
(2015) 11 AHC CK 0098

In the Allahabad High Court

Case No : Land Acquisition Nos. 46, 47, 48, 101 of 2013 and 99, 111 of 2012

Sugriv Verma and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 24-11-2015

Acts Referred:

Constitution of India, 1950 — Article 226

General Clauses Act, 1897 — Section 21

Land Acquisition Act, 1894 — Section 11, 11(2), 11-A, 12, 16

Citation : (2015) 11 AHC CK 0098

Hon'ble Judges : S.S. Chauhan and Anant Kumar, JJ.

Bench : Division Bench

Advocate : Somesh Tripathi, Hari Anuj Bahadur Sinha and Sanjeev Agnihotri, for the Appellant; I.B. Singh, K.K. Singh and Nisar Ahmad, for the Respondent

Final Decision : Dismissed

Judgement

S.S. Chauhan, J.—Since common questions of law and facts are involved in all these writ petitions, therefore, the same are being decided by a common order.

2. These writ petitions have been filed for quashing the notifications dated 27.11.2008 and 14.7.2010 as contained in Annexure Nos. 1 and 2 to the writ petition, by means of which, the notifications have been issued under Section 4(1) read with Section 17 and under Section 6 read with Section 17 sub-section (4) of the Land Acquisition Act (for short "the Act"), by which, the land of the petitioners, who are bhoomidhar with transferable rights of their land situated at Village Salahpur Rajaour and Hasimpur, Tehsil Tanda, District Ambedkar Nagar was sought to be acquired by means of the impugned notifications for the purpose of extension of Stage-II, Tanda Thermal Power Project due to shortage of electricity. The capacity of Tanda Thermal Power Project, Stage-II is proposed to be 2 x 660 MW (1320 MW), out of which, the State of U.P. was supposed to get 832 MW power as its share, which is 63% of the total generation from the said units. The notifications under Sections 4 read with Section 17 and Section 6

read with Section 17 were issued for the purpose of extension of Stage-II of Tanda Thermal Power Project. Urgency clause was invoked in both the notifications. The notification under Section 6 was issued after a gap of 605 days. The provision of Section 5-A of the Act was given a go-bye looking to the urgency in the matter.

3. The aforesaid notifications have been challenged by the petitioners taking shelter of the provisions contained in Sections 11-A and 5-A of the Act.

4. The respondent-State of U.P. has filed a counter affidavit and in the counter affidavit, it has been stated that the publication of notification under Section 4 read with Section 17 of the Act was made in the news paper on 07.06.2009. Thereafter public notice of the substance of notification was done through Munadi made by the Tehsildar in the village on 7/8.09.2009. The gazette notification of the declaration under Section 6(1) read with Section 17(4) of the Act was made on 14.07.2010. The publication of the notification in the news paper as per the requirement of the Act was made on 05.08.2010. Thereafter public notice of the substance of notification was made through Munadi by the concerned Tehsildar on 19.08.2010. Notices to the individual villagers as contemplated under Section 9 of the Act were given on 08.03.2011.

5. Just to obviate the delay caused in acquiring the land, the Government provided the procedure of negotiation with the farmers by means of Government Order dated 12.09.2008. The consensus arrived at on behalf of landholders for an agreed amount of compensation in the light of the policy of the Government of Uttar Pradesh (Karar Niyamawali, 1997). In pursuance of the aforesaid Karar Niyamawali and the Government Order, the Collector, Ambedkar Nagar, constituted a Committee by means of Office Memorandum dated 06.11.2008, both at District Level and Tehsil Level to obtain consensus on behalf of landholders for an agreed amount of compensation in the light of the government policy i.e. Karar Niyamawali, 1997.

6. The Committee constituted by the Collector held the meeting on 04.12.2009, 15.12.2009 and 26.12.2009. In the said meeting, the land owners of different villagers were invited for settlement of rate. The negotiation were made with the landholders and they were offered the rate of Rs. 39.76 lacs per hectare. The circle rate at the time of issuance of notification under Section 4 of the Act on 27.11.2008 was Rs. 12,00,000/- per hectare, which was revised upto Rs. 17,86,000/- per hectare. The rates prevalent at the time of acquisition were less than the rates agreed on the basis of negotiation. The landholders, who came for negotiation for settlement of the rates, wanted higher rate as against the circle rate. A meeting was held on 26.12.2009 and thereafter the said Committee met on 18.04.2011 and in the said meeting, the landholders demanded higher rate of compensation. However, the Committee agreed to give them compensation at the rate of Rs. 43.00 lacs per hectare. This rate was agreed on 18.04.2011. The landholders did not agree with the aforesaid fixation of compensation on the basis of agreement. Some of the landholders signed their agreement for

compensation, leaving the matter of rate of compensation to be decided at a later stage.

