

(2002) 09 DEL CK 0053
In the Delhi High Court
Case No : LPA No. 519 of 2001

Union of India (UOI) and Others

APPELLANT

Vs

Parshadi and Others

RESPONDENT

Date of Decision : 26-09-2002

Acts Referred:

Delhi Development Act, 1957 — Section 22
Land Acquisition Act, 1894 — Section 4

Citation : (2003) 69 DRJ 751

Hon'ble Judges : S.B. Sinha, C.J.;A.K. Sikri, J

Bench : Division Bench

Advocate : Sanjay Jain, in LPA No. 519 of 2001, Geeta Mittal, Shobhna Takiar, Arti Bansal, Geeta Luthra, Pinky Anand, Meenakshi Dogra and Jhum Jhum Sarkar, for the Appellant; P.N. Lekhi R.C. Vats and R.K. Chourasia for the Respondents Nos. 1-80, for the Respondent

Final Decision : Dismissed

Judgement

A.K. Sikri, J.—These three appeals are filed by the Union of India the Delhi Development Authority and the Government of National Capital Territory of Delhi respectively against the same judgment/order dated 1st August, 2001 rendered by the learned Single Judge in CWP No. 923/97 which was filed by the unofficial respondents herein.

2. The unofficial respondents herein had filed the aforesaid writ petition herein direction was sought to the appellants herein (official respondents) to decide representations dated 4th November, 1996, 6th December, 1996 and 24th January, 1997 of the respondents for releasing from acquisition the lands situated in Village Okhla Mahigiran, Mehrauli. They also made a prayer to the effect that the appellants herein should be directed to implement the National Housing Policy 1994 ("NHP-94" for short) as adopted by both the Houses of Parliament. However, during the pendency of the writ petition, certain significant developments took place. A decision was taken by the then Union Minister for

Urban Development on 13th April, 1999 whereby it was decided to denotify the lands of the official respondents. Although a draft denotification was prepared, the same was not published in official gazette. In the meantime, another Union Minister succeeded and he reversed the earlier noting on 6th July, 1999 taking the decision that the land in question was not required to be denotified. By reason of the impugned judgment, the learned Single Judge has, inter alia, held that the subsequent noting dated 16th July, 1999 reversing the earlier noting dated 13th April, 1999 was not valid and quashed the same. Various other incidental issues are decided in the process leading to this noting.

3. In order to appreciate the controversy involved, in the first instance it would be appropriate to take stock of the relevant facts.

4. On 9th April, 1964 the Government issued a notification u/s 4 of the Land Acquisition Act which was followed by declaration dated 17th December, 1966 issued u/s 6 of the Land Acquisition Act relating to 625 bighas and 12 bids was of land in village Kotla Mahigiran. These notifications requiring the aforesaid land come to be challenged in this court. CWP No. 325/82 entitled Ramphal v. Union of India and Ors. was filed for this purpose. This Court admitted the writ petition and granted the stay in the matter. However, thereafter various orders were passed from time to time vacating the stay and directing handing over possession of the various lands to the authorities. On 19th September, 1986 Award No. 205/86-87 was published in respect of the lands in question. Certain other interim orders on various dates were also passed in CWP No. 325/82 including order dated 6th March, 1990 restraining petitioners in the said writ petition from raising constructions on the land. We shall revert to these orders in detail at the appropriate stage. After the award, the Delhi Development Authority (DDA) deposited a total sum of Rs. 77,44,559/- being compensation in terms of the aforesaid award on 6th April, 1987.

5. While the aforesaid writ petition was pending. Sh. Moti Goyal, as General Power of Attorney (GPA) of the land owners whose land was the subject matter of the acquisition proceedings made a representation dated 21st May, 1994 requesting the authorities to withdraw from acquisition of the aforesaid land in village Kotla Mahigiran. As he did not hear anything in the matter, yet another representation dated 28th November, 1994 was made to the same effect. On these representations, the Commissioner (Land & Projects), DDA submitted his report dated 12th May, 1995 inter alias stating that on account of the stay order of this Court possession of land of 492 bighas 2 bids was had not been taken over till date. It was also mentioned in the said report that the land in question was part of DDA's residential scheme known as Saraswati Vihar and Jasola and situate on the east of Mathura Road, New Delhi. It appears that on 7th July, 1995 a noting in the file was made and approved by the then Minister to the effect that the land in question may be released in favor of land on the condition that the same would be utilised as per Master Plan of Delhi-2001 and approved lay out plan. As a consequence thereto order dated 28th July, 1995 was passed to this

effect and communicated to the unofficial respondents herein through GPA Sh. Moti Goyal. However, within one week thereafter, i.e., on 4th August, 1995 the earlier order dated 28th July, 1995 was withdrawn.

6. Keeping in view the important question of law raised in CWP No. 325/82, the matter was referred to the Full Bench of this Court Along with other connected matters. These matters were heard at length. It would be pertinent to mention that during the hearing of these matters, the respondents herein (petitioners in CWP No. 325/82) also pressed into service, their argument based on the representations made for denotification of land, noting dated 7th July, 1995 and order dated 28th July, 1995 deciding to release the land from acquisition and subsequent communication dated 4th August, 1995 withdrawing the order dated 28th July, 1995. The Full Bench dismissed all these writ petitions including CWP No. 325/82 vide judgment dated 14th December, 1995. The judgment is reported as Roshanara Begum Vs. Union of India,

7. SLPs were preferred against the aforesaid Full Bench judgment of this Court. On 25th January, 1996 interim stay with regard to possession of the land was granted. Thereafter, the Supreme Court heard the appeals on merit and dismissed the same vide judgment dated 1st November, 1996 which is reported as Murari and Others Vs. Union of India (UOI) and Others,

8. After three days of the dismissal of the appeals. Sh. Moti Goyal preferred another representation dated 4th November, 1996 for deacquisition of the land. Reminder dated 6th December, 1996 was also sent.

9. It is the case of the DDA that after the dismissal of the appeals by the Supreme Court, land acquisition authorities took physical possession of 276 bighas 05 bids was of the land on 12th December, 1996 and handed over its possession to the officials of the DDA. The physical possession of 201 bighas 01 bids was taken and handed over to DDA on 5th March, 1997. This is seriously disputed by the respondents herein. We shall deal with this aspect at the appropriate stage,

10. To complete the narration of facts, it may be mentioned that Sh. Moti Goyal preferred another representation dated 24th/26th January, 1997 requesting for release of the land but with no result. At this stage, the respondents herein preferred the aforesaid CWP No. 923/97 with the following prayers:

(A) MANDAMUS

(i) Directing the respondent No. 1 to decide the representations dated 4.11.1996, 6.12.1996 and 24.1.1997/26.1.1997 of the petitioners for release from acquisition the lands (subject matter of the writ petition), Annexure P-1 situated in Village Kotla Mahigiran, Tehsil Kalkaji (formerly tehsil Mehrauli), New Delhi from all acquisition proceedings and notifications and to release the lands of the petitioners either in terms of minutes recorded on 7.7.1995 as communicated on 28.7.1995 or issue fresh order and Gazetted it u/s 48(1) of the

Land Acquisition Act so far as the land is concerned;

(ii) Directing the respondents, their official to implement the National Housing Policy-1994 as approved by both the Houses of Parliament in August 1994 (Annexure P-13) qua the land by removing all the constraints of acquisition notification and proceedings under the Land Acquisition Act, so that the petitioners may develop their lands as per Master Plain of Delhi-2001 and approved lay out plan of the are;

(B) PROHIBITION: Directing respondents, their officials and servants:

(i) Not to take actual physical possession of the land situated at village Kotla Mahigiran, Tehsil Kalkaji (formerly Tehsil Mehrauli), New Delhi and

(ii) Not tp demolish any of the building, boundary walls and other properties erected on the land.

(C) CERTIORARI: decide the matter after calling entire official records of the respondents relating to the case of the land and records of lands referred to in paragraphs 19, 21, 22, 23, 28, 38, 43, 44 & 45 and to certify the respondents have acted unreasonably and unfairly in practicing hostile discrimination in the matter of the land whereas other lands similarly situated and circumstances have been favorably treated."

11. In substance, the relief claimed by the petitioners was based on the so-called noting dated 7th July, 1995 as communicated to the respondents herein vide order dated 28th July, 1995 whereby the decision was taken to release the land. The respondents herein wanted the aforesaid decisions to be implemented. Their case was also based on the provisions of NHP-94 and they have claimed that as per this policy, it was proper for the Government to release the lands so that the respondents could develop the same into a housing project privately and achieve the purpose stated in the NHP-94. This writ petition was contested by the official respondents (appellants herein) on various grounds. These included the contention of the petitioners herein to the effect that in the writ petition filed by the respondents herein, material facts had been concealed. They also submitted that the filing of the writ petition was totally misconceived inasmuch as the matter and already been agitated and conclusively decided by the Full Bench of this Court in Roshanara Begum (supra) and the Supreme Court in Murari (supra).

