
(2009) 11 P&H CK 0156
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 10622 of 1999

Smt. Usha Arora and Others

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 09-11-2009

Acts Referred:

Constitution of India, 1950 — Article 136, 226
Land Acquisition Act, 1894 — Section 11, 16, 18, 4, 4(1)
Municipal Act — Section 222
Penal Code, 1860 (IPC) — Section 120B, 420, 466, 467, 468
Punjab Town Improvement Act, 1922 — Section 16, 36, 4, 40, 41

Citation : (2011) 1 ILR (P&H) 565 : (2010) 5 RCR(Civil) 835

Hon'ble Judges : T.S. Thakur, C.J.; Kanwaljit Singh Ahluwalia, J

Bench : Division Bench

Judgement

T.S. Thakur, C.J.—Common questions of law arise for consideration in this bunch of six petitions, four out of which assail the validity of an improvement scheme and consequent acquisition proceedings nearly 27 years after the scheme was sanctioned by the State Government. What adds an interesting dimension to the controversy is that during the intervening period, the State Government has permitted "Change of Land Use" qua a portion of the land covered by the scheme which change has been assailed by the petitioner in Writ Petition No. 893 of 2007 filed in public interest on the ground that the same is fraudulent and an abuse of the powers vested in the authorities concerned. The said petition accordingly assails not only the validity of orders passed by the authorities permitting "Change of Land Use" but even the relaxation of the Building Bye-Laws granted in favour of M/s. R. P. Empires Pvt. Ltd. who claims to have acquired a piece of land measuring 19 Kanals out of a total of 51 Kanals and 14 Marias in Khasra No. 447 Min admittedly owned by Akhara Braham Buta, one of the respondents. The said company has in turn challenged the orders passed by the respondents by which the "Change of Land Use" earlier granted has been cancelled apart from challenging the recall of the sanction to the Building plans for the building which the company proposed to construct over the site in

question. The entire controversy regarding validity of the scheme and the multiple rounds of litigation regarding its implementation has a chequered history which needs to be briefly set out before we formulate the propositions that fall for consideration and advert to the rival contentions urged before us by Learned Counsel for the parties.

2. Improvement Trust Amritsar prepared what was known as " Ajnala Road Development Scheme" u/s 36 of the Punjab Town Improvement Act, 1922, (for short "the Act") as early as on 4th May, 1962. Approval to the said scheme was granted by the State Government under Sections 41 and 42 of the Act aforementioned on 24th February, 1964. The scheme comprised a large area including an area measuring 51 Kanals 14 Marias situate in Khasra No. 447 Min, Inner Circular Road, Amritsar, owned by respondent-Akhara Braham Buta. An award for the acquisition of the aforementioned area was announced by the Land Acquisition Collector on 29th March, 1965. Aggrieved by the scheme and the consequent acquisition, Akhara Braham Buta filed Civil Writ Petition No. 2053 of 1965 in this Court, inter-alia, challenging the validity of the scheme on the ground that the area owned by it did not fall within the municipal limits of Amritsar and could not, therefore, be included in the scheme.

3. On 26th/27th March, 1965, an agreement was arrived at between Akhara Braham Buta and the Improvement Trust with regard to the acquisition of the land aforementioned. According to the agreement, the Improvement Trust agreed to exempt 12 Kanals of land out of total land acquired under the scheme in consideration of Akhara Braham Buta agreeing to accept compensation for the remaining extent of land at the rate of Rs. 21- per Sq. yard, which agreement was given effect to by the Land Acquisition Collector in his award dated 29th March, 1965.

4. Writ Petition No. 2053 of 1965 challenging the scheme and the acquisition was finally allowed by this Court on 3rd January, 1966 which decision was upheld in appeal on 17th November, 1971. The result was that the entire process starting with formulation of the scheme stood obliterated. The Improvement Trust however formulated a fresh scheme covering an area measuring 323 acres including 51 Kanals 14 Marias of land owned by Akhara Braham Buta situate in Khasra No. 447 Min mentioned earlier, notified u/s 41 of the Act on 18th December, 1972.

5. Akhara Braham Buta once again raised objection to the acquisition of the land and sought exclusion of 12 canals of land covered by agreement dated 26th/27th March, 1965 from the purview of the scheme. In the alternative, compensation at the rate of Rs. 150/- per Sq. yard was also prayed for. The Land Acquisition Collector, however, turned down both these objections and published his award on 3rd October, 1973 for the entire extent of land determining compensation at the rate of Rs. 8/- per Sq. yard.

6. The award made by the Collector was then challenged by Akhara Braham Buta

in Civil Writ Petition No. 4229 of 1973 in which a Single Judge of this Court following the decision in *The Atam Nagar Co-operative House Building Society Limited, Ludhiana versus State of Punjab and others*, 1979 PLJ 472 directed the Trust to give effect to the agreement dated 26th/27th March, 1965. Representations filed by Akhara Braham Buta for implementation of the said direction having proved abortive, contempt petition No. 150 of 1979 was filed against the Improvement Trust which was dismissed by R. N. Mittal, J. vide order dated 6th December, 1979 in the following words :--

Mr. Matewal has slated that the Trust wants to comply with the order dated 7th March, 1979 passed by Bains J. and it has written a letter to the petitioner to select 12 canals of land out of the acquired land and in accordance with the agreement the counsel requests for an adjournment to finalize the matter. Adjourned to 5th February, 1980. At this stage, Mr. Palli states that in view of the statement of Mr. Matewal, he does not press the petition. It is consequently dismissed as such.

7. No action despite the above directions/order appears to have been taken by the Trust. A representation was then made by the Akhara to the State Government which too did not evoke any response. Contempt Petition No. 68 of 1980 was therefore filed against the Improvement Trust and the State of Punjab in which the Court was informed that the State Government had considered the matter and by its order dated 28th January, 1981 decided not to exempt 12 Kanals of land from the operation of the scheme. Contempt Petition was on that basis dismissed and the Rule discharged holding that the Trust had done what it was required to do both under agreement dated 26/27th March, 1965 as also in terms of the order of this Court dated 7th March, 1979. No contempt, it was held, was committed by the State Government as no mandate or direction was ever issued against it.

8. It was in the above back drop, that Writ Petition No. 1300 of 1982 was filed in this Court by Akhara Braham Buta challenging order dated 28th January, 1981 passed by the State Government in which the Government had decided not to exempt any land acquired under "Ajnala Road Development Scheme". The challenge was primarily founded on the premise that agreement dated the 26th/27th March, 1965 was binding upon the respondents. It was argued on behalf of Akhara Braham Buta that since the authority competent to grant the exemption was the Trust, it was incumbent upon the Trust to give effect to the agreement executed between the parties keeping in view the direction issued by this Court in Civil Writ Petition No. 4229 of 1973. That contention was repelled by a Division Bench of this Court. The Court held that the power to sanction a scheme with or without modifications vested entirely with the State Government who could refuse to sanction the same or return the scheme for reconsideration. The Improvement Trust was not vested with any authority to modify the scheme on its own. It was u/s 40 of the Act simply entitled to apply to the State Government for sanction of the scheme with such modifications as it may deem

appropriate. The Court further held that the Trust was empowered to abandon the scheme but after the addition of proviso to Section 40 by Punjab Act 7 of 1974, even that power could be exercised only with the prior approval of the State Government. The Trust was not, therefore, competent to exempt any part of the land of the petitioner falling within the scheme from operation thereof. All that the Trust could do and indeed did, was to apply to the state Government to modify the scheme so as to exclude 12 Kanals of land of the petitioner from the operation of the scheme and in doing so the Trust had carried out the direction issued to it by the order of this Court in Civil Writ Petition No. 4229 of 1973. The following passage from the decision of this Court is in this regard apposite :--

The Act clearly provides, by virtue of the provisions of Section 41 thereof that the power to sanction a scheme, whether with or without modifications vests entirely with the State Government. Indeed, the State Government may refuse to sanction it or may return the scheme for reconsideration. The Trust, on the other hand, is not invested with any such authority. The power conferred upon the Trust by Section 40 of the Act, being merely to apply to the State Government for sanction of the scheme with such modification, if any, as it may deem appropriate. The Trust is, however, empowered to abandon the scheme, but now, after the proviso added to Section 40 by Punjab Act 7 of 1974 that too can be done only with the prior approval of the State Government. There can thus be no manner of doubt that the Trust was not competent to exempt any part of the land of the petitioner falling within the Scheme from the operation thereof. All that the trust could do and did in fact do, was to apply to the State Government to modify the scheme framed so as to exclude the said 12 Kanals of land of the petitioner from operation of the Scheme and in doing go, the Trust also carried out the direction imposed upon it by the order of this Court in Civil Writ Petition No. 4229 of 1979 (Annexure P-2).

9. The Court also rejected the argument that the State Government being party to Writ Petition No. 4229 of 1973 was also bound by the directions contained therein and held that the direction contained in the order passed by this Court in Civil Writ Petition No. 4229 of 1973 was exclusive to the Trust and did not require any implementation by the State Government. The challenge to the validity of the scheme also similarly failed and was repelled by the Court observing that the implementation of the scheme was no doubt delayed but the circumstances in which the delay had occurred did not constitute or imply any colorable exercise of power or lack of the bona fides warrant interference.