7. The Committee again met on 18.12.2011 and on the said date, the Committee offered the rate of Rs. 53.00 lacs per hectare. The representatives of the landholders wanted the compensation to be further enhanced. The matter of compensation was placed before the Commissioner and other higher officials, who on consideration of the suggestions made in this regard, agreed for further enhancement of compensation to be paid to the tune of Rs. 53.00 lacs per hectare. On account of the aforesaid continued negotiations, further proceedings of possession and payment of compensation were deferred so that the matter of acquisition may be decided with full satisfaction of the landholders.

8. In the next meeting held on 20.07.2012, which was attended by a large number of representatives of the landholders, it was agreed that compensation @ Rs. 56.00 lacs per hectare would be paid and in addition to this, other benefits under the policy of rehabilitation (R & R Policy) were also to be given to the landholders. The District Magistrate recommended the compensation proposal to the Commissioner, Faizabad and the Commissioner, Faizabad finally approved the same on 24.07.2012. The landholders were thereafter called upon to withdraw the amount of compensation. Some of the villagers raised objection only demanding the higher compensation, but no such plea was raised at any point of time that they do not want acquisition of their land.

9. The rates were finally agreed on the basis of participation of the representatives of landholders of all the villages in large numbers in the meetings held at District Level and Tehsil Level and the possession of the land was taken after the agreement of compensation as recommended by the District Level Committee and approved by the Commissioner on 16.08.2012 and the mutation in the name of NTPC was done on 31.08.2012. The process of paying compensation as per the agreed rate of award simultaneously started and large number of villagers have signed the agreement and received compensation @ Rs. 56.00 lacs per hectare and about 1036 landholders have received the compensation, out of which, 930 landholders have entered into an agreement and received the compensation @ Rs. 56.00 lacs per hectare and have also signed Karar Prapatra, Raji Nama (Agreement), Voucher of Payment and Affidavit.

10. On the basis of negotiation and mutual settlement, the Collector also declared the award on 26.06.2013 and after declaration of the award, 106 landholders also received the compensation as per the rates mentioned in the award. Though the possession was taken in about two years, but this time was consumed in an amicable settlement in regard to the compensation and this was done only with a view to end the dispute, if any, in regard to possession and acquisition, so that the project of generation of electricity may not be stalled, which was the pressing need of the State at the relevant time when extension of Stage-II, Tanda Thermal Power Project was decided.

11. The writ petitions have been filed challenging the notifications at a belated stage and that too after written agreement by large number of landholders to take compensation on an agreed rate and when they handed over physical possession of their land, they are not entitled to challenge the acquisition proceedings.

12. Writ Petition No. 85 (LA) of 2012, challenging the same notifications on similar grounds was filed by Narendra Dev Tripathi and this Court after hearing the matter at length, dismissed the writ petition as withdrawn vide order dated 04.07.2012.

13. On the aforesaid facts, it has been submitted on behalf of the State Government that there is no illegality in the acquisition and the writ petitions are liable to be dismissed.

14. Submission of learned counsel for the petitioners is that the provisions of Section 5-A of the Act could not have been violated and if acquisition has been made in violation of the provisions of Section 5-A of the Act, then the same is illegal as urgency clause has been invoked wrongly in this case. The process for setting up of Power Plant went up for considerable long time i.e. for two years and for about two years, the process of acquisition was going on, by issuing notification under Sections 4 and 6 of the Act.

15. Learned counsel for the petitioners further submits that the decision to invoke urgency clause should have been taken at the initial stage and not at the subsequent stage. There was no urgency in the matter as the setting up of Power Station does not take place in two or three months, but it takes long time and, therefore, the objections of the petitioners under Section 5-A of the Act ought to have been considered and disposed of, without invoking the urgency clause as contemplated under Section 5-A of the Act. The explanation given for invoking the urgency clause in Paras-37 and 38 of the counter affidavit filed by the State is not satisfactory. Learned counsel further submits that the provisions of the Act cannot be given a go-bye and they are to be scrupulously complied with. He also submits that the contents of Para-22 of the writ petition has not been replied.

16. In reply to the argument of learned counsel for the petitioners, learned Standing Counsel has submitted that the urgency clause was rightly invoked as setting up of Tanda Thermal Power Station, Stage-II was a necessary requirement in view of acute shortage of electricity prevailing in the State. The decision for extension of Tanda Thermal Power Station, Stage-II was taken on priority basis by the State Government as the State Government came to the conclusion that in order to cope up with the acute shortage of electricity, the urgency clause may be invoked.