12. During the pendency of this writ petition, some significant developments took place. It would be apposite to take stock of these developments as well. It appears that although this writ petition was pending. Sh. Moti Goyal, acting as GPA was making consistent representations to the authorities for denotification of the land. We have already referred to his representation dated 24th/26th January, 1997. On this representation, the Ministry of Urban Affairs & Employment (UAE) desired that that comments of DDA be obtained. The DDA submitted its comments reiterating its earlier stand to the effect that land in question formed part of DDA's residential scheme known as Saraswati Vihar and

Jasola. The DDA further made reference to the judgment of the Supreme Court upholding the acquisition proceedings. However, as the comments of the DDA were found to be vague, the Ministry asked the DDA for further comments and to clearly indicate whether the land in question was needed by it for the aforesaid two residential schemes and also to give clear cut recommendation for acquisition or otherwise of the land. The DDA replied back categorically stating that the land in question was required by it for the purpose of the aforesaid scheme and opposed any deacquisition thereof.

13. As on January, 1999 the status of the cases may be summarised thus: 14 Notwithstanding dismissal of the writ petition and appeal challenging the acquisition of land in question, the respondents herein had filed the writ petition No. 923/97 seeking release of the land on the basis of noting dated 7th July, 1995 and order dated 28th July, 1995 as well as NHP-94 which was pending in this court and this writ petition was being contested by the various Government authorities. Simultaneously, Sh. Moti Goyal had made representations for release of the land which was opposed to by DDA. After the DDA had given its response to representations of Sh. Moti Goyal, the Ministry of Urban Development had noted the same and even decided to oppose the writ petition.

15. At this stage, another representation dated 20th March, 1999 was preferred by Sh. Moti Goyal. The then UAE Minister directed the matter to be examined and report submitted to him. Report dated 5th April, 1999 was submitted by the Under Secretary tracing out the history of the case and also referring to letter dated 5th March, 1999 of the Ministry whereby it had issued guidelines for involving the private agencies/persons/companies in assembling and development of land and construction of houses. As per these guidelines the private developers were to be allowed to take up land assemble and development as part of housing project and minimum area of 100 acres of contiguous land having legal ownership confirming land use as per the Master Plan for Delhi 2001, on the basis of which it was suggested that the Government should denotify all such lands which had been tied up in litigation for a long time and allow the land to be used to boost housing in Delhi. On this report, the Joint Secretary (UD) made a note dated 9th April, 1999 which is to the following effect:

"Notes from page 38/N may be seen. In this context, the 3 reports submitted by DDA dated 12.5.95 (Flag "X") 7.2. 97 (Flag "X-1") and 17.2.97 (Flat "X-11") may be seen. These report bring out the status of this case as on those dates and the recommendation that the Ministry of U.A. & E. should not take any decision for release of this land from acquisition. In view of these facts, it will be appropriate for us to seek a fresh report from the DDA on the representation dated 20.3.99 filed by Shri Moti Goel before any further action is taken on the matter."

16. However, before taking fresh report from the DDA as suggested by the Joint Secretary, the matter was placed before the Urban Development Minister who recorded the following note dated 13th April, 1999:

"In the light of the Department's note at pages 38-40/N, this is a fit case for denotification. A decision was taken as far back as 1995 to denotify the above and (see page 10/N). Our new policy of involvement of private sector, as laid down in our policy letter on 5th March, 1999, focuses on private sector, as laid down in our policy letter of 5th March, 1999, focuses on private participation to overcome the huge backlog of housing in Delhi. As a result of DDA's monopoly in the housing sector, property prices and rentals have shot up to such levels where nobody with white money could afford to buy a property in Delhi. That is the reason why half of Delhi lives in unauthorized colonies and slums which has destroyed the capital. Against an incremental requirement of 100,000 houses a year, DDA has constructed less than 4,000 houses last year. The Estimate Committee of the Parliament, in its third report of the current year, has come to the conclusion that DDA has been a "complete failure", A copy of Times of India Report on this dated 16.3.1999 is kept in the file. Still DDA is trying to sabotage our new housing policy regarding involvement of private sector. Most of urbanized and unobtainable Delhi has been notified for acquisition at various points of time. DDA has not taken possession of vast tracts of land in various parts of Delhi for which even award has been passed. Unless we denotify lands tied up in litigation, as desired by the Hon"ble Prime Minister in his inaugural speech at the National Housing Seminar, we would not achieve positive results. In Delhi, where land is directly under our control, we have not been able to produce one extra house inspire of the declaration of various policies. This is shameful. I do not want to denotify all the land which DDA has notified for acquisition; but I propose to denotify at least 500 acres of land this year so that private sector can at least start construction on a modest level. The land of Village Kotla Mahigran, under consideration may be denotified immediately. As decided by me in another file, this Ministry will issue the denotification order through an extra-ordinary gazette by 16.4.1999. Draft denotification order is also kept in the file at flag "Z".

17. The draft denotification was prepared for approval. Before it could be published, it appears that the DDA submitted its report, as was asked for, and informed the Ministry that since possession of 600 bighas out of 615 bighas notified for acquisition had already been taken over by the DDA, the denotification was not legally permissible.

18. It also appears that there was a decision relating to denotification of land in favor of one Sita Ram Bhandar Trust. File thereof had been called for by the Prime Minister who ordered that no land was to be denotified without the previous approval of the Cabinet/Prime Minister. When this file was sent to the Ministry based on the decision contained in respect of Sita Ram Bhandar Trust, following noting was recorded in respect of the land in question on 17th June, 1999:

"Notes from page 38/N onwards may kindly be seen : The case of Denotification of Village Kotla Mahigiran, Tehsil Mehrauli, New Delhi was examined without

calling a fresh report up to date position of the case from DDA. The then Minister (UD) has ordered (P-41/N) for the denotification of the land.

2. Subsequently, DDA has informed that out of 615 Bigha acquired by the Govt. physical possession of land measuring 600 Bigha has already been taken over by DDA.

3. In the meantime the file relating to denotification of land in favor of Sita Ram Bhandar Trust has been called for by the Prime Minister and the PM has ordered that no land is to be denotified without the previous approval of Cabinet/PM. In view of this no further action is required in this case. Submitted please.

19. The file was placed before the Minister. It may be mentioned that in the meantime new incumbent had taken charge. This new Minister took the following decision on the basis of aforesaid noting dated 17th June, 1999:

"The file of Sita Ram Bhandar Trust has since been received back from the PMO and PM's instructions not to denotify the land have been noted.

2. On the Trust's file, I have recorded my observations. These observations apply in this case as well. There is no justification for denotifying land, particularly when 600 bighas have already been acquired and taken over."

20. The respondents herein, however, did not amend the writ petition incorporating challenge to the subsequent "decision" dated 6th July, 1999 by the Minister, or for that matter, enforcement of earlier decision" dated 13th April, 1999. Instead CMP was filed bringing these events on record to which the petitioners herein filed their replies. Various orders, however, were passed from time to time recording summoning of records etc. relating to the aforesaid decisions and the matter was argued at length by the respondents herein as can be seen from the impugned judgment of the learned Single Judge. After the arguments, the impugned judgment dated 1st August, 2001 came to be passed.

Judgment of the learned Single Judge:

21. The learned Single Judge, after taking note of the detailed submissions of the parties, formulated the following questions which fell for determination:

1. Whether any notification was issued by the Central Government in terms of Section 22 of the Delhi Development Act placing the land at the disposal of the DDA?

2. Without issuance of a notification u/s 22 of the Delhi Development Act, could DDA obtain the possession of the land as was contended by learned counsel appearing for the DDA in pursuance to Sections 15 and 16 of the DDA Act?

3. Whether the respondents have placed on record relevant documents, inter alia, showing that the possession of the land was obtained by the DDA on 26.12.1996 and 5.3.1997?

4. If the possession has not been taken over by DDA or the same could not have

been handed over in the absence of a notification u/s 22, the decision of the subsequent Minister overruling the decision of the previous Minister dated 13.4.1999 was legal?

5. Whether after the decision in Murari's case, the present writ petition was maintained?

6. Whether this court is empowered to exercise its power of judicial review in these circumstances under Articles 226 of the constitution of India?

