 2 bids was was demarcated on the spot on 20.6.1990, 21.6.1990, 23.6.1990 and 24.6.1990. After demarcation boundary pillars were affixed and thereafter physical possession of the said area was handed over to Shri N.N.Sethi, Tehsildar. The proceedings further record that the possession of

61 bighas 6 bids was of land, (particulars of which including khasra numbers and area are mentioned in the proceedings) could not be taken over, being built up. The report says that the possession of the same is to be obtained later on, after removal of the structures with the help of demolition squad and to be delivered to L & D.O. later on. Report says that the possession proceedings ended peacefully. The change of possession was announced in the locality by Shri Zile Singh, Patwari. One copy of the possession proceedings was sent to the Patwari Halqa for making appropriate entries in the revenue records. Correctness of the proceedings is vouched by Shri RN.Seth, Raj Bahadur and Shri Bhagat Singh, who also put their respective signatures with separate dates thereupon.

28. In the light of this evidence and other documents produced on record on behalf of the petitioner, it has to be inferred that the possession was actually taken over by the Collector Land Acquisition and also handed over to L & D.O. and to the D.D.A. on the dates as mentioned in the proceedings. It is not shown that there was any irregularity in the handing over or taking over of possession or that the proceedings are not in consonance with the procedure laid down in Land Revenue Rules. Recording of memorandum by the Land Acquisition Officer of taking over and handing over of possession in the presence of witnesses, who also sign the same, would definitely constitute taking over of possession of land within the ambit of Section 16 of the Act. There is no reason to disbelieve, what is stated in Annexure-P.9. Otherwise also by virtue of Section 114(g) of the Evidence Act, there is a presumption attached to all official acts that the same have been performed regularly, unless shown otherwise.

29. In Tamil Nadu Housing Board Vs. A. Viswam (Dead) by Lrs., , it was held that one of the recognized modes of taking possession of the acquired land is recording of a memorandum by the Land Acquisition Officer in presence of witnesses, which would constitute taking possession of land as it would be impossible otherwise to take physical possession of a vast tract of land.

30. The fact that possession of land already stands taken over is otherwise to be inferred from various averments made in the petition. It has been alleged by the petitioner that mere deprivation of the use of a particular land for a particular purpose by the land owner does not mean that he has either been dispossessed or The acquiring authorities have taken possession of the land. These averments have been made under ground (xi) to para 17 of the petition.

31. Reference may also be made to the decision in Balmokand Khatri Educational and Industrial Trust, Amritsar Vs. State of Punjab and others, , which holds that it is rather difficult to take physical possession of a vast tract of land under compulsory acquisition. The normal and recognized mode of taking over possession is drafting of a document in the presence of the witnesses, recording therein the taking over and handing over of possession to the beneficiaries. Subsequent to these proceedings, the retention of possession by any other person would tantamount only to illegal or unlawful possession.

32. In case possession had already been taken over, as we have noticed above from 20.6.1980 to 24.6.1980, on taking over of such possession u/s 16 of the Act, the petitioner's land stood absolutely vested in the State, free from all encumbrances and the petitioner lost all rights, title and interest therein. The order passed on 15.7.1981 in the petitioner's appeal staying dispossession or its confirmation on 16.9.1982 will be of no consequence, as the petitioner was not at all in possession, on the day when the stay order was passed or confirmed. Land already stood vested in the State. The State was in possession of the property on the day when stay order was passed. Moreover, the petitioner's appeal and the writ petition were dismissed on 20.7.1993. The order of maintenance of status quo passed in civil suit presumably on the assumption that the petitioner was in possession or on the assumption that the Supreme Court on 15.7.1991 had granted stay against dispossession would also be of no effect since the land already stood vested in the State free from all encumbrances. Thus the contention on behalf of the petitioner that the acquisition proceedings are incomplete is totally untenable.

33. On the other plea of the petitioner, namely, change in the purpose of acquisition, direction is sought against the respondents either to withdraw from the acquisition or restraining it from retaining the property. Such a plea is highly untenable and deserves outright rejection. It is now well settled that when property is acquired for a public purpose, either subsequent to acquisition or during acquisition proceedings, the requirement of the public purpose may change. Such a change would not vitiate the acquisition proceedings in any manner. In *State of Maharashtra Vs. Mahadeo Deoman Rai alias Kalal and Others*, , it was held that a particular scheme may serve the public purpose at a given point of time but due to change of circumstances, it may become essential to change or substitute the same by another scheme. The requirement of a public purpose is not static. It goes on changing. Once the property is acquired for a public purpose, it cannot be held that the said property is immune from being utilized for any other public purpose for ever. The State or the body like Municipal Corporation, entrusted with a public duty to look after the requirements of a community, has to assess the situation from time to time and take necessary decisions periodically.

34. In *Jai Narain and Others Vs. Union of India and Others*, , the land in question was shown in Master Plan and Zonal Development Plan as agricultural green. It was sought to be acquired for public purpose for setting up of Treatment Plants. It was held that the object and purpose of constructing said plants was to protect the environment, control pollution and in that process to maintain and develop agricultural green. Therefore, it cannot be said that it was contrary to Master Plan and the Zonal Development Plan.

35. Similarly, in the instant case, there was no specified public purpose disclosed in the notification under Sections 4 and 6 of the Act except that the land was required for Planned Development of Delhi. The purpose for which it has been

utilized or is being utilized is a part of planning and consequently for the planned development of Delhi. Construction of road is also a part of planning.

36. In *Union of India and Others Vs. Jaswant Rai Kochhar and Others*, , it was held that land sought to be acquired for one public purpose can be used for another public purpose. The acquisition notification cannot be questioned on the ground of change of user.

37. Reference may be made to another decision in *C. Padma and Others Vs. Dy. Secretary to the Govt. of T.N. and Others*, to the effect that when the acquired land stood vested in the state and compensation is duly deposited, the claimants will not be entitled to claim back the possession on the ground that either the original public purpose has ceased to be in operation or the land could not be used for any other purpose.

38. Another aspect, which would debar the petitioner from seeking reliefs in these petitions, would be the petitioner's conduct in having withdrawn Civil Writ No.700 of 1994 by virtue of an order passed on 8.9.1995. In the said petition the petitioner sought direction for quashing of notification u/s 4, declaration u/s 6 and the act of acquiring compulsorily the petitioner's land with consequential direction not to disturb its possession. In the alternative, it was prayed that direction be issued to the respondents to allot developed land to the petitioner, in accordance with the scheme of the Government.

39. On 8.9.1995 the aforementioned writ petition was dismissed on the statement made by learned counsel for the petitioner that he would not press the petition and would apply for allotment of an alternative land in Institutional Area. While recording the statement that petition was not being pressed as withdrawn, the Court observed:-

"We will make it clear that allotment of the alternative land be made to the petitioner as per policy."

40. As per the policy of the State Government, application for allotment of alternative plot can be made only in case property of the applicant is acquired. In other words, person became entitled to apply for alternate plot of land only when title in the acquired property has vested in the Government. Right to apply will vest in a person only on his property being acquired, namely, vesting of the property on taking over of possession by the Collector. The very fact that the petitioner prayed for alternative land in Institutional area would mean that the petitioner admits the vesting of title in the respondent which cannot vest without possession having been taken over u/s 16 of the Act.

41. In view of the above, we find no substance in the petitions. Both the petitions are liable to be dismissed, which are dismissed with costs quantified at Rs.10,000/- in each petition.