17. Learned Standing Counsel also submits that in order to give full opportunity to the petitioners, a meeting was called by the District Level and Block Level Committee again and again and they participated in the meeting and after their participation, they objected to the rate of compensation, but no objection was

raised by any of the land owners in regard to adequacy of acquisition or that their land was not fit for acquisition or that alternative land was offered. He further submits that the question of availability of alternative land is not feasible and neither would be a practical idea in the present case as it is a matter of extension of Tanda Thermal Power Station, Stage-II.

18. Learned Standing Counsel further submits that the writ petition filed by some of the land owners has been dismissed as not pressed as the Court found that there was no merit in the same and as such the same was got dismissed as not pressed. He submits that in the present writ petitions, an attempt has been made to take a chance again before this Court. When the land owners agreed for a particular rate of compensation, only thereafter the same was accepted and the award was made after the approval from the Commissioner of the Division on 26.6.2013. The award was given the publicity by means of various notices under Section 12 of the Act, by calling the land owners to accept the compensation by agreement or in terms of the award.

19. Learned Standing Counsel also submits that out of 1312 land owners, 1040 land owners have accepted their compensation and as such the urgency clause has rightly been invoked and the petitioners were having ample opportunity to challenge the acquisition as and when notification under Section 4 of the Act was issued, which they did not do and they waited for the process to go on and they turned around to file writ petitions in 2013. He submits that the writ petitions, therefore, are belated and are liable to be dismissed.

20. Learned counsel for the NTPC has submitted that in Writ Petition No. 46 (LA) of 2013, petitioner Nos. 16, 17, 18, 19, 20, 21, 22, 33, 36, 40, 42, 43, 45, 46, 47, 50, 52, 62, 63, 65, 66, 80, 81, 82, 87, 92, 97, 101, 102, 119, 126, 135, 137, 139 and 153 are not a recorded tenure holders and, therefore, they have no right to maintain the writ petition. He submits that the Government Order dated 12.09.2008 provides that while starting the proceedings under the Act, simultaneous efforts should be made to obtain consensus on behalf of the landholders for an agreed amount of compensation in the light of the policy of the Government of U.P. (Karar Niyamawali, 1997) and the same procedure was adopted in the present cases and after agreement with the farmers, compensation was fixed @ Rs. 56.00 lacs per hectare and on the basis of the said rate, compensation has been awarded.

21. The amount has been handed over to the Government and the Government has proceeded to deposit the amount in the Treasury and thereafter in the Court on 13.08.2014.

22. Most of the land owners have accepted the compensation and few have come forward before this Court to challenge the acquisition with mala fide intention and with a view to delay the acquisition proceedings and setting up of Tanda Thermal Power Station, Stage-II.

23. The possession of the land was taken on 16.08.2012 within the time

prescribed under the Act. Notices were issued to the land owners, who have not entered into agreement, after declaration of the award on 26.06.2013 for receiving the compensation. A total amount of Rs. 187.58 crores has been deposited by the answering respondents between 14.08.2008 to 26.06.2013. This amount has been calculated at the agreed rate of Rs. 56.00 lacs per hectare. Submission is that at the time of acquisition on 27.11.2008, the existing circle rate was Rs. 12,00,000/- per hectare, which was revised from time to time and at present, it is @ Rs. 17,86,000/- per hectare. In addition to above, an amount of Rs. 43.50 crores has also been deposited between the periods from 15.07.2013 to 07.08.2013 against R&R grant.

24. The landholders have participated in various meetings held between the State authorities and their representatives, but objection was never raised in respect of acquisition proceedings except claiming higher compensation. They allowed the acquisition proceedings to go on till the rate was finally approved by the Commissioner and the possession was taken on 16.08.2012 and after getting the compensation enhanced from Rs. 12.00 lacs to Rs. 56 lacs per hectare, they filed the present writ petitions challenging the proceedings for the first time at a much belated stage stating therein that the acquisition proceeding was bad on account of dispensation of the enquiry under Section 5-A of the Act.

25. We have heard learned counsel for the parties and perused the record.

26. The State of Uttar Pradesh is under acute shortage of electricity and keeping in mind the aforesaid situation, a decision was taken to increase/expand the capacity of Tanda Thermal Power Station, Stage-I at Ambedkar Nagar, U.P. with the capacity of 2 x 660 MW (1320 MW). The said decision was taken, looking to the fact that the need of electricity can be met by more and more generation of electricity, which is needed in the present existing situation.