22. The formulation of the aforesaid issues indicate the nature of disputes before the learned Single Judge. It can be easily discerned that the case of the writ petitioners was that legal possession of the land was never taken inasmuch as there was no notification issued by the Central Government in terms of Section 22 of the DDA Act placing the land at the disposal of the DDA and in the absence of legal possession having been taken over by the official respondents, it was permissible for the Minister to pass an order of releasing the land which was rightly done by him on 13th April, 1999. It was also the case of the writ petitioners that while taking this decision, the then Minister had taken into consideration all the relevant materials. Such a decision taken by him was perfectly in order as he was the competent authority to take such decision having regard to the provisions of Article 77 of the Constitution of India read with Rules of Allocation of Business framed there under. Even the draft notification to be issued u/s 48 of the Land Acquisition Act was prepare"d and only a ministerial/ clerical act to publish this notification remained. It was, Therefore, not permissible for the successor Minister to rescind or withdraw this decision particularly when there was no cogent and/or relevant material before him to do so. The entire decision making process culminating into decision dated 6th July, 1999 was arbitrary and unfair and could be judicially reviewed. It was also contended that the first decision dated 13th April, 1999 of the, previous Minister was based on relevant consideration having regard to the Government" own NHP-94 as well as dated 5th March, 1999.

23. The learned Single Judge has, in its impugned judgment, accepted the aforesaid case of the writ petitioners referring to the Housing Policy of the Central Government in detail and the acute problem of housing shortage in the National Capital Territory of Delhi and also that in view of inability of the DDA to meet the demand fully, involvement of private developers/colonisers in the development of housing was envisaged and this policy of the Government itself to resist the Minister to take decision dated 13th April, 1999 denotifying the land in question. The learned Single Judge further held that for placing the land at the disposal of the DDA, a notification had to be issued in terms of Section 22 of the DDA Act which was not done in the instant case and thus the land was not put at the disposal of the DDA in the manner provided by a statute. Consequentially, the possession of the land was not taken in the manner provided u/s 16 of the Land Acquisition Act. The learned Single Judge referred to the provisions of Land Acquisition Act, the Delhi Land Revenue Rules relating to maintenance of the

records for taking possession and came to the conclusion that the possession of the land in question was not taken by the official respondents factually or legally. While returning such findings, the learned Single Judge has also referred to the stand/plea taken by the official respondents and the material on record to arrive at a conclusion that the DDA itself had taken contradictory stand and further that the stand of different official respondents was inconsistent with each other.

24. The learned Single Judge brushed aside the contention of the official respondents to the effect that "nothing" in the file dated 13th April, 1999 was not an "order" of denotification, holding that it was in fact an "order" of denotification. It was further held that before this order could be rescinded by another Minister on 6th July, 1999 notice thereof was required to be given to the writ petitioners who were beneficiaries of earlier order dated 13th April, 1999. The learned Single Judge also rejected the contention of the official respondents to the effect that the writ petition was not maintainable in view of the Supreme Court judgment in *Murari's case* (supra), by observing that in *Murari's case*, the prayer of the writ petitioners was rejected for issuance of notification u/s 48 of the Land Acquisition Act as the Government of National Capital Territory of Delhi had not agreed to the order of denotification passed in favor of the writ petitioners whereas in the instant case the decision was taken to denotify the land after the judgment in *Murari's case* which the Central Government was competent to take. Also rejecting the contention of the official respondents to the effect that judicial review in such circumstances was available, the learned Single Judge dealt with this aspect of the matter in the following manner:

"The argument of Mr. Salve that where an authority exercising discretion which is vested in him judicial review is not available. Whether successor Minister could overrule the decision which was competently and legally arrived at by his predecessor. To my mind a successor in office of the Minister may exercise his discretion to act contrary to what in previous Minister has ordered. But if the discretion exercised by the previous Minister circumscribed by law under the Govt. of India (Transaction of Business) Rules, pursuant to the National Housing Policy adopted by both Houses of Parliament can be set at naught by a succeeding Minister without having any fresh material or without taking recourse to prevalent courtesies in a parliamentary democracy governed by principle of collective responsibility there will be administrative anarchy as no policy of the Parliament can be implemented, no policy of the Government can achieve the desired result. Individual Minister will be free to act de hors the principle of collective responsibility. There is a serious doubt to the proposition advanced by the learned Solicitor General."

25. Thereafter, the learned Single Judge took note of the chequered history of the case leading to the "decision" dated 13th April, 1999 for releasing the land and another "decision" dated 6th July, 1999 by the successor Minister cancelling the earlier decision and remarked:

"This Court normally in such matters should not interfere in the discretion to

decide the matters one way or the other. However, in a catena of cases Supreme Court has held that the power of judicial review is exercised to check the unbridled executive function and when the decision making process has been affected on account of irrationality, unreasonableness or procedural impropriety."

26. The impugned judgment thereafter takes note of various pronounce merits, dealing with the powers of judicial review of the courts including the judgment in the case of Tata Cellular Vs. Union of India, . Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation (1948) 1 KB 233 : (1947) 2 All ER 680, 3. G.B. Mahajan and others Vs. The Jalgaon Municipal Council and others, . S.R. Bommai and others Vs. Union of India and others etc. etc.,

27. After quoting extensively from the aforesaid judgments and culling out the ratio laid down therein, the learned Single Judge discussed the issue involved in the instant case by stating:

"In the ever increasing tempo of urban life and the emerging stresses and strains of planning, policy decisions are taken by the State. After independence it was thought by the founding fathers of our republic that it was by adopting socialist policies where the land should remain in the domain of the State, the fruits of liberty could be delivered to the larger masses of our people living in Delhi as well as in whole of India. After the experiment of more than four and a half decades, it was decided by the policy makers that the land could not only be developed by the State agencies but be developed by involving the private sector. There were bound to be two opinions, one for land to remain in the exclusive domain of the State to be developed by the State agencies and the other to involve the participation of private sector. Once the later point of view culminated in a policy decision by the Parliament in the form of National Housing Policy whether that policy could be tinkered with by a subsequent Minister who might have believed, had a conviction that the development could only be done by the agencies or authority of the State. It is in this context I have to analyze on the basis of material placed before me and after perusing the correspondence which ensued between the former Minister who believed that his decision was based on the policy of the Government and the decision to overrule the said decision by subsequent Minister who believed that it was in the domain of the DDA to deal with land....."

28. The learned Single Judge reproduced the two nothings, namely, 13th April, 1999 and 6th July, 1999 recorded by the two Ministers (which have already been reproduced above) and made following comments thereupon:

"From the perusal of the aforesaid note the consideration on the basis of which the earlier order has been reversed is not what has been canvassed before me at the time of arguments by learned counsel for the respondents. The decision of the earlier Minister was not reversed on account of the fact that the policy was not applicable or there was no pending litigation or in view of Murari's case (supra) the petitioner had no right to pursue the matter any further or that the

order of the previous Minister was not final. The consideration for reversal of earlier order which is apparent is two fold:

(1) that the order of reversal of the order dated 13.4.1999 was on the basis of noting of the Prime Minister not to denotify the land involved with Sita Ram Bhandar Trust. Whereas Mr. Salve, Solicitor General fairly conceded that the file of Kotla Mahigiran was never sent to the Prime Minister nor any order was made by the Prime Minister not to denotify the land in question:

(2) Shri Jagmohan on 6.7.1999 has also recorded that on Sita Ram Bhandar Trust file he has recorded his observation and that observation is applicable to this case as well, the note of the Minister is based on the following nothings:

On 21.4.1999 there was a note of the Under Secretary (DD). The same is to the following effect:

The factual position of the case may kindly be perused from page 38/N onwards. The draft denotification order kept in the file at flag Z as stated in the noting at pre page of Hon. Minister UAE may be approved, please."

This noting is at page 42 of the relevant file. Just after the change of the Minister when the present incumbent succeeded on 10.6.1999 a note was recorded which is to the following effect;

"The case was discussed with JS (UD) & S(UD). The information received from DDA is placed below. It indicates that possession of 600 bighas out of 615 bighas notified for acqun, has already been taken over by DDA. Hence denotification is not legally possible. Pl. p.u. with a brief note for re-circulation-10.06.99"

In the file no material has been placed nor shown which could indicate on the basis of which this information that possession of 600 bighas of land has been taken by the DDA has been recorded. As a matter of fact a note after 7 days makes this note inconsistent to the note of 17.6.1999 of Shri R.C Nayak, Under Secretary (DDVA). The same is as under:

"The case of Denotification of Village Kotla Mahigiran, Tehsil Mehrauli, New Delhi was examined without calling a fresh report unto date position of the case from DDA. The then Minister (UD) has ordered (P-41 /N) for the denotification of the land.

2. Subsequently, DDA has informed that out of 615 Bigha acquired by the Govt. physical possession of land measuring 600 Bigha has already been taken over by the DDA.