10. With the dismissal of the writ petition aforementioned, the Land Acquisition Collector took possession of 32 Kanals 14 Marias of land out of Khasra No.447 Min. The possession of the remaining 19 Kanals could not, however, be taken as the area had been built upon. Akhara Braham Buta in the meantime filed Special Leave Petition/Civil Appeal No. 10543 of 1983 in the Supreme Court against the judgment delivered by this Court in Civil Writ Petition No. 1300 of 1982. The said appeal was finally disposed of by their Lordships of the Supreme Court on 24th

August, 1992 on the basis of a statement made on behalf of the appellant in the said appeal that the appellant would accept compensation for the entire land to be calculated at the market rate prevailing as on 19th April, 1983 instead of seeking release of any portion of land from the acquisition proceedings. Their Lordships considered the said offer to be fair and accordingly directed that no part of the land being acquired from Akhara Braham Butta would be given back to it. Compensation for the entire area shall, however, be paid to the appellant/owner at the market rate prevailing on 19th April, 1983, the date on which the Writ Petition No. 1300 of 1982 was dismissed. The valuation of the land was directed to be fixed by the Civil Court in the same manner as is done in a reference u/s 18 of the Land Acquisition Act. The following passage contained in the order of their Lordships is in this regard apposite :--

The Learned Counsel for the Improvement Trust, Amritsar has stated that houses have already been constructed on the acquired land in accordance with the scheme and it will be against the public interest to disturb the position now. The counsel for the appellant, after taking instruction, indicated the willingness of the appellant to accept only compensation for the entire land to be calculated at the market rate prevailing on April 19, 1983. We have considered the relevant circumstances and we are of the view that the stand taken by the appellant is fair. Accordingly, we direct that no part of the land in question shall be given back to the appellant but the compensation for the entire area shall be paid at the market rate prevailing on 19th April, 1983, the date on which the present writ petition was dismissed by the High Court. The valuation will be fixed by the Civil Court in the same manner as it is done on reference u/s 18 of the Land Acquisition Act. Let the High Court pass necessary orders sending the matter to the Civil Court for fixing the valuation without delay and let the civil court determine the valuation as expeditiously as may be possible. The appellant will be paid the compensation within a period of three months from the final determination of the valuation.

The appeal is allowed in the above terms. There will be no order as to cost.

11. Dismissal of the appeal filed by Akhara Braham Buta on the above terms left the Improvement Trust free to take possession of the remaining area measuring 19 Kanals acquired in terms of the scheme. Improvement Trust did not however take any further action till 1999 when a request was made to the Land Acquisition Collector to deliver possession of the said area who in turn fixed 23rd July, 1999 as the date for doing the needful. It was at this stage that four different civil suits came to be filed against the Improvement Trust as well as the Collector for injunction restraining them from interfering with their possession over the said extent of the land. The case of the plaintiff's in the said suits was that they were in possession of the land as transferees for consideration and no notice about any acquisition of land had been served upon them. In the reply filed by Improvement Trust, the Improvement Trust pointed out that the prayer for exemption of land situate in Khasra No. 447 Min from acquisition had been

rejected by the Government and the acquisition proceedings upheld by the Supreme Court in terms of the order extracted earlier. It was also stated that the status of the plaintiffs was no better than that of lessee(s) of the land and that since the true owner of the land had raised no objection to the framing of the scheme, neither a lessee nor a transferee from them could do so. The proceedings of the Civil Court were according to the Improvement Trust an abuse of the process of law and an attempt to scuttle the implementation of the judgment of the Supreme Court. Upon consideration of the rival contentions, the Civil Court dismissed the application for ad-interim injunction filed before it on 27th July, 1999 holding that the plaintiffs had no locus stand to file the suit. Shortly thereafter, the suits were also dismissed as withdrawn at the request of the plaintiffs ostensibly because the issue regarding validity of the acquisition had been brought up for determination before this Court in Civil Writ Petitions No. 10622 to 10625 of 1999 in which this Court had stayed dispossession of the petitioners from the property in question which order has continued ever since. The sum total of the above narrative is that the petitioners in Writ Petitions No. 10622 to 10625 of 1999 assail the validity of a scheme framed more than 26 years before filing of the writ petitions, no matter, the challenge to the scheme by Akhara Braham Buta stood repelled by this Court and eventually by the Supreme Court in terms of the order to which we have referred earlier. We shall presently examine the effect of this inordinate delay on the maintainability of the challenge to the validity of the scheme but before we do so we may complete the narration of the factual matrix to get a fuller view of the developments that have taken place on different fronts during this period.

12. One of the significant developments that we must at this stage refer to is the determination of the amount of compensation by the Civil Court at Amritsar pursuant to the direction issued by their Lordships of the Supreme Court. A reference to the Addl. District Judge, Amritsar having been made in obedience to the directions issued by the Apex Court, Akhara Braham Buta filed a claim before the said Court in which it demanded a sum of Rs. 2,58,50,000 at the rate of Rs. 1,000 per sq. yard for the entire extent of 51 Kanals 14 Marias equivalent to 25,850 sq. yards. In para No. 4 of the said claim before the Civil Court, Akhara Braham Buta stated :--

that the present controversy pertains to 51 Kanals 14 Marias of land which comes to 25,850 sq. yards and the market value thus comes to Rs. 2,58,50,000 (Two crores, fifty eight lacs and fifty thousand only) at the rate of Rs. 1,000 per sq. yard.

13. By an order dated 24th October, 2005, Addl. District Judge, Amritsar awarded compensation to Akhara Braham Buta at the rate of Rs. 288 per sq. yard for the entire extent of 51 canals and 14 marlas together with statutory benefits of solarium at the rate of 15% and interest at the rate of 6% per annum on the enhanced amount and the solarium from the date of taking over the possession till actual payment. The operative portion of order dated 24th

October, 2005 passed by the learned Addl. District Judge, Amritsar, reads as follows :--

In view of my findings on issue No. 1 above, the market rate of the acquired land which was prevailing as on 19th April, 1983, is worked out to be Rs. 288 per sq. yard, to which the petitioners are held entitled. In addition to the value of the acquired land, the petitioners are also held entitled to solarium @ 15% on the market value on account of compulsory nature of acquisition and interest @ 6% p.a. on the enhanced amount of compensation inclusive of solarium from the date of taking over the possession till the actual payment. The reference is answered accordingly. Memo of costs be prepared. File be consigned to the records.

14. Aggrieved by the above determination the owners and the Improvement Trust both filed Writ Petitions No. 2282 and 4989 of 2006 in this Court, one for seeking enhancement of compensation while the other seeking reduction thereof. The said two writ petitions are pending disposal before this Court in which this Court has vide an interim order dated 25th April, 2006 directed payment of 50% of the amount to Akhara Brahm Buta while the balance 50% to be paid upon its furnishing security to the satisfaction of the Executing Court.

15. While the matter was still pending before the Civil Court, one Shri R. K. Sharma filed an application before the Commissioner, Municipal Corporation, Amritsar on 14th October, 2005 seeking "change of land use of land measuring 19 Kanals falling in khasra No. 447 Min at old Jail Road, Amritsar, which as noticed above was at all points of time a part of the scheme framed by the Improvement Trust. This application alleged that the applicant was the General Power of Attorney holder of the "nominees of the original owners" and that the disputed extent of 19 canals was exempted from the scheme formulated by Improvement Trust. Amritsar. It was alleged that the area in question is surrounded by residential and commercial properties, and therefore prayed for change of land use for construction of a Multiplex/hotel over the same. Nearly 10 days later, Municipal Corporation, Amritsar made a recommendation on that application to the Principal Secretary of Department of Local Government, Punjab, for change of land use of the property mentioned above, in which it was inter alia stated that since a factory building stood over the area in question, the same could not be used for construction of roads, parks and residential plots under the scheme and that since the applicant proposed to construct a hotel/multiplex over the entire plot of land after demolishing the factory, change of land use of this plot was necessary by an amendment of the scheme u/s 43 of the Punjab Town and Improvement Act, 1922.

16. The above recommendation was taken up for consideration in a meeting held under the Chairmanship of Principal Secretary, Local Government on 16th November, 2005. The minutes of the meeting suggest that the applicant, namely, Shri R. K. Sharma was running a highly polluting industry on the above parcel of land, and that since the area was surrounded by residential/commercial

properties, the existence of a highly polluting industry was objectionable for the inhabitants of the area, as the same had become a nuisance for those living in the locality. Two decisions were on that basis recorded namely (i) that since the scheme had been transferred to Municipal Corporation, Amritsar, years ago, and the High Court has also granted a stay order in the matter, the question for issuing of any modification or alteration of the scheme did not arise; and (ii) it was in public interest to grant conversion of land use to enable the applicant to build up a multiplex/hotel over the plot in question as a polluting industry was not acceptable in a residential/commercial area. The request of the applicant was accordingly accepted and Municipal Corporation, Amritsar directed to grant permission for change of land use on payment of conversion charges as per rules.