27. To make the State a better place for living and as a consequence thereof, respondent Nos. 2 and 3 sent requisition for acquisition of land for power plant and also provided the details and comments on the basis of objective and proper appraisal of the matter and also recommended for invoking the urgency clause under Section 17 of the Act. Thereafter, it was decided to acquire the land adjacent to the premises of the existing power plant, in view of extension of Stage-I power plant to Stage-II power plant because of the facility of management, supervision and efficient running of the plant.

28. The notifications under Section 4 read with Section 17 and under Section 6(1) read with Section 17 of the Act were issued on 27.11.2008 and 14.07.2010 respectively, by invoking the urgency clause. The adequate publicity was made of the substance of notification by Munadi made by the Tehsildar in the village on 7/8.09.2009 under Section 17(4) of the Act. Publication of notification under Section 6(1) read with Section 17 of the Act was made on 05.08.2010. The notices were also sent to the individual villagers as contemplated under Section 9 of the Act on 08.03.2011.

29. In order to overcome the delay caused in acquiring the land, the State Government issued a Government Order dated 12.09.2008, which provides that while starting the proceedings under the Act, simultaneous effort should be made to obtain consensus on behalf of the land owners for an agreed amount of compensation in the light of the policy of the Government of Uttar Pradesh (Karar Niyamawali, 1997). In view of the aforesaid Karar Niyamawali and the Government Order, the Collector, Ambedkar Nagar proceeded to issue the Office Memorandum dated 06.11.2008 by constituting a Committee, both at District Level and Tehsil Level to obtain consensus on behalf of the landholders for an agreed amount of compensation in the light of the government policy i.e. Karar Niyamawali, 1997.

30. The Committee constituted by the Collector held the meeting on 04.12.2009, 15.12.2009 and 26.12.2009 and in the said meeting, the land owners of different villages were invited for settlement of the rate and by negotiations, the landholders were offered the rate of Rs. 39.76 lacs per hectare. At the time of notification under Section 4 of the Act on 27.11.2008, the existing circle rate was Rs. 12,00,000/- per hectare, which was revised upto Rs. 17,86,000/- per hectare. The same rate is still continuing, but in spite of that, negotiations were made with the land owners, and the Committee, however, agreed to give compensation @ Rs. 43.00 lacs per hectare, though it was not acceptable to the landholders. The landholders agreed for fixation of higher compensation by agreement and some of the landholders signed their agreement for compensation, leaving the matter of rate of compensation to be decided at a later stage.

31. The Committee again met on 18.12.2011 and on the said date, rate of Rs. 53.00 lacs per hectare was offered. The representatives of the landholders wanted compensation to be further enhanced. The matter of compensation was placed before the Commissioner and other higher officials, who on consideration of suggestion made in this regard, agreed for further enhancement of compensation to be paid upto the rate of Rs. 53.00 lacs per hectare. The minutes of the meeting dated 18.12.2011 also indicate the same.

32. The negotiations further continued and ultimately a meeting again took place between the representatives of the landholders and the members of the Committee on 20.07.2012. In this meeting again, on asking of the representatives of the landholders, finally the rate was fixed @ Rs. 56.00 lacs per hectare. In addition to the aforesaid rate, other benefits under the policy of rehabilitation (R & R Policy) were also to be given to the landholders. The Committee through District Magistrate recommended the compensation proposal to the Commissioner, Faizabad, who approved the same on 24.07.2012. Thereafter the landholders were asked to withdraw the amount of agreed compensation as contemplated under Section 11(2) of the Act.

33. It is to be noted that in none of the meetings any objection was raised in regard to acquisition of land and neither any objection was raised as to whether

the land was fit for acquisition or not, moreso, it was not placed before the Committee at any point of time that any other alternative land was available, but in fact, the landholders never raised any objection to the acquisition and they only demanded higher compensation.

34. The possession of the land was taken on 16.08.2012 and the mutation in the name of NTPC was done on 31.08.2012 and out of 1312 land owners, 1040 land owners have accepted their compensation, out of which, 930 landholders have entered into agreement and received compensation @ Rs. 56.00 lacs per hectare and have signed Karar Prapatra, Raji Nama (Agreement), Voucher of Payment and Affidavit.

35. The Collector, finally declared the award on 26.06.2013. The award was given due publicity and notices were issued to all the landholders to collect the compensation.

36. In the light of the above facts, it has to be considered as to whether the petitioners have approached this Court well within time or they have approached this Court at a belated stage i.e. after entering into negotiations with the State authorities and finally agreeing for fixation of rate of compensation, which was many times more than the circle rate.

37. The question of giving of opportunity to the land owners could have arisen under Section 5-A of the Act, had there been any objection in regard to acquisition. There has been no objection in regard to acquisition before the authorities and even alongwith the writ petitions, no document has been filed to indicate as to in what manner, acquisition of the land of the petitioners could not been made.