3. In the mean time the file relating to denotification of land in favor of Sita Ram Bhandar Trust has been called for by the Prime Minister and the PM has ordered that no land is to be denotified without the previous approval of Cabinet/PM. In view of this no further action is required in this case. Submitted please.

Sd/- (R.CAYAK)

US(DDVA)

17.6,99"

In Sita Ram Bhandar Trust Case the Minister has recorded:--

".....The very idea of de-notification goes against the basic objective of bringing about planned and integrated development of Delhi. It also strikes at the very root of healthy and unassailable principle of ensuring that the benefits of infrastructural investment, made by the public authority, is reaped by it and not by any other agency which has made no contribution towards it."

From the perusal of the above note which was recorded in Sita Ram Bhandar Trust file the Minister thought it strongly that in Delhi where DDA has invested on infrastructural investment there was no scope for any other agency or private developers to develop the land. Whether said stand was in conformity with the policy of the Minister's own Government and if the same is in conformity, this Court has no power of judicial review.

But unfortunately that is not so. The housing policy which has been adopted by the Parliament pursuant to the order passed by the Supreme Court envisages the role of private participation to mobilise the resources facilitate and expand the investment. The National Housing Policy in terms of para 4.10 envisages the role of the Government as well as private sector and the community fiscal policy. Under 4.10.3 the policy inter alias laid down:--

"4.10.3 The private developers and the organized sector will be encouraged to invest in various forms of housing and land development by access to finance, speedier approval of schemes and other forms of support removal of constraints to assembly and development of land, while they will be induced to devote a significant proportion of the investment in housing for lower and middle-income groups at affordable prices and conform to non-exploitative practices."--It was not only a policy which was on paper. To implement that policy in the National Capital Territory of Delhi the Government issued guide-lines dated 5.3.1999 for involving the private agencies/persons/companies in assembly and development of land and. construction of houses. The guide-lines envisaged the involvement of private developers in housing activities to take up land assembly and develop housing project with a minimum area of 10 acres of contiguous land having; legal ownership of land with conforming and use as per MPD 2001,-

The said guide-lines also inter alias incorporated to harmonise compliance in view of the infrastructural investment made by the State so that the builders may not indulge in exploitative mechanism:-"2. (iii) The private agency/person/company should have legal ownership and/or legal possession of the land or the right to develop the land with conforming land use as per MFD-2001. 10 acres could be in the name of a person, or in the name of a company or partly in the name of one person and partly in the name of a company. The 10 acres may comprise land partly owned and partly with development rights only.....

(viii) The builder will contribute to Housing for EWS Fund for providing shelter to slum dwellers. The contribution will be @ Rs. 5 lakhs per acre for plotted development. In the case of Group Housing, Rs. 25,000/- per (sic.) of size 1000 sq. ft. or more plinth area will be paid by developer.....

(xiv) The developer will hand over land free of cost to the local authority for such purposes as Police Station, milk booths, etc. as per the Master Plan/Zonal Plan requirements.....

(xvi) The developers will surrender free to the local authorities, the following categories of land after they have been properly developed:--

(a) Play ground-

(b) Park".

Therefore, there was no material before the succeeding Minister regarding possession except what has been before the Minister who passed the order on 13.4.1999 regarding the possession of the land in question. In any case I have already dealt with the possession aspect in the earlier part. This file has not been sent to the Prime Minister. Therefore, there was no occasion for the Prime Minister to pass any order on this file.

The third and most important aspect on which the order passed by the earlier Minister has been overruled by the subsequent Minister it seems stems from his personal conviction with regard to the land and how same has to be dealt in Delhi for construction of houses. In a Parliamentary democracy governed by rule of law everybody is entitled to hold his own personal opinion. But whether that personal conviction or opinion should affect the decision making process when there is a clear, well defined policy? If that is allowed to be done. I am afraid the whole functioning of a parliamentary democracy based on collective responsibility will face dangerous consequences.

Dissent and tolerance, are the essence of democracy. Functioning within the parameter of policy is the mandate of collective responsibility.

After a long and arduous interaction between the officers of the Ministry, the Minister has taken the conscious decision to denotify the land. Can a subsequent Minister can simply disagree, with the view of the previous Minister which he has taken in view of the discussions as reflected in the notes in the file and in consonance with the National Housing Policy 1994. To my mind until and unless subsequent Minister had referred the matter for discussion in the Cabinet for being overruled or indicated reasons consistent with policy of the Government by a single stroke to pen he could not have altered the decision of the previous Minister because he personally thought that private parties should not be allowed to deal with the land. This action was contrary to the policy of the Government of which he was a Minister.

29. The learned Single Judge then proceeded to take note of the contention of

the writ petitioners that in suitable cases a writ of mandamus or an appropriate direction to compel the performance in a proper and lawful manner of the discretion conferred by the Government or a public authority can be issued and court may itself pass an order or give directions which the Government or the public authority should have passed or given and in support of this proposition judgment in the case of Comptroller and Auditor-general of India, Gian Prakash, New Delhi and Another Vs. K.S. Jagannathan and Another, was referred to. After extracting the passage from the aforesaid case, the learned Single Judge concluded his judgment in the following manner:

It is proper exercise of public power in a republic which is sine qua non of parliamentary democracy governed by rule of law. Rule of law must keep pace with the rule of life. From the order passed by the subsequent Minister there is nothing on record to show that there was some change in the circumstances for rescinding the earlier order passed by the previous Minister on 13.4.1999. It is neither contended nor brought on record that the earlier decision was passed by the person who did not have the authority or decision was incorrect, mala fide, arbitrary or was taken on extraneous considerations or was not legal or suffered from non-application of relevant factors or the same was without jurisdiction. In the subsequent decision it has not been mentioned by the Minister concerned that the previous decision was an erroneous decision and was based on wrong premises and was inconsistent with the Government Policy. Therefore, same could not be allowed to be perpetuated.

Therefore, the decision taken on 6.7.1999 by the subsequent Minister without taking into consideration the material placed before the earlier Minister, without taking into consideration that no notification u/s 22 of the Delhi Development Act has been issued to place the land at the disposal of the DDA and without taking into consideration that if notification in terms of Section 22 has not been issued, would make the decision irrational, as well as amounts to procedural irregularity. No possession could have been taken by the DDA in accordance with law, as discussed above, the possession taking reports, to say the least, suffers from contradictions as well as lacks credence. This court is not concerned with the decision. It is only concerned with the manner in which the decision to overrule the earlier decision has been taken. Decision making process is vitiated on account of irrationality, the same is based on irrelevant consideration. In view of the above reasons, I quash the order dated 6.7.1999 on the aforesaid premises. Rule is made absolute. All the pending applications are disposed of.

Petition is allowed:"

30. As already pointed out in the beginning, all the three official respondents, namely, the Union of India, the Delhi Development Authority and the Government of National Capital Territory of Delhi have filed LPAs challenging this judgment. The correctness or otherwise of the impugned judgment was challenged on various grounds. In the first instance, the very maintainability of such a writ petition was challenged submitting the learned Single Judge should

have dismissed the same on the threshold as not maintainable by contending:

(1) The writ petition was filed by Sh. Moti Goyal as GPA of the petitioners. However, he was not holding power of attorney on behalf of the petitioners, and Therefore, the manner in which the writ petition was filed was itself incompetent.

(2) In the writ petition, the writ petitioners had only, sought for enforcement of earlier decision dated 28th July, 1995 and implementation of NHP-94. The subsequent "noting" or "decision" dated 13th April/1999 and withdrawal thereof on 6th July, 1999 was not subject matter of the writ petition. Neither any fresh writ petition was filed for challenging the "noting/decision" dated 6th July, 1999 or enforcement of "noting/decision" dated 13th April, 1999 nor these subsequent developments prompted the writ petitioners to even seek amendment of the writ petition. In the absence of such a challenge and prayer to this effect, it was not permissible for the learned Single Judge to examine the effect of "noting/decision" dated 13th April, 1999 or the validity of "noting/decision" dated 6th July, 1999.

(3) The writ petitioners had not approached the court with clean hands and they had not only distorted the facts but also concealed the relevant facts. The writ petition, Therefore, should have been dismissed also on the ground that the writ petitioners had not approached the court with clean hands.

(4) In any case, it was contended, the so-called decisions dated 13th April and 6th July, 1999 were only nothings on- a Government file which did not give any enforceable right to the writ petitioners. As nothings in the file did not amount to an order of any authority, no writ petition could be filed or mandamus issued for enforcing of such nothings.

(5) In any case, the Government had the inherent power to review/modify/alter or rescind in its decision and on this ground also the writ petitioners could not get any legal right for enforcing noting dated 13th April, 1999.