17. It is not in dispute that pursuant to the above decisions, the applicant namely Shri R. K. Sharma deposited a sum of Rs. 1.90 Crores with Municipal Corporation, Amritsar towards charges for change of land use. It is also not disputed that pursuant to the said decision, an amendment for change of land use of 19 kanals of land in Khasra No. 447 Min was also approved. Writ Petition No. 893 of 2007 filed in public interest challenges the validity of above decision and action taken pursuant thereto. It is alleged by the petitioner in the said petition that the entire piece of land measuring 51 Kanals 14 Marias situate in Khasra No. 447 Min had been lawfully acquired by Improvement Trust, Amritsar and that the impugned order of change of land use was bad both on facts and in law especially when the true owner of the land namely Akhara Braham Buta had lost its legal battle intended to save the property from acquisition right up to the Supreme Court.

18. Shortly after the filing of the said petition. Superintending Engineer. Improvement Trust, Amritsar, intimated to the Government that the change of land use and the sanction of plans in favour of M/s R. P. Empires Pvt. Ltd., which in the meantime appears to have taken over the land from the lessee(s) of Akhara Braham Buta in terms of the sale-deeds executed in its favour by the attorney Shri R. K. Sharma. was legally bad. It was pointed out that property comprising 19 Kanals of land in khasra No. 447 Min was owned by Amritsar Improvement Trust who had requested the Senior Superintendent of Police, Amritsar to register a case against all those involved in the sale and purchase of the said property including the employees of the Amritsar Improvement Trust. Municipal Corporation. Amritsar and the Revenue Department, who had lent assistance or connived in the said sales. Consequently, FIR No. 107, dated 16th April, 2007 for offences punishable under Sections 420, 466, 467, 468, 471 and 120-B of the Indian Penal Code was registered against the said persons.

19. On receipt of the above report, the Government by an order dated 27th August, 2007 reviewed its earlier order dated 16th November, 2005 and revoked the sanction for change of land use of the area mentioned above. The Government noted that the Apex Court had upheld the acquisition of Khasra No. 447 Min and directed that no part of land acquired by the Trust shall be given

back to the appellant-owner, namely. Akhara Braham Buta. It had also directed the payment of market value prevailing in the year 1983 to the owner. Consequently, neither the Akhara Braham Buta nor its lessee(s) had any right to sell the land to any person. The sale transaction between the lessees(s) and M/s. R.P. Empires Pvt. Ltd. was declared to be a sham transaction hence void ab initio especially when the land stood vested in the Improvement Trust upon announcement of the award by the Collector Land Acquisition u/s 11 of the Land Acquisition Act. 1894 and the Trust had already deposited the enhanced amount of compensation.

20. Aggrieved by the said orders, M/s R. P. Empires Pvt. Ltd. has filed Writ Petition No. 18029 of 2008 challenging the validity of said orders on several grounds to which we shall presently refer.

21. We have heard Learned Counsel for the parties at considerable length and perused the record. Broadly speaking, the following questions arise for our determination :--

(i) Is a challenge to the improvement scheme sanctioned by the State Government u/s 42 of the Punjab Town Improvement Act, 1922 and resultant land acquisition proceedings maintainable twenty six years after the making of the award ?

(ii) As a subsequent purchaser of the property under acquisition, can M/s R. P. Empires Pvt. Ltd. in Civil Writ Petition No. 18029 of 2008 challenge the scheme or the Land Acquisition proceedings in its own right or seek substitution in place of the original petitioners ?

(iii) Are the petitioners in Civil Writ Petitions No. 10622, 10623, 10624 and 10625 of 1999 entitled to a mandamus directing the respondents to consider the applications made by them for exemption of the land from acquisition ?

(iv) Has the delay in taking of the possession of the land under acquisition resulted in the lapsing of the acquisition proceedings or the implied grant of exemption of the land from acquisition ?

(v) Does the withdrawal of the order granting Change of Land Use suffer from any legal or procedural infirmity ? and

(vi) Is a case for transfer of pending investigation in FIR No. 107, dated 16th April. 2007 for offences punishable under Sections 420, 466, 467, 468, 471 and 120-B of the Indian Penal Code, to the Central Bureau of Investigation made out ?

22. We shall take up the questions for discussion ad seriatim.

Re: Question No.(i)

23. The legal position regarding the effect of delay on a challenge to the land acquisition proceedings is settled by a long line of decisions of the Supreme

Court, in which it has been authoritatively held that a challenge to the land acquisition proceedings must come within reasonable time failing which the challenge is liable to be rejected on the ground of delay alone. Delay of even two years in the filing of the petition has in some cases been considered to be fatal to a petition challenging such proceedings. We need not refer to all the decisions rendered by their Lordships on the subject, for a reference to some only of such decisions which have directly addressed the question of delay and its effect on a challenge to the proceedings would suffice.

24. In *Aflatoon and Others Vs. Lt. Governor of Delhi and Others*, , the challenge to the validity of the notification u/s 4 of the Land Acquisition Act was delayed by 13 years. Dismissing the petition on the ground of delay and laches, the Court observed :

...There was apparently no reason why the writ petitioners should have waited till 1972 to come to this Court for challenging the validity of the notification issued in 1959 on the ground that the particulars of the public purpose were not specified. A valid notification u/s 4 is a sine qua non for initiation of proceedings for acquisition of property. To have sat on the fence and allowed the Government to complete the acquisition proceedings on the basis that the notification u/s 4 and the declaration u/s 6 were valid and then to attack the notification on grounds which were available to them at the time when the notification was published would be putting a premium on dilatory tactics. The writ petitions are liable to be dismissed on the ground of laches and delay on the pail of the petitioners.

25. In *The Municipal Council, Ahmednagar and Another Vs. Shah Hyder Beig and Others*, , the petitioner challenged the acquisition proceedings after 21 years from the date of preliminary notification and 16 years from the date of the making of the award. The High Court interfered with the acquisition proceedings but setting aside the order passed by the High Court, the Supreme Court cautioned that the Courts ought to give effect to the doctrine of "delay defeats equity". Setting aside the view taken by the High court, their lordships observed :

...It is now a well-settled principle of law 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 proceeding 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 the law courts under Article 226 of the Constitution on a very sound equitable principle. Hence, the equitable doctrine, namely, "delay defeats enquiry" 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. An Equity favor 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.

26. To the same effect are the decisions of the Supreme Court in *Senjeevanagar Medical and Health Employees Co-operative Housing Society Vs. Mohd. Abdul Wahab and Others*, ; *Municipal Corporation of Greater Bombay Vs. The Industrial Development Investment Co. Pvt Ltd.*, and others, ; *Northern Indian Glass Industries Vs. Jaswant Singh and Others*, ; *M/s. Larsen and Toubro Ltd. Vs. State of Gujarat and Others*, and *Vishwas Nagar Evacuee Plot Purchasers Association and another Vs. Under Secretary, Delhi Admn. and others*, .

27. In *Santosh Kumar and others versus Union of India and others* 2006 VII AD Delhi 7 a Division Bench of the High Court of Delhi had while dealing with similar fact situation and dismissing the writ petition on the ground of delay and laches observed :--

30. The legal position that emerges from all the above decisions is that while the High Courts have the discretion to entertain a petition under Article 226 of the Constitution, it would be sound exercise of that discretion if the Court refuses to interfere with land acquisition proceedings in cases where the land owners have allowed the authorities to complete the said proceedings and challenge the same at a belated stage. The land owners cannot allow the proceedings to go on, accepting by their silence, the validity of the notifications under Sections 4 and 6 of the Act and then turn around to challenge the same after the Collector has made his award or dispossessed the owners on the basis thereof. Even if the period post-Balak Ram Gupta's judgment is deemed to have been explained, there is no explanation for the pre-Balak Ram Gupta period of three years, which is sufficient to justify the dismissal of these petitions on the ground of delay and laches.

28. To the same effect is the decision in *Rajiv Prem (Sh.) versus UOI and Ors.*, 2006 VIII AD 268, where the same Court declined to interfere with acquisition proceedings long after the issue of the declaration u/s 6 of the Act. The Court held that even in cases where the declaration u/s 6 and the subsequent proceedings culminating in the making of award were void, the aggrieved party must approach the Court within a reasonable time to get the same invalidated, he cannot wait until he was threatened with dispossession. The Court declined to accept the view that just because affected party was in possession, he could challenge the acquisition proceedings at any time even belatedly. The following passage is, in this regard, relevant:--

Even if the declaration u/s 6 and subsequent proceedings culminating into passing of award were void, the petitioner was in any event required to move the Court within a reasonable time to get the same invalidated and could not have waited until he was threatened to be dispossessed. Thus, possession of the land in question being not taken pursuant to the award dated 4th December, 1987, cannot be a ground to overcome the adverse effect generated on account of belated challenge to the acquisition proceedings by the petitioner.