38. Was there any objection to give opportunity to the landholders under Section 5-A of the Act; was the land was not fit for extension of Power Plant, Stage-II or there was better alternative land available, but no such case was setup before the authorities while negotiations went on for considerable long time.

39. If the petitioners have not raised any objection in regard to acquisition, then they cannot come forward and raise any objection before this Court by stating that they ought to have been given opportunity under Section 5-A of the Act.

40. The question of invoking the urgency clause under Section 5-A of the Act was duly considered by the State Government and the State Government took a conscious decision to invoke the urgency clause and shun away with the opportunity under Section 5-A of the Act as there was acute shortage of electricity in the State so in order to cope up with the shortage of electricity, setting up of Tanda Thermal Power Station, Stage-II was required on emergency basis. Therefore, looking to the acute shortage of electricity in the State, a decision was taken on the basis of details, comments and proper appraisal of the matter recommended by respondent Nos. 2 and 3 for invoking the urgency clause.

41. The details, which were supplied and the comments, which were presented before the State Government, convinced the State Government to invoke the urgency clause under Section 17 of the Act, so it cannot be said that there was no urgency in the matter for invoking the urgency clause under Section 5-A of the Act.

42. Whether the petitioners have approached this Court well within time, challenging the acquisition or their writ petitions suffer from delay and laches in the given circumstances when they have participated in the meetings and got the compensation rate finalized and thereafter turned around to challenge the acquisition and that too, after such a belated stage.

43. Learned counsel for the petitioners, in support of his contention, has placed reliance upon the judgment of the apex court in the case of Darshan Lal Nagpal (dead) by L.Rs. Vs. Government of NCT of Delhi and Others, , wherein the apex court has held that enquiry has to be made by the Court as to existence of genuine urgency and the said evidence has to be led by the State authorities. In the said case, time lag of five years was found between the proposal for acquisition of land for establishment of electricity substation and issuance of notification invoking the urgency provisions. In those very special circumstances, it was held that long time gap between initiation of proposal and issuance of notification cannot be overlooked.

44. The aforesaid case was also related to setting up of a Power Station, but in the said case, there was no negotiation with the land owners, moreover, the urgency in regard to pre-notification was taken into consideration.

45. In the present case, no such evidence has been brought to our notice that there has been such a long time gap in taking possession for setting up a Power Station and issuing notification. Neither there was any private negotiation nor there was any Government Order nor there was any Karar Niyamawali in the said case.

46. To the same effect, there is a case reported in Devendra Singh and Others Vs. State of U.P. and Others, . In the said case, the land was sought to be acquired for construction of District Jail by invoking the urgency clause. In this case, proposal was sent on 24.01.2003 by the Principal Secretary, Home/Prisons, and after lapse of five years, in the year 2008, the State Government asked the District Magistrate to trace availability of lands for acquisition for construction of the District Jail in the proximity to District Headquarters and further requested the Selection Committee to recommend the land suitable for the said purpose. The Selection Committee, thereafter recommended the acquisition of land notified as suitable for the construction of the Jail, but it took two years for the State Government to issue the Notifications under Section 4 and 6 respectively, invoking the urgency provisions under Section 17 . In that very situation, it was held that there was lethargy and lackadaisical attitude of the State Government.

47. The aforesaid case is also not applicable in the present case, looking to the

peculiar facts involved in the present case in absence of any material brought before this Court by the petitioners in regard to delay in the process of acquiring the land. Same facts are of the cases reported in Anil Kumar Gupta Vs. State of Bihar and Others, ; and Ram Dhari Jindal Memorial Trust Vs. Union of India (UOI) and Others, The said cases are also not applicable in the present cases.

48. Learned Standing Counsel, in reply to the argument advanced on behalf of the petitioners, has submitted that a void order cannot be set at naught if the parties have not approached the Court within a reasonable time. Once the notification under Section 4(1) read with Section 17 of the Act is issued, the officers of the State are authorized to enter upon the land and carry on measurement etc. and the owner/interested person was put on notice that any encumbrance hereafter would not bind the State and, therefore, Section 4(1) of the Act does not envisage specification of the nature of the land.

49. When there is inordinate delay in filing the writ petition and when all such steps have been taken and the acquisition proceedings have become final, the Court should be loathe to quash the notifications. The notification under Sections 4(1) and 6 of the Act cannot be quashed. The discretion should be exercised taking all relevant factors into pragmatic consideration. When the award has been passed and possession has been taken, then Court cannot exercise its power to quash the notification, which is a material factor to be taken into consideration before exercising the power under Article 226 of the Constitution of India.