(6) As the acquisition of the land was complete the land owners had no right in the land thereafter. In any case, the land owners had not raised any objection and the litigation was being pressed by the subsequent purchasers. Sh. Moti Goyal in the instant case had no locus standi to maintain the present writ petition and press for such a relief.

(7) Even for the purposes of Section 48, it is only a beneficiary which had right to object to any orders/consideration for denotification. In the instant case, the DDA was the beneficiary who had raised an objection to denotification and claimed that it needed the land in question. Therefore, even if any order for denotification was made, the same could be reviewed at the instance and upon objection by the beneficiary, i.e., the DDA.

31. On merits, the decision of the learned Single Judge has been assailed by arguing:

(1) The learned single Judge was wrong in holding that possession of the land was not taken by the official respondents. Physical possession of the land was taken which could be clearly concluded from the various documents filed on record.

(2) Such a possession was a legal possession as well. The learned Single Judge wrongly referred to the provisions of the DDA Act and the Delhi Land Revenue rules.

(3) Once the possession was taken even the Government could not withdraw the notifications u/s 48 of the Land Acquisition Act.

(4) Even if it is presumed that the nothing dated 13th April, 1999 was an order, subsequent noting/order dated 6th July, 1999 was based on relevant grounds, material on record and with due application of mind/and Therefore, the learned Single Judge was not right in holding that the decision making process was mala fide or vitiated by irrelevant considerations.

(5) It was also submitted that the learned Single Judge failed to consider that after the possession was taken and put at the disposal of the DDA, the DDA had made significant and substantial developments on the said land. The learned Single Judge, Therefore, should not have exercised its discretionary powers under Articles 226 of the Constitution of India which could be exercised only in furtherance of public interest. In the present case the public interest rather warranted continuation of vesting of the land with the DDA so that it could be utilised for public purpose.

32. We may point out that the aforesaid contentions are noted in capsulated form. While dealing the same, we shall refer to the same in detail as advanced by the learned counsel on either side at the time of hearing.

33. It would be in the fitness of things to deal with the preliminary submissions of the official respondents/appellants herein to the maintainability of the writ petition before embarking on the merits of the decision.

LOCUS STANDI TO MAINTAIN THE WRIT PETITION

34. A perusal of the memorandum of parties/cause title of the writ petition would show that there are 80 petitioners. All are stated to be the residents of village Madanpur Khadar, Tehsil Mehrauli, New Delhi/village Khizabad, Tehsil Mehrauli.

35. Sh. Moti Goyal is not amount them. However, the affidavit in support of this writ petition is that of Sh. Moti Goyal which he has filed as GPA.

36. It is the only solitary affidavit in support of the writ petition. The writ petition is not signed by any of the petitioners and it is not even necessary that such a writ petition should have been signed by the petitioners. However, what was required that the vakalatnama in favor of the counsel for the petitioners is signed by the petitioners. Vakalatnama in the instant case is signed only by Sh. Moti Goyal and he signs the same describing himself as GPA of some of the

petitioners. Thus as per his own showing he is not holding GPA on behalf of all the petitioners. He has not disclosed as to who out of 80 petitioners" have given GPA to him. The petition, at the most, could be maintained only on behalf of those petitioners who have given GPA to Sh. Moti Goyal. In the absence of specific averments to his effect, it is not known as to who are those petitioners. Even the copy of the purported GPA executed in his favor by some of the petitioners has not been placed on record. In the absence of these particulars, it also cannot be ascertained as to on whose behalf the said GPA could maintain the present writ petition.

37. Moreover, it transpires that the original owners who are imp ledged as petitioners in the present case, have transferred the land to Sh. Moti Goyal/builders. A specific averment to this effect was made by the DDA in its counter affidavit to the writ petition as can be seen from the retained of paras 3.6 and 3.10 thereof. In fact in para 3.10 serious allegations of the following nature are made:

"3.10: That the deponent further says that the petitioners are no longer interested in the land. The land has been sold either under power of attorney or by execution of sale deeds which have been got registered outside the Union Territory of Delhi. The petitioners have no subsisting right, title or interest in the land. Petitioners are merely stooges and puppets in the hands of a builder who seeks to have the land released from acquisition so as to adversely affect the public interest. It would neither be in the interest of public nor would it become conducive to public interest if the land is to be released on flimsy and frivolous contentions of the petitioners."

38. Significantly, rejoinder to this counter affidavit is not in the form of an affidavit. However, supporting affidavit of Sh. Moti Goyal has been filed. More significantly in this rejoinder para 3.10 of the counter affidavit of the DDA is not separately replied to. In fact paras 3.5 to 3.11 are replied in one go and while denying various averments, there is no specific denial to the averments made in paras 3.6 and 3.10 of the counter affidavit of the DDA that the original owner have not sold the land in question. Interestingly, without advertng to these allegations, the rejoinder contains that the petitioners are no longer interested in the land in question and have no subsisting right, title and interest in the land in question. Even when this aspect was repeatedly highlighted by the learned counsel for the official respondents/appellants herein, no attempt was made by the counsel for the writ petitioners to refute this allegation. Moreover, as already noticed above, apart from Sh. Modi Goyal who as per his own averment is not holding the GPA on behalf of all the petitioners, no petitioner has signed any of the pleadings, affidavits or vakalatnama inasmuch as all subsequent applications and affidavits in support thereof filed on behalf of the writ petitioners are signed by Sh. Moti Goyal along. It can, Therefore, be reasonably inferred and concluded that the land has been sold by original owners to builders and/or Sh. Moti Goyal.

39. While factual position is that the writ petitioners, who were the original

owners, had sold the land in question long ago, in para 1 of the writ petition itself, it is averred:

"That the petitioners are the owners in possession of the land measuring....."

40. Further, as already pointed out above, various representations to the Government for release of the land from acquisition were made and signed by Sh. Moti Goyal as GPA. All these representations preferred on behalf of the villagers/land owners started by stating:

"We, the poor villages/land owners of village Kotla Mahigiran most humbly and respectfully submit....."

41. Not only this averment was false, it would show that no representations for denotification had been made by the original land owners. It was made by Sh. Moti Goyal as attorney when admittedly the original owners had no title or interest left in the land in question.

42. Such a writ petition filed on behalf of the petitioners not having signed by them and Sh. Moti Goyal not being the GPA of all the petitioners who failed to point out as to on whose behalf he held the GPA, was clearly not maintainable, more so when all the 80 persons arrayed as petitioners had sold the land in question, and Therefore, as far as they are concerned and they ceased to have any interest in the land in question. This fact would also point out that the averment made in the writ petition to the effect that these petitioners are owners of the land and in possession thereof was palpably false. It may be mentioned also at this stage that transfer of land in favor of third party after the issuance of notification under Sections 4 and 6 of the Land Acquisition Act and during the pendency of the writ petition, i.e., CWP No. 325/82 was clearly impermissible and such provisions being in violation of the provisions of The Land (Restrictions on Transfer) Act, 1972. It would be pertinent to point out at this stage that the DDA has pointed out that in order to conceal the transactions from the authorities and to get over the statutory restrictions the registration of the documentation was got affected at Mumbai and other places outside Delhi and following sale deeds were placed on record by the DDA which had fallen into its hands.

Date Vendee Extent of Land

30.8.95 Rekha Estates Pvt. Ltd. 5. Ring Road (Opposite Maharani Bagh, Kilokari, New Delhi, which is a Property of Sh. Moti Goel) 18 bighas 2 biswas

21.8.95 -do- 19 bighas 4 biswas

30.8.95 -do- 20 bighas 2 biswas

21.8.95 -do- 12 bighas 16 biswas

27.8.95 10 bighas 2 biswas

25.8.93 Moti Board Industries Pvt. Ltd, 8 bighas 8 biswas

21.8.95 Geeta Aggarwal w/o Pradeep Aggarwal (Vendor is Moti Board Industries through Sh. Moti Goel vide a registered sale deed dated 4.2.93 registered at Mumbai. 1000 sq. yards (claimed to have sold to vendor

30.8.95 Sh. Mahavir Prasad and one Sh. Shakeelur-Rehman (Vendor Sh. Desraj claiming to be attorney of owners relying on attorneys registered in Noida, U.P. And Jind, Haryana Sale considerations Rs. 3 lakhs) 18 biswas

43. The aforesaid material facts were concealed and suppressed in the writ petition. On the contrary, misrepresentation is made alleging that the petitioners are still owners of the land and they are in possession thereof. It is, Therefore, a clear case of suppression suggestio false which alone was sufficient to disentitle the petitioners to seek any relief in the writ petition. Article 226 of the Constitution of India is a discretionary remedy. It is now trial law that the High Court can refuse to exercise discretion in favor, of the petition-ers whose hands are soiled. In S.P. Chengalvaraya Naidu (dead) by L.Rs. Vs. Jagannath (dead) by L.Rs. and others, the Supreme Court observed:

"....Non-production and even non-mentioning of the release deed at the trial tantamounts to playing fraud on the court. We do not agree with the observations of the High Court that the appellants-defendants could have easily produced the certified copy of Exhibit B-15 and non-suited the plaintiff. A litigant, who approaches the court, is bound to produce all the documents executed by him which are relevant to the litigation. If he withholds a vital document in order to gain advantage on the order side than he would be guilty of playing fraud on the court was well as on the opposite party ".