29. Reference may also be made to *The Ramjas Foundation and Others Vs. Union of India and Others*, where neither award had been made nor possession of the land under the process of acquisition taken. The Supreme Court, however, held that the same could not be used to explain the delay in challenging the notifications under Sections 4 and 6 of the Act. Their lordships observed that the grounds of challenge to the notifications under Sections 4 and 6 of the Act were available to the petitioners at the time of publication of the said notifications but since the petitioners were sitting on the fence and did not take any steps to challenge the same, they could not do so at a subsequent stage. To the same effect is the decision of the Supreme Court in *Delhi Development Authority versus Shyam Sunder Khanna and Ors.*, 2004 (72) DR. 1356 (SC) where the writ petitions challenging the acquisition proceedings were filed before the High Court after about 18 years of issue of declaration u/s 6 on the ground that the petitioner's property being evacuee property was excluded from the purview of notification u/s 4 of the Act. The High Court had, in that case, interfered and set aside the notifications. Their lordships of the Supreme Court, however, referring to its earlier decisions in *Vishwas Nagar Evacuee Plot Purchasers Association and another Vs. Under Secretary, Delhi Admn. and others*, and in *Ramjas Foundation's case (Supra)* set aside the order passed by the High Court and dismissed the writ petition holding that the High Court was in error in entertaining such belated writ petitions.

30. It is common ground that the Collector's award for the entire extent of 51 Kaul 14 Marias in the instant case was made as early as on 3rd October, 1973, in which compensation at the rate of Rs. 8 per square yard was determined as payable to the owners. Civil Writ Petitions No. 10622 to 10625 of 1999 were, however, filed to assail the validity of the sanction and the award only in the year 1999 i.e. after 26 years after the same had been made and published. There is no explanation much less a cogent one forthcoming from the petitioners in the said petitions for this inordinate delay, which in our opinion must on the authority of law declared by the Supreme Court prove fatal to the challenge mounted by them. What is important is that the only challenge to the award made by the Collector was thrown by Akhara Brahm Buta in Civil Writ Petition No. 4229 of 1973. which challenge too was limited to the exclusion of an area of 12 Kanals of land from acquisition proceedings. The Government had after consideration of the matter in the Light of the orders passed by this Court declined to exclude any part of the land underlying Khasra No. 447 Min. Writ Petition No. 1300 of 1982 was filed by the owner once again seeking exclusion of the aforementioned 12 Kanals of land and also laying a challenge to the validity of the scheme itself. Even that petition having failed, the matter was taken up to the Supreme Court, in which their Lordships directed that no part of the land forming the subject matter of the scheme shall be given back to the owner Akhara Brahm Buta. The Court, however directed payment of compensation to the owner at the market rate prevailing as on 19th April 1983 the date on which Writ Petition No. 1300 of 1982 challenging the acquisition proceedings for the second time was dismissed.

Suffice it to say that while Akhara Braham Buta owner of the land had made an attempt to assail the validity of the scheme and claimed exclusion of 12 Kanals of land on the basis of the earlier agreement, lessee(s) petitioners in Civil Writ Petitions No. 10622, 10623, 10624 and 10625 of 1999 did not raise even a little finger against the scheme or the resultant land acquisition proceedings and thus allowed the said proceedings to attain finality. Such being the position, it is difficult to see how more than 21/2 decades after the publication of the scheme and making of the award under the Land Acquisition Act. can the petitioners rise from their deep slumber to question the validity of the same.

31. There is another aspect to which we must at this stage advert to for that aspect is in our opinion equally important and shows that petitioners had gone merrily along the acquisition proceedings and belatedly come up with the present writ petitions to challenge the validity thereof. The petitioners who claim to be lessee(s) were also notified by the Collector Land Acquisition in connection with the award proceedings, pursuant where to each one of them not only participated in the said proceedings but made claims for payment of compensation in their favour. This is evident from the following passages appearing in the award :--

M/s Harish Chand Arora :

The claimant has demanded Rs. 73,900 as cost of the super structure. In support of his demand, he has produced an estimate and plan of the structure prepared by Shri Surjit Singh Nagi, Regd. Architect and Engineer. The rates assessed are on high side hence the estimate is discarded. The Trust has estimated cost of the standing structure at Rs. 14,370 as per estimate and plan produced on the file with which I agree.

(e) Shri Harish Chander Arora has demanded Rs. 8125 on account of high rent which he will have to pay at some other place. The demand has not been proved and is, therefore, rejected.

Shri Dharam Dev Seth :

This is a small structure being raised after the material date. No compensation is, therefore awarded for the same.

(B) Vinod Textiles mills-ravi weaving industries :

M/s Vinod Textiles Mills have demand Rs. 1,06,000/- while M/s Ravi Weaving Industries have demanded another sum of Rs. 1,06,000 for the standing structure. They have led no evidence in support of their demand. The Trust has estimated cost of the structure at Rs. 34,020 as per estimate and plan produced on the file. I agree with estimate of the trust and award compensation at Rs. 34,020 which is to be divided equally between the two firms.

(b) Vinod Textiles mills

The following compensation has been demanded :--

(i) Compensation for shifting of machinery :

Rs. 10,000

(ii) Compensation for wastage of material :

Rs. 5,000

(iii) Compensation for dismantling and refitting of machinery :

Rs. 5,000

(iv) Compensation for breakage of machinery by transit while shifting

Rs. 3,000

(v) Compensation for loss of business for one year :

Rs. 75,000

(vi) Compensation for loss of good will :

Rs. 80,000

(vii) Compensation for loss of outstanding dues

Rs. 10,000

(viii) Compensation for paying high rent

Rs. 1,00,000

The claimant has not proved his demand. I, however, award Rs. 3000 to the applicant on account of shifting, loss of business etc.

(c) M/S Ravi Weaving Industries :

The following compensation has been demanded :-

(i) Compensation for shifting of machinery :

Rs. 10,000

(ii) Compensation for wastage of material :

Rs. 5,000

(iii) Compensation for dismantling and refitting of machines :

Rs. 5,000

(iv) Compensation for breakage of machinery by transit while shifting :

Rs. 3,000

(v) Compensation for loss of business for one year :

Rs. 50,000

(vi) Compensation for loss of good will :

Rs. 5,000

(vii) Compensation for loss of outstanding dues :

Rs. 10,000

(viii) Compensation for paying high rent :

Rs. 10,000

The claimants have not proved their demand. I however award Rs. 2,000 to the applicants for shifting, loss of business etc.

32. It is evident from the above that all the petitioners were interested in payment of adequate compensation in lieu of the acquisition of their interest which they held in the property held by them as lessee(s) under the original owners. It is noteworthy that petitioners in Civil Writ Petition NO. 10622 of 1999 had demanded a reference to the Civil Court for enhancement of compensation determined in their favour. This is evident from the averments made in Paras No. 13 and 16 of the petition which may be extracted at this stage :--

13. That in response to aforementioned notice the petitioner No. 1 "s husband as well as petitioner No. 2 filed applications claiming compensation as well as an application u/s 56(2)(b) of the Act seeking exemption of the land and buildings from the rigorous of acquisition. A true copy of the application dated 5th March, 1973 filed by Shri Satish Kumar is annexed herewith as Annexure P-8 Petitioner No. 2 had also filed an application u/s 56 but the same has been misplaced. However, it is available in the record of the Improvement Trust. The filing of the application by Shri Satish Kumar is evidenced by another application dated 7th March, 1973 wherein it is stated that the application u/s 56(2)(b) has been filed on 5th March, 1973. A true copy of this application is annexed herewith as Annexure P-8/A.

16. That it would be pertinent to mention here that after the Award Annexure P-9, no compensation was received by the petitioners as their applications for exemption were pending. Thereafter as a formality the petitioners preferred a reference petition seeking enhancement. After decision thereof the petitioners were not offered any enhanced compensation by the respondents. The petitioners were under the genuine belief that as per their applications for exemption of their buildings were pending they were not entitled to receive any compensation.

33. Similarly, in Civil Writ Petition No. 10623 of 1999, the petitioners have admitted having made a claim before the Collector Land Acquisition for payment of compensation. Paras No. 10 and 11 of the writ petition refer to the claim for payment of compensation and the making of the award by the Collector which may be extracted at this stage :--

10. That in response to the aforementioned notices, the petitioner's father filed an application claiming compensation as well as an application u/s 56 of the Act seeking exemption of the land and building from the rigorous of acquisition. However, a copy of the application is not available with the petitioners but is available in the record of the Improvement Trust.

11. That thereafter, noting more was heard from the Improvement Trust and eventually an award was pronounced as Award No. 5/1973 dated 3rd October, 1973. A true copy of the award is annexed herewith as Annexure P-6.

34. In Civil Writ Petition No. 10624 of 1999, the petitioner claims to be a subsequent purchaser from one of the lessee(s). The petition filed by him does not make any reference to any claim having been made by the erstwhile lessee but making of the award is admitted in Para No. 11 of the said writ petition.

35. Even in Writ Petition No. 10625 of 1999, the petitioners have in para No. 12 of the writ petition admitted having made a claim before the Collector Land Acquisition and the making of the award which is evident from the following three paragraphs appearing in the said petition.

12. That in response to aforementioned notice the petitioners filed applications claiming compensation as well as an application u/s 56(2)(b) of the Act seeking exemption of the land and buildings from the rigorous of acquisition. The copy of the said applications not available with the petitioners, however, the same are available in the record of the Improvement Trust.