50. Though the order may be void, but if the party does not approach the Court within reasonable time, which is always a question of fact and have the order invalidated or acquiesced or waived, the discretion of the Court has to be exercised in a reasonable manner. When the discretion has been conferred on the Court, the Court may in appropriate case decline to grant the relief, even if it holds that the order was void. The extraordinary jurisdiction of the Court may not be exercised in such circumstances.

51. Supporting the aforesaid proposition of law, learned Standing Counsel has relied upon the judgment of the apex court in the case of State of Rajasthan and Others Vs. D.R. Laxmi and Others, .

52. Learned Standing Counsel has also placed reliance upon the judgment of the apex court in the case of Municipal Corporation of Greater Bombay Vs. The Industrial Development Investment Co. Pvt Ltd., and others, . In the said case also, it was held that once the acquisition proceeding is complete and land vests in the State free from all encumbrances, the proceedings become final and not open to challenge under Article 226 on the ground of non-compliance with any statutory requirement such as non-existence of public purpose. Therefore, the person aggrieved must approach the Court before completion of the proceedings. The apex court in the said case held as under:

"23. The next question is whether the High Court was right in issuing the writ

after long lapse of time? The respondents, admittedly, approached the High Court after a delay of 4 years; that too after award was made and possession was taken from the owner. It is seen that the declaration was published as long back as on 3-5-1979. Earlier to that after the draft plan was published, notice was given to all the parties. The respondents, who claim to be the tenants, had not raised the little finger in making any objection to the proposed scheme or the revised plan. The award was made on 24-2-1983; possession was taken on 4-3-1983, and on the same day it stood transferred to the BMC. The writ petition came to be filed thereafter on 4-7-1983. The learned Single Judge dismissed the writ petition on the ground of laches.

24. In *State of Tamil Nadu and others etc. Vs. L. Krishnan and others etc.*, , a Bench of three Judges of this Court had held that "the delay in challenging notification was fatal and the writ petitions were liable to be dismissed on the ground of laches".

Exercise of power under Article 226 of the Constitution, after award was made, was held to have been wrongly made. Delay to make award was not a ground to quash the acquisition proceedings."

53. In the case of *Swaika Properties Pvt. Ltd. and Another Vs. State of Rajasthan and Others*, , it was found by the apex court that the acquisition was challenged after passing of the award and simultaneously reference application was filed under Section 18 of the Act for enhancement of compensation. The declaration in the said case under Section 6 of the Act was made on 08.02.1984 and the award was made on 26.06.1989. The writ petition having been filed after taking over of possession and the award having become final, the same was dismissed on the ground of delay and laches.

54. In the case of *Sawaran Lata etc. Vs. State of Haryana and Others*, , the apex court held as under:

"11. In the instant case, it is not the case of the petitioners that they had not been aware of the acquisition proceedings as the only ground taken in the writ petition has been that substance of the notification under Section 4 and declaration under Section 6 of the 1894 Act had been published in the newspapers having no wide circulation. Even if the submission made by the petitioners is accepted, it cannot be presumed that they could not be aware of the acquisition proceedings for the reason that a very huge chunk of land belonging to a large number of tenure-holders had been notified for acquisition. Therefore, it should have been the talk of the town. Thus, it cannot be presumed that the petitioners could not have knowledge of the acquisition proceedings."

55. In the case of *Banda Development Authority, Banda Vs. Moti Lal Agarwal and Others*, , it was laid down by the apex court that the delay of even few years would be fatal for denying reliefs to the petitioners. It was also held that even if objection for delay and laches was not raised by the Banda Development Authority, it was duty of the High Court to take cognizance thereof and decline

since acquired land had been utilized for implementing the residential scheme and third-party rights had been created. In Paras-16, 17, 18 and 22 of the said judgment, the apex court observed as under:

"16. In our view, even if the objection of delay and laches had not been raised in the affidavits filed on behalf of BDA and the State Government, the High Court was duty-bound to take cognizance of the long time gap of nine years between the issue of declaration under Section 6(1) and filing of the writ petition, and declined relief to Respondent 1 on the ground that he was guilty of laches because the acquired land had been utilized for implementing the residential scheme and third party rights had been created. The unexplained delay of about six years between the passing of award and filing of the writ petition was also sufficient for refusing to entertain the prayer made in the writ petition.

17. It is true that no limitation has been prescribed for filing a petition under Article 226 of the Constitution but one of the several rules of self imposed restraint evolved by the superior courts is that the High Court will not entertain petitions filed after long lapse of time because that may adversely affect the settled/crystallized rights of the parties. If the writ petition is filed beyond the period of limitation prescribed for filing a civil suit for similar cause, the High Court will treat the delay unreasonable and decline to entertain the grievance of the petitioner on merits.