44. The aforesaid sentiments are echoed by this Court in the case of Prem Chand Ramesh Chand Vs. Delhi Development Authority, wherein the Division Bench of this Court had the occasion to state:

"Apart from above, the petitioner is not entitled to any discretionary and equitable relief for the reasons which we should presently notice. The petitioner has not filed any document of title on record except only a copy of Khasra Girdhawari for 1979-80. It cannot and has not been urged to be a document of title. This Khasra Girdhawari only shows that there are some godowns on the land in question. The petitioner is not the recorded owner. The record owner of the land, are different persons. The petitioner has not even disclosed in the writ petition as to when the structures/godowns were constructed. It has also not been disclosed in the writ that in respect of land in question Sections 4 and Section 6 had been issued. It could not be disputed that the alleged were made after issue of the said notifications. The petitioner has also not disclosed as to whether the recorded owners filed or not objections u/s 5A of the Land Acquisition. These material facts were and not disclosed with a view to secure interim protection from this. The demolition and dispossession could not take place because of the interim orders and, Therefore, it does not now lie in the mouth of the petitioner to contend that the acquisition is not complete since has

not been taken. We felt that the writ petitions deserve dismissal on the short ground of suppression of material facts."

45. We have also to keep in mind the nature of relief sought for in the present writ petition. The petitioners were seeking to denotify the land after they had already sold the land in question to third party and ceases to have any interest therein. In these circumstances, when the original land owners were nowhere to be seen for whose benefit the land was to be denotified, this is yet another reason which amply demonstrates the lack of locus standi for filing such a petition.

RE : SUBSEQUENT EVENTS AND DECISION BASED THEREON:

46. We have already noted above, while narrating the facts, in the writ petition when it was filed in the year 1997 the main relief claimed by the respondents herein was for deciding their representations made time and again including last representation dated 24th/26th January, 1997 and release the land from acquisition. The respondents herein wanted, for this purposes, official respondents/appellants to take into consideration the NHP-94. Thus, the primary prayer in the writ petition was for consideration of the representations in terms of the minutes recorded on 7th July, 1997 as communicated on 28th July, 1995 or issue fresh order and accept it u/s 48(1) of the Land Acquisition Act. On such a writ petition the court could at least give a direction to the appellants to consider the representations of the respondents herein and take appropriate decision thereon. However, during the pendency of writ petition, Sh. Moti Goyal keeps on filing representations and on these representations one Minister makes a "nothing" dated 13th April, 1999 to the effect that land be released. Before the acquisition notice is published, successor Minister takes a "decision" dated 6th July, 1999 to the effect that the land in question is not be denotified. The respondents herein now target this latter decision dated 6th July, 1999 of the successor Minister. For this purpose they contend that the so-called "decision" of the earlier Minister could not have been recalled by the successor Minister particularly when there was no material change in circumstances or no fresh material brought on the record. It is this aspect of the matter which is ultimately decided by the learned Single Judge. However, admittedly the writ petition was not amended and no prayer was made in the writ petition for seeking quashing of the "decision" dated 16th July, 1999 of the successor Minister for enforcement of "decision/noting" dated 13th April, 1999, The entire controversy and the subject matter of the impugned "decision" is based on these subsequent events which naturally were not and could not be the pleadings in the writ petition as they occurred after the filing of the writ petition. Only CMP was filed by the respondents herein wherein these subsequent developments were stated and on that basis the reliefs claimed. Whether it was necessary for the respondents herein to amend the writ petition and without amendment of the writ petition it was not proper for the learned Single Judge to delve on these aspects is the question which comes up for consideration and was hotly debated on both sides.

Whereas the contention of the official respondents/appellants was that without amending the writ petition after taking due permission of the court and bringing these subsequent events on record in the writ petition and further suitably amending the prayer, it was not permissible for the respondents herein to agitate these issues which formed subsequent and distinct cause of action.

47. On the other hand, Mr. P.N. Lekhi, learned senior counsel appearing for the unofficial respondents argued: that no such formal amendment was necessary as it was a continuation of the same cause of action which formed the basis of the writ petition, and Therefore, the learned Single Judge could take stock of these subsequent events and give the relief. Expatiating this submission Mr. Lekhi argued that the respondents herein had made a number of representations before filing the writ petition for denotification of land. Since these representations were not decided, the writ petition was filed. In the meantime, the Central Government announced a Housing Policy on 19th June, 1998 which was Delhi specific. Thereafter, a comprehensive National Housing Policy was announced on 5th March, 1999 modifying the first Policy. In view thereof another representation dated 20th March, 1999 was made. This representation was Therefore in continuation of three previous representations which were, referred to in the prayer clause. These subsequent events, i.e., land policy came during the pendency of the writ petition and these subsequent events supported the prayer-cause of action-already in existence. The respondents herein had already argued in the writ petition that the Housing Policy was consistent with Section 21(1)(B) of the DDA Act, 1957. It was on this representation but the Minister in office takes a "decision" for de acquisition of the respondents", land on 13th April, 1999 which decision is upset by the successor Minister. Therefore, these events were clearly linked with the events mentioned in the writ petition on which action for filing the said writ petition was founded. It was thus a continuation of the cause of action and the essence of the prayer, namely, denotification of the land remained the same. In view thereof the respondents herein brought on record all these events by filing CMP and making specific prayers therein. This CMP No. 6709/99 was replied to by the official respondents/appellants. The respondents herein were not, Therefore, taken by surprise. The entire matter was at large. Both the parties had argued thereon comprehensively and on the basis of these arguments, a detailed judgment is given by the learned Single Judge. Therefore, according to the learned senior counsel it was not a new cause of action which warranted filing of any fresh petition. Even if, according to the learned senior counsel, amendment in the writ petition was not made, it would be of no consequence.

48. Although we are not impressed by the arguments of Mr. Lekhi, there are certain peculiar facts and circumstances of his case which persuade us not to dismiss the writ petition on this ground alone. Normally, after these developments took place which led to the "decision" dated 6th July, 1999 and the respondents herein felt aggrieved against that "decision" it was proper for them to either file a fresh writ petition or to at least seek amendment of the writ

petition challenging the said "decision". However, fact remains that CMP was filed bringing on record all these facts and in this GMP the "decision" dated 6th July, 1999, in essence, was challenged. The official respondents/appellants herein filed reply to this CMP defending this "decision. Even before us the matter on this aspect is argued at great length. Therefore, at this distant of time when much water has flown down the Ganges, it would not be appropriate to render the judgment of the learned Single Judge nugatory on the specious plea that the writ petition should have been amended by incorporating these events in the writ petition when they were brought on record nonetheless; albeit in the form of the CMP. It would be futile exercise now to ask the respondents herein to file fresh writ petition challenging the "decision" dated 6th July, 1999 after the pronouncement of the judgment by the learned Single Judge dealing with this aspect at great length deeply scanning through and digging into the facts in the impugned judgment.

Therefore, we are not inclined to dismiss the writ petition or upset the judgment of the learned Single Judge only on this ground and we would rather proceed to deal with the issue on merits.

Nature of "nothings" dated 13th April and 6th July, 1999:

49. The first and foremost question which arises for consideration is as to whether the "noting" dated 13th April, 1999 recorded by the incumbent Minister was a "decision" taken to denotify the land in question? If it was not a "decision" and merely "noting" on the basis of which no right accrued in favor of the respondents herein, no further question would arise in the matter. On the other hand, if it was a "decision" by the Minister, then the second question would arise, namely, whether the successor Minister had validly recalled/rescinded the "decision" taken by the earlier Minister vide his "decision" dated 6th July, 1999.

50. It was argued by all the counsel for the official respondents/appellants and Mr. Sanjay Jain, learned counsel appearing for the Union of India with great emphasis that what was recorded in the file by the Minister in charge on 13th April, 1999 was only a "noting" in the file. This was not communicated to the respondents herein. Only a draft notification for denotifying the land was prepared which remained in the file and it did not see the light of day. Therefore, this "noting" did not take the character of a "decision" which could give right to the respondents herein to enforce the same. He posed the question by arguing whether the nothings on a Government file can be construed as a conclusively pronounced decision, binding and stopping the Government, the reversal of which by another noting on a file, merited the testing of the same by way of judicial review and whether any such favorable noting conferred any vested rights, without the contents of the nothings being expressed and communicated in the shape of a conclusive and binding pronounced decision, in accordance with the relevant provisions of the Constitution of India.