13. That thereafter nothing more was heard from the Improvement Trust and eventually an award was pronounced as Award No. 4/1973 dated 3rd October, 1973. A true copy of the award is annexed herewith as Annexure P-4.

14. That in the award Annexure P-4 the name of petitioners No. 1 and 4 are mentioned as the occupants of the land and it is also mentioned that they have raised construction on the land.

36. In the light of the above admitted position, the challenge to the validity of the land acquisition proceedings is totally misconceived, especially after such an inordinate delay.

37. Last but not the least is the fact that the petitioners in all the four petitions have transferred by sale all their rights and interests in favour of M/s R.P. Empires Pvt. Ltd. Copies of the sale deeds purported to have been executed by the said petitioners have also been placed on record from which it appears that the petitioners in the above writ petitions did not retain any interest whatsoever in the property in question to give them the locus to maintain the present writ petitions. On the contrary, the purchaser M/s R.P. Empires Pvt. Ltd. has filed an application inter-alia asserting that M/s R.P. Empires Pvt. Ltd. has in terms of 10 separate registered sale-deeds purchased the rights and interests of the erstwhile lessee(s) in 19 Kanals of land falling in Khasra No. 447 Min and that the original petitioners having sold the land in question, the company could be

substituted in their place to prosecute the challenge to the validity of the scheme and the land acquisition proceedings. Whether or not, a subsequent purchaser can challenge either in a separate petition or by way of substitution in place of the original petitioners the land acquisition proceedings and the scheme under which the same are instituted, is an aspect, which we will presently examine while taking up question No. (ii) for discussion. All that we need say for the present is that the writ petitions filed by the petitioners challenging the land acquisition proceedings are liable to be dismissed not only on account of inordinate delay in filing of the said petitions but also on account of the acquiescence of the petitioners in such proceedings which acquiescence is evident from their participation in the process of determination of the award and the claim for payment of compensation thereof to them. Question No. (i) is accordingly answered in the negative.

Re : Question No. (ii) :

38. Several decisions rendered by the Supreme Court have authoritatively declared that the transfer of land qua which acquisition proceedings have been initiated is void and does not bind the Government. We shall briefly refer to some of those decisions. In U.P. Jal Nigam, Lucknow through its Chairman and another Vs. M/s. Kalra Properties (P) Ltd. Lucknow and others, their Lordships held that any encumbrance created by the owner after the issue of notification u/s 4(1) of the Land Acquisitions Act, 1984, does not bind the Government nor does the purchaser acquire any title to the property. The Court observed :--

3....Having regard to the facts of this case, we were not inclined to further adjourn the case nor to remit the case for fresh consideration by the High Court. It is well settled law that after the notification u/s 4(1) is published in the gazette any encumbrance created by the owner does not bind the Government and the purchaser does not acquire any title to the property.

(emphasis supplied)

39. In Smt. Sneh Prabha etc. Vs. State of U.P. and Another, the Court similarly held that any person who purchases land after publication of notification u/s 4(1) of the Land Acquisition Act, 1894 does so at his own risk and that any alienation of the land after publication of any such notification does not bind the Government or the beneficiary under the acquisition. The Court observed :--

5...It is settled law that any person who purchases land after publication of the notification u/s 4(1), does so at his/her own peril. The object of publication of the notification u/s 4(1) is notice to everyone that the land is needed or is likely to be needed for public purpose and the acquisition proceedings point out an impediment to anyone to encumber the land acquire hereunder. It authorizes the designated officer to enter upon the land to do preliminaries etc. Therefore, any alienation of the land after the publication of the notification u/s 4(1) does not bind the Government or the beneficiary under the acquisition. On taking possession of the land, all rights, title and interests in land stand vested in the

State, u/s 16 of the Act, free from all encumbrances and thereby absolute title in the land is acquired hereunder.

40. In *Ajay Krishan Shinghal, etc. etc. Vs. Union of India and Others*, , also, the Court reiterated the same legal position. To the same effect is the decision of the Supreme Court in *Star Wire (India) Ltd. Vs. State of Haryana and Others*, . Reference may also be made to judgment rendered by the Supreme Court in *Meera Sahni Vs. Lt. Governor of Delhi and Others*, . Their Lordships have in that decision too declared the law on the object as under :--

When a piece of land is sought to be acquired, a notification u/s 4 of the Land Acquisition Act is required to be issued by the State Government strictly in accordance with law. The said notification is also required to be followed by a declaration to be made u/s 6 of the Land Acquisition Act and with the issuance of such a notification any encumbrance created by the owner, or any transfer made after the issuance of such a notification would be deemed to be void and would not be binding on the Government. A number of decisions of this Court have recognized the aforesaid proposition of law wherein, it was held that subsequent purchaser cannot challenge acquisition proceedings and also the validity of the notification or the irregularity in taking possession of the land after the declaration u/s 6 of the Act.

41. In the light of the above pronouncements, we have no hesitation in holding that the transfer of land in question by the lessee(s) or their predecessors in interests did not bind the Government or the Improvement Trust as the beneficiary of the acquisition. The transfers in question cannot therefore be made a basis by the transferee M/s R.P. Empires Pvt. Ltd. to challenge the validity of either the scheme or the acquisition proceedings initiated pursuant thereto. That is true not only for the purposes of filing of a fresh petition by the transferee but even for the purposes of substitution of transferee in place of the original petitioners. CM. No. 18707 of 2006 in Civil Writ Petition No. 10622 of 1999, CM. No. 18565 of 2006 in C.W.P. No. 10623 of 1999, CM. No. 18714 of 2006 in C.W.P. No. 10624 of 1999 and CM. No. 18705 of 2006 in C.W.P. No. 10625 of 1999 under which the transferee seeks substitution on the basis of transfers that are legally void cannot therefore be allowed nor can the challenge to the acquisition proceedings continued by the transferee on the strength of the transfers in its favour. At any rate, the transferee cannot acquire a title better than the one held by transferor. If the vendors of the properties who are petitioners in Civil Writ Petition Nos. 10622, 10623, 10624 and 10625 of 1999 had themselves lost the right to challenge the acquisition proceedings on account of inordinate delay, laches and acquiescence, it is difficult to see how a transferee claiming under them could claim a better right to do so. Question No. (ii) is accordingly answered in the negative.-

Re : Question No. (iii) :

42. It was strenuously argued by Mr. Chopra, learned Senior Counsel for the

petitioners that the petitioners had made applications for exemption of the land in question from acquisition, which applications have not been considered or disposed of by the Improvement Trust to whom they were addressed. It was argued that the Improvement Trust was under an obligation to consider the applications in question and upon its failure to do so, a mandamus could be issued as prayed for in the writ petition.

43. On behalf of the respondents, it was on the other hand contended that making of the applications and the prayer for their disposal were both misconceived in as much as an application for exemption was envisaged u/s 56 of the Act, only in case the land under acquisition was discovered to be unnecessary for the scheme. No part of the land covered by the scheme having been found to be unnecessary for the scheme, there was no question of considering the request or granting any exemption under the said provision. It was also argued that the Improvement Trust had no power to exempt any land on its own. It was only in case the Government took the view that the acquisition of any portion of the land was unnecessary that it could grant exemption on the conditions stipulated u/s 56 of the Act. It was submitted that the Government having taken a specific stand to the effect that no part of the land covered by the Scheme was unnecessary and the order passed by their Lordships of the Supreme Court having directed that no part of the land shall be released to "Akhara Braham Buta" owner of the land, there was no question of considering or granting an exemption.

44. In Civil Writ Petition No. 10622 of 1999, the petitioners have placed on record copies of two applications marked Annexure P-10 and P-11, both of which are addressed to the Chairman of the Amritsar Improvement Trust, seeking exemption of the land in question from acquisition. In Civil Writ Petition No. 10623 of 1999, the petitioners have alleged that an application for exemption was made but no copy of the said application has been placed on record. Similarly, in Civil Writ Petition No. 10624 of 1999, the petitioners have referred to an application marked Annexure P-6 to the Chairman of the Amritsar Improvement Trust seeking exemption of the property in their occupation from acquisition. In Civil Writ Petition No. 10625 of 1999 also, the petitioners have alleged that the applications marked P-5, P-6 and P-7 were made for exemption of the land under acquisition.

45. Three distinct aspects fall for consideration in so far as these applications are concerned. The first and the foremost is whether any such applications could be maintained having regard to the scheme underlying the Act and the language employed in Section 56 of the Punjab Town Improvement Act, 1922 which may at this stage be extracted in extensor :--

56. Abandonment of acquisition in consideration of special payment.--Whether in any locality comprised in any Scheme under this Act, the State Government has sanctioned the acquisition of land which is subsequently discovered to be unnecessary for the execution of the scheme the owner of such land, or any

person having an interest therein may make an application to the trust requesting that the acquisition of such land be abandoned in consideration of the payment by him or a sum to be fixed by the trust in that behalf.

[Provided that no land shall be deemed to be unnecessary for the execution of the scheme, unless the State Government after making such enquiry as it may deem fit, declares it to be so by a notification in the Official Gazette.]

(2) The trust shall admit every such application if it--

(a) reaches it before the time fixed by the Collector, u/s 9 of the Land Acquisition Act, 1894, for making claims in reference to the land and,

(b) is made by any person who owns the lands, is mortgagee thereof, or holds as lease thereof, with an unexpired period of seven years.