18. In State of Madhya Pradesh Vs. Bhailal Bhai and Others, , the Constitution Bench considered the effect of delay in filing writ petition under Article 226 of the Constitution and held: (AIR pp. 1011-12, paras 17 & 18)

"17.It has been made clear more than once that the power to give relief under Article 226 is a discretionary power. This is specially true in the case of power to issue writs in the nature of mandamus. Among the several matters which the High Courts rightly take into consideration in the exercise of that discretion is the delay made by the aggrieved party in seeking this special remedy and what excuse there is for it...It is not easy nor is it desirable to lay down any rule for universal application. It may however be stated as a general rule that if there has been unreasonable delay the court ought not ordinarily to lend its aid to a party by this extraordinary remedy of mandamus.

21. The learned counsel is right in his submission that the provisions of the Limitation Act do not as such apply to the granting of relief under Article 226 . It appears to us however that the maximum period fixed by the legislature as the time within which the relief by a suit in a civil court must be brought may ordinarily be taken to be a reasonable standard by which delay in seeking remedy under Article 226 can be measured. This Court may consider the delay unreasonable even if it is less than the period of limitation prescribed for a civil action for the remedy but where the delay is more than this period, it will almost always be proper for the court to hold that it is unreasonable."

22. In Pt. Girdharan Prasad Missir and Another Vs. State of Bihar and Another, ,

the delay of 17 months was considered as a good ground for declining relief to the petitioner. In *Municipal Corporation of Greater Bombay Vs. The Industrial Development Investment Co. Pvt Ltd., and others*, , this Court held: (SCC p. 452, para 9)

"9.It is thus, well-settled law that when there is inordinate delay in filing the writ petition and when all steps taken in the acquisition proceedings have become final, the Court should be loathe to quash the notifications. The High Court has, no doubt, discretionary powers under Article 226 of the Constitution to quash the notification under Section 4(1) and declaration under Section 6 . But it should be exercised taking all relevant factors into pragmatic consideration. When the award was passed and possession was taken, the Court should not have exercised its power to quash the award which is a material factor to be taken into consideration before exercising the power under Article 226 . The fact that no third-party rights were created in the case, is hardly a ground for interference. The Division Bench of the High Court was not right in interfering with the discretion exercised by the learned Single Judge dismissing the writ petition on the ground of laches."

56. So, on the strength of the aforesaid case laws, it has been stated that the acquisition proceedings were finalized and the award was also made on 26.06.2013. The petitioners have waited for this long period when negotiations were going on between the landholders and Committee constituted by the District Magistrate in view of the Government Order dated 12.09.2008 and the Karar Niyamawali of 1997. The petitioners, either personally or through their representatives, participated in the meeting and finally the rate of compensation was agreed upon @ Rs. 56.00 lacs per hectare, whereas on the date of acquisition, the prevailing circle rate was Rs. 12.00 lacs per hectare. The compensation was awarded on much more higher rate than the circle rate and rather it was many fold than the circle rate.

57. The petitioners did not come before this Court for challenging the acquisition when notification under Section 4(1) read with Section 17 of the Act was issued on 27.11.2008, but they waited upto the year 2013. The notification under Section 6 read with Section 17(4) of the Act was issued on 14.07.2010. What made the petitioners to participate in the negotiation process, therefore, in these circumstances, the acquisition proceedings on the ground of violation of Section 5-A of the Act cannot be faulted and neither can be said to be illegal and arbitrary in any manner.

58. The petitioners have acquiesced their right by not challenging the acquisition proceedings within a reasonable time.

59. The argument advanced on behalf of the petitioners in respect of violation of Section 11-A of the Act also does not have any legs to stand as in the case of *Banda Development Authority (supra)*, the apex court, in Paras-38 and 39 held as under:

"38. In the light of the above discussion, we hold that the action of the State authorities concerned to go to the spot and prepare panchnama showing delivery of possession was sufficient for recording a finding that actual possession of the entire acquired land had been taken and handed over to BDA. The utilization of the major portion of the acquired land for the public purpose for which it was acquired is clearly indicative of the fact that actual possession of the acquired land had been taken by BDA. Once it is held that possession of the acquired land was handed over to BDA on 30.6.2001, the view taken by the High Court that the acquisition proceedings had lapsed due to non-compliance with Section 11-A cannot be sustained.