51. He submitted that it was not being suggested that judicial review was barred

in such circumstances. According to him, the question to be determined was whether any legal binding and conclusive decision at all, which could be subjected the judicial review, was taken. He submitted that such a "noting" in the file did not give any enforceable right to the respondents herein. In support of this submission, he heavily relied upon the Constitutional Bench judgment of the Supreme Court in the case of Bachhittar Singh Vs. The State of Punjab, wherein the Supreme Court held:

"Before something amounts to an order of the State Government, two things are necessary. The order has to be expressed in the name of the Governor as required by Clause (1) of Article 166 of the Constitution and then it also has to be communicated. The Constitution requires that the action must be taken by the authority concerned in the name of the Governor. It is not till this formality is observed that the action can be regarded as that of the State Constitutionally speaking, the Minister is no more than an advisor and that the head of the State, the Governor is to act with the aid and advise of the Council of Ministers. Therefore, until such advise is accepted by the Governor whatever the Minister or the Council of Ministers may say in regard to a particular matter does not become the action of the State until the advice of the Council of Ministers is accepted or deemed to be accepted." "Indeed it is possible that after expressing one opinion about a particular matter at a particular stage a Minister of the Council of Ministers may express quite a different opinion, one which may be completely opposed to the earlier opinion."

52. He also referred to another judgment of the Supreme Court in the case of Gulabrao Keshavrao Patil and Others Vs. State of Gujarat and Others, wherein the Supreme Court took the following view:

"Before the action or the decision is expressed in the name of the Governor in the manner prescribed under the business rules and communicated to the party concerned it would always be open by necessary implication to the Chief Minister to send for the file and above it examined by himself and to take a decision though the subject was allotted to a particular Minister for convenient transaction of the business of the Government. The subject, though exclusively allotted to the Minister, by reason of the responsibility of the Chief Minister to the Governor and accountability to the people, has implied power to call for the file relating to a decision taken by a Minister. The object of allotment of the subject to a Minister is for the convenient transaction of the business at various levels through designated officers. The ultimate object is to secure an impartial pure and efficient administration as propounded by Dr. Ambedkar in the Constituent Assembly vide Constituent Assembly Debates, Vol III page 546."

53. He also referred to the decision of the Supreme Court in the case of State of Bihar and Others Vs. Kripalu Shankar and Others, wherein it was held:

"nothings in a notes file, not only of officers but even that of a Minister will not constitute an order to affect others unless it is done in accordance with Article

166(1) and (2), and communicated to the person concerned. The nothings in a file get culminated into an order affecting right of parties only when it reaches the head of the department and is expressed in the name of the Governor, authenticated in the manner provided in Article 166(2)."

54. Ms. Gita Mittal, learned counsel appearing for the DDA also emphasised this argument and referred additionally to the following judgments in support of this proposition:

- 1 Delhi Development Authority Vs. Shyama Prasad Mukherjee Park Plot Holders Welfare Association and Others,
2. Gulabrao Keshavrao Patil and Others Vs. State of Gujarat and Others,
3. Uttam Singh v. State of Punjab 1998 (2) LACC 96.
4. Kedar Nath Bahl Vs. The State of Punjab and Others,
5. I.T.C. Bhadrachalam Paperboards and Another Vs. Mandal Revenue Officer, A.P. and Others,
6. Roshanara Begum Vs. Union of India,
7. Murari and Others Vs. Union of India (UOI) and Others,
8. Surgical Electronics and Anr. v. UOI 1995 (6) DLT 359.
9. State of Punjab Vs. Amar Singh Harika, .
- 10 State of West Bengal etc. Vs. M.R. Mondal and Another,
11. Shanti Sports Club and another Vs. Union of India and others,

55. Mr. P.N. Lekhi, learned senior counsel, on the other hand, made a fervent plea to hold that the "noting" dated 13th April, 1999 was in fact a "decision" for all practical purposes. It was submitted that the very language of the so-called "noting" suggested that in no uncertain terms the Minister had taken a "decision." that the land in question was to be released from acquisition. He submitted that even a draft notification was prepared for this purpose and only a clerical job of publishing the said notification was to be done for implementation of the "decision" taken by the Minister. He strongly relied upon the observations of the learned Single Judge from the impugned judgment wherein it was stated: "no notice was to be given of the order passed by the Minister to the petitioners that the land of Village Kotla Mahigiran was not required for the purpose of acquisition. The Minister specifically ordered for denotification of the land and also drafted the denotification. It was simply to be published in the official gazette." He submitted that each case was to be considered on its own merits. Referring to the judgments cited by the learned counsel for the official respondents/appellants. Mr. Lekhi argued that the ratio of the aforesaid cases had to be understood in the relevant facts of the case and the law laid could not be of universal application. Whether the relevant departmental files were

produced before the court by the Government and the court on scrutiny of the same came to the conclusion that the "decision" had not been taken fairly, then the court would be entitled to comment on the role of such person who took the decision as was held in the case of P.K. Dave Vs. Peoples Union of Civil Liberties (Delhi) and others,

56. He also referred to another judgment of the Supreme Court in the case of Union of India and Others Vs. Lt. Gen. Rajendra Singh Kadyan and Another, in order to show that in that case the court went through the file containing notes of the officials and the Minister. It was examining the contention put forth before it that there were factual inaccuracies in the statement recorded by the Cabinet Secretary in his note and, Therefore, must be deemed to be vitiated. That was done to reach a conclusion that the decision of the Government in this regard was not based on proper material. On examining the file, the court concluded the nothings were not baseless.

57. He submitted that by taking such specious plea the official respondents/appellants could not avoid determination of the issue as to whether action taken by the successor Minister in reversing the earlier "noting/decision" and in deciding not to go-ahead with the draft notification prepared pursuant to "noting" dated 13th April, 1999 was fair and proper was the State could not escape its liability to show that its action was fair, reasonable and in accordance with law, for every action of the executive must be in confirmity with reason and should be free from arbitrariness as held in the cases of: Netai Bag and Others Vs. The State of West Bengal and Others, , 2. Ramana Dayaram Shetty Vs. International Airport Authority of India and Others, . Shri Sachidanand Pandey and Another Vs. The State of West Bengal and Others, . His further submission was that there were circumstances where the Supreme Court had taken note of Government files and no demonstrate this he cited the judgment in the case of Union of India and Others Vs. Dr. S. Krishna Murthy and Others, which had taken into consideration various judgments Bhanu Kumar Shastri Vs. Mohan Lal Sukhadia and Others, , Environment Awareness Forum Vs. State of Jammu & Kashmir and Others, , Ghulam Din Buch etc. etc. Vs. State of Jammu and Kashmir, , Food Corporation of India and others Vs. Jagannath Dutta and others, State (Delhi Admn.) Vs. N.S. Giani and others, Sheonandan Paswan Vs. State of Bihar and Others, and Ibrahim Ahmad Batti alias Mohd. Akhtar Hussain alias Kandar Ahmed Wagher alias Iqbal alias Gulam Vs. State of Gujarat and Others, and observed:

"Para 19: It is not for the first time by the impugned rules, the past services of the ECOs and the SSCOs have been taken into consideration for the purpose of giving them their year of allotment with retrospective effect, that is to say, on a date earlier than their actual appointment in the Indian Police Service or in the Indian Forest Service, as pointed out by Mr. G. Ramaswamy, learned Additional Solicitor General appearing on behalf of the Government Appellants. The learned Additional Solicitor General has drawn our attention to the nothings in the

Government files for the purpose of showing the Government policy to rehabilitate the ECOs and SSCOs in All India Services, Central Services and State Services in order to ensure good response and to provide sufficient incentives for those who offered themselves for emergency commissions. These nothings start from November 17, 1962. It is not necessary for us to make a particular reference to the nothings in the Government files. Suffice it to say that in view of the voluntary offer of services by the youngmen of our country to defend the country against foreign aggression, the Government took a very sympathetic view and took steps to compensate them after their discharge from, the Emergency Commission Service, for the opportunity lost by them in joining the All India Services. One thing which is very significant to be mentioned here that although their past services were taken into consideration, the Government did not relax the minimum qualifications required for the All India Services. These ECOs and SSCOs had to appear in the competitive tests held by the Union Public Service Commission and they were appointed only after they became successful in such tests."