(3) The trust may admit any such application presented by any other person having an interest in the land.

(4) On the admission by the trust of any such application, it shall forthwith inform the Collector, and the Collector shall thereupon stay for a period of three months all further proceedings for the acquisition of the land, and the trust shall proceed to fix the sum in consideration of which the land may be abandoned

(5) Within the said period of three months, or, with the permission of the trust, at any time before the Collector has taken possession of the land u/s 16 of the Land Acquisition Act, 1984, the person from whom the trust has agreed to accept the sum so fixed may, if the trust is satisfied that the security offered by him is sufficient, execute an agreement with the trust either.

(i) to pay the said sum three years after the date of the agreement, or

(ii) to leave the said sum outstanding as a charge on his interest in the land subject to the payment of interest at a rate to be agreed upon by such person and the trust until the said sum has been paid in full and to make the first annual payment of such interest four years after the date of the agreement;

Provided that the trust may, at any time before the Collector has taken possession of the land u/s 16 of the Land Acquisition Act, 1894, accept immediate payment of the said sum instead of an agreement as aforesaid.

(6) When any agreement has been executed in pursuance of sub Section (5) or when any payment has been accepted in pursuance of the proviso to that sub section in respect of any land, proceedings the acquisition of the land shall be deemed to be abandoned.

(7) Every payment due from any person under any agreement executed under sub section (5) shall be a charge on the interest of that person.

(8) If any installment of interest payable under an agreement executed in pursuance of clause (ii) of sub section (5) be not paid on the due date, the sum

fixed by the trust under sub section (4) shall be payable on that date, in addition to the said installment.

(9) At any time after an agreement has been executed in pursuance of clause (ii) of subs section (5) any person may pay in full the charge created thereby, with interest, at the agreed rate, upto the date of such payment.

(10) When an agreement in respect of any land has been executed by any person in pursuance of sub section (5), no suit with respect to such agreement shall be brought against the trust by any other person (except an heir executor or administrator of the person first aforesaid claiming) to have an interest in the land.

(11) When an agreement in respect of any land has been executed by any person in pursuance of sub section (5), and any sum payable in pursuance of that sub section is not duly paid, the same shall be recoverable by the trust (together with interest upto the date of realization at the agreed rate) from the said person or his successor in interest in such land in the manner provided by section 222 of the Municipal Act, and, if not so recovered the Chairman may after giving public notice of his intention to do so and not less than one month interest of the said person or successor in such land by public auction, and may deduct the said money and the expenses of the sale from the proceeds of the sale, and shall pay the balance (if any) to the defaulter.

46. A plain reading of the above would show that the owner of any land or any person having an interest therein can make an application to the Trust requesting for abandonment of the acquisition proceedings in cases where, after the Government have sanctioned the acquisition of the land, it is discovered that any such land included within the scheme is unnecessary for execution of any such scheme. In terms of the proviso to Section 56(1) of the Act, no such land shall be deemed to be unnecessary for the execution of the scheme, unless the Government after making such enquiry as it may deem fit, declares it to be so by a notification in the official Gazette.

47. A careful reading of Sub Section (2) of Section 56 of the Act, would show that an application for exemption may be entertained by the Trust if the same reaches it before the time fixed by the Collector u/s 9 of the Land Acquisition Act, 1894, for making claims in reference to the land, and is made by the person who either owns the lands, is mortgagee thereof, or who holds a lease of such land with an unexpired period of seven years. The Trust may u/s 56(3) of the Act admit any such application presented by any other person having an interest in the land. In terms of Sub Section 4 of Section 56 of the Act, the Trust shall forthwith inform the Collector whereupon the Collector shall stay for a period of three months all further proceedings for the acquisition of the land while the Trust shall proceed to fix the sum in consideration of which the acquisition of the land may be abandoned. Sub Section 5 of Section 56 of the Act envisages execution of an agreement with the Trust regarding the payment of the amount

determined under Sub Section 4 of immediate payment of the said sum instead of the execution of an agreement.

48. It is evident, from the above that certain conditions precedent, must be satisfied for consideration of a request for exemption of the land for acquisition in consideration of special payment for the same. The first of such conditions precedent appears to be that the land sought to be exempted must be discovered to be unnecessary for the execution of the scheme. In terms of proviso to Sub Section (1) of Section 56, added by Punjab Amendment Act No. 7 of 1974, no land shall be deemed to be unnecessary unless the Government have after making such enquiry as it may deem fit, declared it to be so by a notification in the Official Gazette. It is common ground that in the instant case, neither the Government nor the Improvement Trust have at any stage held any part of the land measuring 51 Kanals 14 Marias, Khasra No. 447 Min, to be unnecessary for the scheme in question by issuing a notification to that effect or even in the absence thereof. Even assuming, as was contended by Mr. Chopra, that proviso having been added by Amendment Act No. 7 of 1974 cannot govern applications made earlier to the said addition yet the condition precedent for exemption or a request for abandonment namely that the land sought to be exempted is unnecessary for the execution of the scheme must be satisfied before any such request can be entertained or considered. The Scheme of Section 56 of the Act does not in our opinion envisage an application for the release of land unless the same is found to be unnecessary for execution of any scheme.

49. This aspect of the matter has been authoritatively dealt with by the Supreme Court in *Narain Das and Others Vs. The Improvement Trust, Amritsar and Another*, in which the Apex Court has declared that it is only when some land included in the scheme is discovered to be unnecessary that its owner or any person having an interest therein is entitled to make an application to the Trust requesting for the abandonment of its acquisition in consideration of payment by him of a sum to be fixed by the Trust in that behalf. The Court declared that unless the said initial condition is satisfied, there is no occasion for making an application for abandonment and that an application for abandonment must reach to the Collector within the time stipulated for that purpose. The Trust is in that view bound to admit the application only on satisfaction of the above mentioned two conditions precedent. The Court observed :--

It is obvious that this section contemplates a locality comprised in a scheme under the Act pursuant to which the Government has sanctioned the acquisition of land, which land is subsequently discovered to be unnecessary for the execution of that scheme. It is only when some land included in the scheme is discovered to be unnecessary after the sanction of the acquisition that its owner or any person having an interest therein is entitled to make an application to the Trust requesting for the abandonment of its acquisition in consideration of payment by him of a sum to be fixed by the Trust in that behalf. In other words,

it is when this initial condition is satisfied that the occasion for making an application for abandonment arises. The further requirement of this section is that the application for abandonment must reach the Trust before the time fixed by the Collector u/s 9 of the Land Acquisition Act, 1984 for making claims in reference to the land. When all these conditions are complied with then the Trust is bound to admit the application so made if the applicant either owns the land in question or is a mortgagee or a lessee thereof with an unexpired lease period of seven years. When, however, such an application is made by some other persons having an interest in the land, the Trust may admit it in its discretion. It is noteworthy that unless his acquisition of land is discovered to be unnecessary for the execution of the scheme, this section does not operate and there is no question of the Trust possessing any power to exempt lands from the scheme under this section. The existence of an orchard on such land which is not unnecessary for the execution of the scheme would be a wholly irrelevant consideration. In the present case, there is no finding that the acquisition of the appellants land has been discovered to be unnecessary for the execution of the scheme. Therefore, the appellants had no locus stand to invoke Section 56. The mere fact that exemption of land under orchard was granted to Mahant Bikram Das as alleged by the appellants, even assuming that exemption to be purporting to be u/s 56 of the Act, is no ground for exempting the appellants land u/s 56 when the pre-requisites of that sanction have not been complied with.

50. In the instant case, far from making any declaration, that the land in question is unnecessary, both the Improvement Trust and the State Government have all along insisted that the land in question is necessary for the implementation of the scheme.

51. The second requirement for the admission of an application for abandonment viz. that it must reach the Trust before the time fixed by the Collector u/s 9 of the Land Acquisition Act, 1894 for making claims in reference to the land in question has also to be satisfied. The provisions of Section 56(2) of the Act do not give any discretion to the Trust to entertain an application for exemption after the time fixed by the Collector for making claims in reference to the land in question or at any time after the award is made by him.

52. In the present bunch of cases, this requirement is not satisfied In Writ Petition No. 10622 of 1999, the petitioners have placed on record copies of four applications allegedly made by them seeking abandonment of the acquisition proceedings. In so far as Annexure P-10 and P-11 are concerned, they are purported to have been filed on 31st December, 1980 i.e. much after the making of the award. Copies of the applications marked Annexure P-8 and P-8/A do not however bear any acknowledgment of such applications having ever been filed. Application Marked Annexure P-8 does not in fact bear any date while application marked Annexure P-8/A is dated 7th March, 1973. In the absence of any official acknowledgment regarding the receipt of said applications, it is difficult to accept the bald assertion made by the petitioners that the said two applications were

filed before the time stipulated u/s 56(2) of the Act.