39. In *Satyendra Prasad Jain v. State of U.P.*, this Court considered the applicability of Section 11-A in cases involving acquisition of land under Section 4 read with Section 17 and observed: (SCC p. 374, para 15)

"15. Ordinarily, the Government can take possession of the land proposed to be acquired only after an award of compensation in respect thereof has been made under Section 11 . Upon the taking of possession the land vests in the Government, that is to say, the owner of the land loses to the Government the title to it. This is what Section 16 states. The provisions of Section 11-A are intended to benefit the landowner and ensure that the award is made within a period of two years from the date of the Section 6 declaration. In the ordinary case, therefore, when the Government fails to make an award within two years of the declaration under Section 6 , the land has still not vested in the Government and its title remains with the owner, the acquisition proceedings are still pending and, by virtue of the provisions of Section 11-A , lapse. When Section 17(1) is applied by reason of urgency, Government takes possession of the land prior to the making of the award under Section 11 and thereupon the owner is divested of the title to the land which is vested in the Government. Section 17(1) states so in unmistakable terms. Clearly, Section 11-A can have no application to cases of acquisitions under Section 17 because the lands have already vested in the Government and there is no provision in the said Act by which land statutorily vested in the Government can revert to the owner."

(emphasis supplied)"

60. Similar view has been taken by the apex court in the case of *Satendra Prasad Jain and Others Vs. State of U.P. and Others*, , wherein it has been held that once the possession has been taken under Section 17(1) of the Act, in such a case, Section 11-A of the Act are not attracted and, therefore, the acquisition proceedings will not lapse on failure to make award within the prescribed period. Non-compliance of Section 17(3-A) regarding part payment of compensation before taking possession would also not render the possession illegal and entitle the Government to withdraw from acquisition. In Paragraphs-14, 15, 16 and 17 of the aforesaid case, the apex court observed as under:

"14. There are two judgments of this Court which we must note. In *Rajasthan*

Housing Board and Others Vs. Shri Kishan and Others, it was held that Government could not withdraw from acquisition under Section 48 once it had taken possession of the land. In Lt. Governor of Himachal Pradesh and Another Vs. Avinash Sharma, it was held that: (SCC p. 152, para 8)

".... after possession has been taken pursuant to a notification under Section 17(1) the land is vested in the Government, and the notification cannot be cancelled under Section 21 of the General Clauses Act, nor can the notification be withdrawn in exercise of the powers under Section 48 of the Land Acquisition Act. Any other view would enable the State Government to circumvent the specific provision by relying upon a general power. When possession of the land is taken under Section 17(1) , the land vests in the Government. There is no provision by which land statutorily vested in the Government reverts to the original owner by mere cancellation of the notification."

15. Ordinarily, the Government can take possession of the land proposed to be acquired only after an award of compensation in respect thereof has been made under Section 11 . Upon the taking of possession the land vests in the Government, that is to say, the owner of the land loses to the Government the title to it. This is what Section 16 states. The provisions of Section 11-A are intended to benefit the landowner and ensure that the award is made within a period of two years from the date of the Section 6 notification. In the ordinary case, therefore, when Government fails to make an award within two years of the declaration under Section 6 , the land has still not vested in the Government and its title remains with the owner, the acquisition proceedings are still pending and, by virtue of the provisions of Section 11-A , lapse. When Section 17(1) is applied by reason of urgency, Government takes possession of the land prior to the making of the award under Section 11 and thereupon the owner is divested of the title to the land which is vested in the Government. Section 17(1) states so in unmistakable terms. Clearly, Section 11-A can have no application to cases of acquisitions under Section 17 because the lands have already vested in the Government and there is no provision in the said Act by which land statutorily vested in the Government can revert to the owner.

16. Further, Section 17(3-A) postulates that the owner will be offered an amount equivalent to 80 per cent of the estimated compensation for the land before the Government takes possession of it under Section 17(1) . Section 11-A cannot be so construed as to leave the Government holding title to the land without the obligation to determine compensation, make an award and pay to the owner the difference between the amount of the award and the amount of 80 per cent of the estimated compensation.

17. In the instant case, even that 80 per cent of the estimated compensation was not paid to the appellants although Section 17(3-A) required that it should have been paid before possession of the said land was taken but that does not mean that the possession was taken illegally or that the said land did not thereupon vest in the first respondent. It is, at any rate, not open to the third

respondent, who, as the letter of the Special Land Acquisition Officer dated June 27, 1990 shows, failed to make the necessary monies available and who has been in occupation of the said land ever since its possession was taken, to urge that the possession was taken illegally and that, therefore, the said land has not vested in the first respondent and the first respondent is under no obligation to make an award."

61. Somewhat similar situation is in the present case as the urgency clause has been invoked and after that, benefit of Section 11-A of the Act would not be available to the petitioners.

62. Considering the arguments of learned counsel for the parties and the case laws on the point, we find that these writ petitions are liable to be dismissed.

63. Accordingly, these writ petitions are dismissed.