53. The applications in the remaining three petitions have also been filed between June, 1979 to November/December, 1980 and do not therefore satisfy the second requirement stipulated for the admission of such applications. These applications are therefore of no consequence and cannot call for any mandamus to the respondents at this point of time especially when the award made by the Collector has been published and attained finality. It is common ground that no request has been made for abandonment in terms of Section 48 of the Land Acquisition Act, 1984, no matter the possession of the land in question has yet to be taken by the Collector.

54. The third and an equally important aspect that we need to keep in mind is that the original applicants have since alienated/transferred their interests in the property in favour of M/s R.P. Empires Pvt. Ltd. If such transfer is void and does not bind the authorities as has been declared by the Supreme Courts it may be difficult to recognize any such transfer even for purposes of exemption of the land from acquisition. All that the transfer of the interest held by the petitioners in Civil Writ Petitions No. 10622, 10623, 10624 and 10625 of 1999 in favour of M/s R.P. Empires Pvt. Ltd. would mean is that M/s R.P. Empires Pvt. Ltd. may be entitled to claim compensation if any payable to the vendors in terms of the award made in their favour. Challenge to the acquisition proceedings or even request for exemption from such proceedings may no longer be maintainable once transfers are made and held to be binding on the Government or the Improvement Trust. Our answer to question No. (iii) is accordingly in the negative.

Re: Question No. (iv) :

55. On behalf of the petitioners, it was argued by Mr. Chopra, learned Senior Counsel that inordinate delay in finalizing the acquisition proceedings was itself sufficient for declaring such proceedings to have lapsed. Reliance in support of that argument was placed upon a Full Bench decision of this Court in Radhey Sham Gupta versus State of Haryana (1982) 84 P.L.R. 743 and the two Single Bench decisions of this Court in Gurmail Singh and others versus Secretary to Government Punjab through Local Self Government, Chandigarh and another Vol. CXIII-1996-2 PLR 428 and Parkash Singh versus The State of Punjab 1983 P.L.J. 259. That contention appears to be one in despair. A similar argument was advanced on behalf of Akhara Braham Buta, owner of the land, in Civil Writ Petition No. 1300 of 1982. Relying upon Radhey Sham Gupta's case (supra) it was argued by the owner that the delay in finalizing the acquisition proceedings rendered the same legally bad. The contention was repelled in clear words by S.S. Sodhi J. speaking for the Court in the following words :--

The implementation of the scheme in the present case has no doubt been delayed but the circumstances in which it occurred clearly do not bring it within the ratio of Radhey Sham Gupta's case (supra) and no colorable exercise of

power or lack of bonafide on the part of the respondents can be attributed as the cause for such delay.

56. The above view as noticed earlier has been upheld by the Supreme Court also in the decision which we have extracted earlier. Reliance upon Radhey Sham Gupta's case (supra) is in that view of no assistance to the petitioners especially when the delay in completion of the execution of the scheme has to a large extent been on account of the petitioners themselves who have in the present writ petitions obtained interim orders against their dispossession as early as in the year 1999. The single Bench decision in Gurmail Singh's case (supra) has drawn support from the view taken in Radhey Sham Gupta's case (supra) and therefore does not offer any assistance to the petitioners. So also the decision in Parkash Singh's case (supra) deals with a different issue with which we are not concerned, namely, whether the Government can withdraw from the acquisition proceedings u/s 48 of the Land Acquisition Act and if so in what situations and circumstances.

57. We have therefore no hesitation in holding that the delay in completion of the acquisition proceedings in the instant case does not render the same illegal nor can be the proceedings said to have lapsed on that account.

58. The second limp of the argument of Mr. Chopra that the land in question must be deemed to have been exempted by implication has also not impressed us. If no request for exemption/abandonment of the acquisition proceedings could be entertained or granted for failure of the two essential pre requisites for such exemption or abandonment, it is difficult to say that such an abandonment or exemption could be implied merely because the lessee(s) had obtained interim order against dispossession and subsequently sold the property to a third party who had in turn obtained "Change of Land Use" or sanction for building plans for the authorities concerned. As to what is the genesis of those subsequent developments is a matter to which we shall advert while we come to question No. (v) where the same fails for consideration more appropriately. Question No. (iv) is accordingly answered in the negative.

Re : Question No. (v) :

59. It was contended by Mr. Chopra that since the Government had granted change of land use for the land in question, and the authority competent had even sanctioned the building plans for the proposed hotel/ multiplex to be constructed over the same, recall or withdrawal of the said order without notice and an opportunity of being heard to M/s R.P. Empires Pvt. Ltd. to oppose such withdrawal and recall was in violation of the principles of natural justice. It was argued by Learned Counsel that the "Change of Land Use" sanctioned by the Government had created a valuable right in favour of the petitioner M/s R.P. Empires Pvt. Ltd. which could not be taken away without complying with the bare nominal requirement of an opportunity of being heard in the matter. In as much as no such opportunity was granted, the respondents had committed an illegality

that was required to be corrected in the present proceedings.

60. Per contra, it was contended by Learned Counsel for the respondents that the change of land use for the land in question was granted by suppression of the true facts. The sanction issued by the Government proceeded on the assumption as though M/s R.P. Empires Pvt. Ltd. had acquired clear title to the land in question from Akhara Braham Buta the true owner and as if the land was free from all encumbrances including the rigors of the improvement scheme sanctioned by the Government u/s 42 of the Act. It was further submitted that the very basis on which the change of land use had been obtained being fraudulent and having been found to be wholly non-existent, the State Government was entitled to review and recall the same. It had accordingly recalled the order issued earlier. The sanction to the building plans was also consequently recalled. Not only that, a case for commission of offences punishable under Sections 420, 466, 467, 468, 471 and 120-B of the Indian Penal Code had also been registered in Police Station, Civil Lines, Amritsar which was under investigation and which would eventually identify all those who had connived in the commission of the fraud resulting in the issue of totally undeserved and illegal order granting "Change of Land Use". It was further submitted that State Government would have no objection to the transfer of the investigation of the case aforementioned to the Central Agency for a fair and effective investigation of the case and to bring to light the role played by all those who contributed to commission of the fraud.

61. We have given our careful consideration to the rival submission made at the bar. There is no gain saying that the doctrine of audi alter partem is a great and humanizing concept. No one need be condemned unheard is a principle which is both salutary and laudable intended to prevent injustice resulting from a denial of the opportunity of being heard. In the ordinary course, therefore there would have been no difficulty for this Court to apply the doctrine if the non-application of the same was seen to be causing any miscarriage of justice. The position in the instant case is, however, different and shall have to be viewed in the light of the findings that we have recorded while dealing with questions No. (i) to (iv) and which we may briefly recapitulate at this stage. We have noted how the acquisition proceedings were finalized with the making of the award by the Collector in the year 1973. We have also noticed how the owners and the lessee(s) participated in the acquisition and award proceedings and claimed compensation. We have also seen how Akhara Braham Buta, Amritsar the owner of the land, challenged the scheme and the acquisition proceedings in Civil Writ Petition No. 1300 of 1982 which was dismissed by this Court. The order passed by the Supreme Court in appeal against the said decision has also been noted by us in which the Supreme Court directed that no part of the land shall be returned to the owner, although compensation for the same would be determined by reference to the marked value of the property in the year 1983 as against the years 1972-1973 when the preliminary notification was made. We have held that the challenge to the acquisition proceedings by the owner Akhara Braham Buta

having failed, no challenge to the said proceedings can be entertained 26 years after the making of the award at the instance of the lessee(s) holding the land under the Akhara Brahama Buta. In answer to question No. (iii) we have also held that transfer of the rights and interest held by the that transfer of the rights and interest held by the lessee(s) to M/s R.P. Empires Pvt. Ltd. could not be recognized as the same was not binding upon the Government or the Improvement Trust and that there was no occasion for exemption of the land in question u/s 56 of the Act on account of the failure of the conditions precedent for such exemption. The net effect of all these findings recorded by us is as under :--

(a) The acquisition proceedings qua the land in question are valid in the eyes of law.

(b) The claim for exemption from/abandonment of the acquisition proceedings was untenable.

and

(c) The transfer of the rights held by the lessee(s) to M/s" R.P. Empires Pvt. Ltd. was not binding upon the Government and the Improvement Trust being void.

62. If the above be the true position, as indeed it in our opinion is, we fail to appreciate how the transferee M/s R.P. Empires could have obtained the "Change of Land Use" from the Government and how such "change of land use" sanctioned in its favour could make any difference in so far as the validity of the transfer in its favour was concerned. The only right which M/s R.P. Empires Pvt. Ltd. could on the basis of the said transfer claim in the property was the right to claim compensation determined in the award, provided the said amount has not already been paid to the transferees from whom the company has acquired the interest held by them. Suffice it to say that change of land use could not in our opinion create any right in favour of the petitioner whose status was not more than that of a person holding land under instruments of the transfer that were void and unenforceable against the State Government and the Improvement Trust. At any Fate the issue of any mandamus directing the respondents to hear the petitioner before cancelling the sanction for the change of land use and the building plans would be no more than an idle formality.

63. In Aligarh Muslim University and Others Vs. Mansoor Ali Khan, the Supreme Court declared that it would depend upon the facts of each case whether or not the non-observance with the principles of natural justice had made any difference. The Court noticed the debate raised about the useless formality argument advanced by the protagonists in every situation. The Court observed :-

25. The useless formality theory, it must be noted, is an exception. Apart from the class of cases of admitted or indisputable facts leading only to one conclusion referred to above, there has been considerable debate on the application of that theory in other cases. The divergent views expressed in regard to this theory

have been elaborately considered by this Court in M.C. Mehta referred to above. this Court surveyed the views expressed in various judgments in England by Lord Reid, Lord Wilberforce, Lord Woolf, Lord Bingham, Megarry, J. and Staughton, L.J. etc. in various cases and also views expressed by leading writers like Prof. Garner, Craig, De Smith, Wade, D.H. Clark etc. Some of them have said that orders passed in violation must always be quashed for otherwise the Court will be prejudging the issue. Some others have said that there is no such absolute rule and prejudice must be shown. Yet, some others have applied via media rules. We do not think it necessary in this case to go deeper into these issues. In the ultimate analysis, it may depend on the facts of a particular case.

64. In a later decision, rendered in Karnataka State Road Transport Corporation and Another Vs. S.G. Kotturappa and Another, , the Court reiterated that principles of natural justice are required to be complied with depending on the fact situation in each case. The Court declared that principles of natural justice do not apply in vacuum nor they can be put as a straitjacket formula. They can also not be complied with where the application could lead to an empty formality. The Court observed :-

...The question as to what extent, principles of natural justice are required to be complied with would depend upon the fact situation obtaining in each case. The principles of natural justice cannot be applied in vacuum. They cannot be put in any straitjacket formula. The principles of natural justice are furthermore not required to be complied with when it will lead to an empty formality. What is needed for the employer in a case of this nature is to apply the objective criteria for arriving at the subjective satisfaction. If the criteria required for arriving at an objective satisfaction stands fulfilled, the principles of natural justice may not have to be complied with, in view of the fact that the same stood complied with before imposing punishments upon the respondents on each occasion and, thus, the respondents, therefore, could not have improved their stand even if a further opportunity was given....

65. Reference may also be made to judgment rendered by the Supreme Court in Punjab National Bank and Others Vs. Manjeet Singh and Another, where the Court reiterated the position that principles of natural justice are not required to be complied with if any such application would only be an empty formality. The Court observed :-

...The principles of natural justice were also not required to be complied with as the same would have been an empty formality. The Court will not insist on compliance with the principles of natural justice in view of the binding nature of the award. Their application would be limited to a situation where the factual position or legal implication arising hereunder is disputed and not where it is not in dispute or cannot be disputed. If only one conclusion is possible, a writ would not issue only because there was a violation of the principle of natural justice.

66. To the same effect are the decisions of the Supreme Court in P.D. Agrawal

versus State Bank of India and others, (2006) 8 S.C.C. 776, Ashok Kumar Sonkar Vs. Union of India (UOI) and Others, and The Secretary, A.P. Social Welfare-Residential Educational Institutions Vs. Sri Pindiga Sridhar and Others, .

67. In the light of the authoritative pronouncements and findings that we have already recorded in the earlier part of this judgment, there is no gain saying that the Government can not restore the "Change of Land Use" or sanction the building plans in respect of a property which is the subject matter of acquisition, even if the idle formality of a notice upon the petitioners were to be gone through. We do not in the above circumstances consider the present to be a fit case in which we ought to interfere with the impugned order passed by the State Government by which the "Change of Land Use" was withdrawn and sanction of the building plans recalled even without notice to the petitioner M/s R.P. Empires Private Limited the transferee pendent-lite. We may at this stage make it clear that we have not purposely gone into the question of fraud which was argued at considerable length before us by Learned Counsel for the parties on the basis of the documents that were produced on both sides. We have done so because expression of any opinion by us on the question is likely to prejudice one or the other party in the case that is presently under investigation, in which criminal angle to the entire transaction is being examined. Question No. (v) is accordingly answered in the negative.

Re: Question No. (VI)

68. The Supreme Court has in a series of decisions dealt with the question whether Investigation by the Central Bureau of Investigation can be ordered by the Courts and, if so the circumstances in which such a direction can be issued. The decision rendered by their Lordships in Central Bureau of Investigation Vs. State of Rajasthan and Another, declared that the High Courts and Supreme Court have power under Article 226 or Article 136 of the Constitution respectively to order investigation by the Central Bureau of Investigation but the said power should be exercised only in rare and exceptional cases. This was reiterated by their Lordships in Secretary, Minor Irrigation and Rural Engineering Services, U.P. and Others Vs. Sahngoo Ram Arya and Another, in which the Court held that a CBI inquiry cannot be ordered as a matter of routine or merely because the party makes a prayer to the same effect. The decision of the Supreme Court in Sakiri Vasu Vs. State of U.P. and Others, , declined investigation by the Central Bureau of Investigation on the ground that the material on record did not disclose a prima facie case calling for any such investigation. The Court held that a mere allegation by the appellant that his son was murdered because he had discovered some corruption did not justify a CBI inquiry, particularly when inquiries held by the army authorities as well as by GRP at Mathura established that it was a case of suicide. In the light of the above pronouncements, we have no difficulty in holding that while this Court can in exercise of its power under Article 226 of the Constitution direct investigation into a case by the Central Bureau of Investigation, such a direction would be justified only when the material on

record and the attendant circumstances warrant the same.

69. Civil Writ Petition No. 893 of 2007 filed in public interest does not pray for transfer of the investigation in FIR No. 107 dated 16th April, 2007, registered with Police Station Civil Lines, Amritsar to CBI. That prayer has been made in Civil Misc. No. 14508 of 2009 filed in the said petition. The application alleges that transfer of the land in dispute and the grant of change of land use was a part of a big scam in which many senior public officers of different departments are involved and that it was a clear case of an attempt to cause loss of hundreds of crores to the public exchequer. It also alleges that the complaint leading to the registration of the FIR appears to have been lodged by Amritsar Improvement Trust only to save their skin and that investigation of the case had not even taken off because of the involvement of senior Government officers thereby making it necessary in the interest of justice and larger public interest to hand over the investigation to an independent agency like the Central Bureau of Investigation to discover the truth and nail the culprits.

70. When the above application came up before us on 7th September, 2009, Mr. Khosla, Learned Counsel for the State Government submitted on instructions that the Government had no objection whatsoever to the transfer of investigation in FIR No. 107 dated 16th April, 2007 (Supra) to the Central Bureau of Investigation. A similar statement was made on behalf of the Learned Counsel for the Amritsar Improvement Trust also. Mr. Chopra, Learned Counsel appearing for respondent No. 3, however, further submitted that a request for transfer of investigation from the jurisdictional police station of the State was made to the CBI but was turned down by the latter. This, according to Mr. Chopra left to room for transfer of the investigation to CBI especially when the State Government is fully competent to have the investigation conducted and expeditiously concluded.

71. FIR No. 107 dated 16th April, 2007 was registered as early as in April 2007. Nearly two and half years have rolled by since then without any meaningful steps having been taken by the investigating agency leave alone taking the investigation to anywhere near conclusion of filing of a charge sheet against those found guilty. Mr. Khosla, counsel for the respondent-State was unable to explain as to why the investigation into the case has taken such a long period. The very fact that writ petitions were pending in this Court also did not in our opinion prevent the investigating agency from conducting its investigation especially when there was no challenge to the registration of the case nor any stay against investigation into the same. The failure on the part of the State Police to conduct a proper investigation and to conclude the same within a reasonable time, may therefore, call for intervention of this Court to ensure an effective investigation in what has been described by the petitioner as a big scam. The question however is whether we ought to direct transfer of the investigation immediately or give an opportunity to the State Police Authorities to conclude the same within a time frame. The latter course appears to us to be more reasonable. Whatever may have been the reasons for the delay in

completion of the investigation heretofore, we see no impediment in the investigating agency taking up the investigation of the case immediately and concluding the same expeditiously. In case the State Police Authorities remain remiss in completing the investigation within a period of six months also from the date of this order, it would give rise to an inference that the investigation of the FIR is being deliberately held up or prevented by whosoever is likely to be affected by the same. Transfer of the investigation to the CBI, in that event would be a just and fair order which we are inclined to make right away. Question No. 6 is answered accordingly.

72. In the result writ petitions No. 10622 of 1999, 10623 of 1999, 10424 of 1999, 10625 of 1999 and Civil Misc. Application No. 18707 of 2006, 18565 of 2006, 18714 of 2006 and 18705 of 2006 filed in the same fail and are hereby dismissed alongwith Civil Writ Petition No. 18029 of 2008 filed by M/s R.P. Empires Pvt. Limited.

73. Civil Writ Petition No. 893 of 2007 and CM No. 14508 of 2009 are however disposed of with the direction that in case investigation into FIR No. 107 dated 16th April, 2007, registered in Police Station, Civil Lines, Amritsar, is not concluded by the investigating agency concerned within a period of six months from the date of this order, the same shall stand transferred to the Central Bureau of Investigation established under the Delhi Special Police Establishment Act, 1946, without any further reference to the Bench, the CBI shall then take up the investigation and conclude the same expeditiously and as far as possible within a period of six months from the date the record is transferred to it. No. costs.