58. It wa"s also submitted that the Minister exercised his discretionary constitutional power in lawfully manner. The only requirement was where such power is exercised reasons have to be recorded truly disclosing the justifiability for the exercise of that power. That is what the court is to find out and not that the discretionary power should have been exercised in another manner. [Refer : The Consumer Action Group and Another Vs. State of Tamil Nadu and Others, . It was further submitted that when the administrative order was made, the subordinates were directed to carry it out and a writ lies to ensure the subordinates carry out the order in the manner that order was made and drawn by the Minister. The order gives rise to an enforceable right which flows from legitimate expectation [Refer: Shairkhan Mohammed Abdullah Vs. The District Collector, Kurnool and Others, , Union of India (UOI) Vs. K.P. Joseph and Others, Shri Raghunandan Panda Vs. State of Orissa and Others,

59. Presuming that the "noting" dated 13th April, 1999 of the Minister amounted to a "decision" which has been upset by the successor Minister on 6th July, 1999, we proceed to decide the validity of this latter "decision."

60. The scope of judicial review in such matters is now very well defined. The learned Single Judge has dealt with this aspect in great details and was conscious of the limitations of power of judicial review when he observed:

"This Court normally in such matters should not interfere in the discretion to decide the matters one way or the other. However, in a catena of cases Supreme Court has held that the power of judicial review is exercised to check the unbridled executive function and when the decision making process has been affected on account of irrationality, unreasonableness or procedural impropriety."

61. It is trite law that there has to be fairness in the administrative action and it should be free from vice of arbitrariness. The learned Single Judge set aside the

impugned "decision dated 6th July, 1999 of the successor Minister primarily on the ground that the succeeding Minister took the "decision" on the basis of false noting placed before him indicating that the possession of the land had been taken over by the DDA when in the file no material had been placed in order to show which could indicate on the basis of which this information had been recorded. He further noted that the Union of India had filed a false affidavit in respect of possession of the land.

62. The learned Single Judge further remarked that the successor Minister had over-ruled the "decision" of the earlier Minister on his personal conviction with regard to the land and how same has to be dealt with in Delhi for construction of houses and then observing that personal conviction or opinion could not affect the decision making process in the face of existing a definite housing policy adopted by the Parliament Mr. P.N. Lekhi, supporting the aforesaid analysis of the matter as undertaken by the learned Single Judge, argued that the "decision" was not free from arbitrariness. His submission was that scope of judicial review rests on what function of the authority is under challenge. It was his submission that as per the law developed by the Supreme Court on judicial review over a period of time, it had undergone a sea change as remarked by the Supreme Court in the cases of *Sat Pal and Co. and Others Vs. Lt. Governor of Delhi and Others*, and *The Chairman, Railway Board and Others Vs. Mrs. Chandrima Das and Others*, The Supreme Court has in the case of *Ranjit Thakur Vs. Union of India (UOI) and Others*, laid down the parameters of general principles of judicial review. His submission was that the functions of the Union Minister are controlled, (i) on the principles of collective responsibility, and (ii) by Rules framed by the President, under Clause (3) of Article 77 of the Constitution and called, the Government of India (Transaction of Business Rules). The scope of judicial review, in the facts and circumstances of the case, is firstly, to examine whether the previous Minister holding the Cabinet portfolio of Urban Development was competent to take the decision he took. He also submitted that whether failure to comply with the order made by him to publish the Gazette notification u/s 48 of the Land Acquisition Act entitles the respondents herein to approach this court for an order, direction or writ in the nature of writ or mandamus. (Refer : *J.K. Gas Plant Manufacturing Co. (Rampur) Ltd. and Ors. v. Emperor AIR 1947 FC 38 Dattatreya Moreshwar Pangarkar Vs. The State of Bombay and Others*, . It was also queried that whether the successor Minister is not bound with that order on the principle of collective responsibility and whether he has any power or authority under the Government of India (Transaction of Business Rules) to reverse the decision lawfully and competently taken by his predecessor. His further submission was that whether the possession of the land in question was over taken at all in accordance with the law and established prescribed legal procedure and whether Collector can take possession u/s 16 of the Land Acquisition Act in violation of the procedure prescribed under Rule 110(4) of Delhi Land Revenue Rules. His next submission was that whether the pretense of procedure in the so called qabza karwai and the false statement in

that karwai document does not establish possession was not taken as is prescribed by law. The state has indulged in this exercise to defeat the claim an individual. It, was also submitted that withholding of the relevant papers/ documents from the court proves that the successor Minister is deliberately hiding the true facts relevant to the grievance made by the respondent herein and the possession papers does not prove possession was taken in accordance with Section 16 of the Land Acquisition Act because: (i) there is no order made by the absentee Collector authorising the naib tehsildar and patwari to take possession particularly when the collector is a party and he has not filed any affidavit to the effect the he has taken possession of the land [Refer: Tamil Nadu Housing Board Vs. A. Viswam (Dead) by Lrs., and (ii) there is no gazette notification u/s 22 of the DDA Act transferring the acquired land to DDA. [Refer: General Medical Council v. Spademan 1943 (2) All Delhi Development Authority Vs. Golcha Theatres and Others, . He next submitted that the land in question does not vest in Government and the Ministry prepared false documents and the possession being subject to decision before this court, the Government has not proved that it took possession in accordance with procedure established by law and the court can issue directions to the Government to publish the gazette notification as per directions issued by the Minister. [See Comptroller and Auditor-general of India, Gian Prakash, New Delhi and Another Vs. K.S. Jagannathan and Another, and V. V. Balasubramaniam and Others Vs. Tamil Nadu Housing Board and Others,]. He further submitted that the successor in office of the Minister concerned had no discretion to act contrary to what the previous Minister had ordered. The discretion, if any, circumscribed by the law, i.e., by the Government of India (Transaction of Business) Rules. The concerned respondents herein had on the other hand claimed privilege to disclose how the successor Minister took a decision contrary to the file decision taken by his predecessor. He also relied upon the judgment of the English Courts in the case of Roberts v. Hopwood 1925 All E.R. 24 laid down the law in the following terms:

".....A person in whom is vested a discretion must exercise his discretion upon reasonable grounds. A discretion does not empower, a man to do what he likes merely because he is minded to do so - he must in the exercise of his discretion do not what he likes but what he ought. In other words, he must, by use of his reason, ascertain and follow the course which reason directs. He must act reasonably...."

63. It is submitted that judicial review of executive's discretionary power was based on doctrine of rule of law. In the present case judicial review was permissible when the discretion was exercised mala fide State of Punjab and Another Vs. Gurdial Singh and Others, or when it was without application of mind State of Gujarat and Another Vs. Vaghela Dayabhai Chaturbhai and Others, or exercised in the absence, of material to support a decision Smt. S.R. Venkataraman Vs. Union of India (UOI) and Another, or based on irrelevant consideration (G.M. Shah Vs. State of Jammu and Kashmir,) or leaving out the relevant considerations Deepak Pahwa and Others Vs. Lt. Governor of Delhi and

Others,] or extending the limits set by the rules governing the ministerial discretion Y. Mahaboob Sheriff and sons, Y. Mahaboob Sheriff and Others and S. Shamsoddin and Others Vs. Mysore State Transport Authority, Bangalore and Others, ; Rohtas Industries Vs. S.D. Agarwal and Others, . He concluded by submitting that all the aforesaid ingredients were established in the present case in the decision making process culminating into "decision" dated 6th July, 1999, and Therefore, it was rightly set aside by the learned Single Judge.

64. The learned counsel for the official respondents/appellants, on the other hand, argued that the possession of the land was in fact taken over by the official respondents; the learned Single Judge failed to notice that acquisition proceedings having become final, could not be set aside; the Government had inherent power to review/modify/alter/rescind any decision taken by it; the land owners have no right in the land after acquisition was complete; the impugned order was passed on relevant grounds, material on record and with due application of mind and such a decision Would stand the test of judicial review. It was argued that once acquisition was valid (which was held to be so by the Full Bench of this Court as well as Supreme Court), title vested in the Government and how it uses the land, was not the concern of the original owners, and Therefore, the unofficial respondents could not take the plea of NHP-94. It was argued that in any case power under Article 226 of the Constitution was discretionary and in the matter of land acquisition it could be exercised only in furtherance of public interest which should not have been exercised in the present case because of: (a) only a beneficiary had a right to object to any order/consideration for denotification. In the instant case, the DDA was the beneficiary and had raised objections and claimed that it needed the land. Therefore, assuming that any valid order had been made for denotification, the same could be reviewed at the instance upon objection by the beneficiary, i.e., the DDA. AS far as land owners are concerned, they had no right in the land after the acquisition was complete; (b) acquisition could not quashed as developments on the land had been made by the DDA; (c) the unofficial respondents were guilty of concealment of material facts and misrepresentation disentitling them to any relief under Article 226 of the Constitution of India; (d) the original- owners had sold the land and subsequent purchaser could not claim any right other than compensation; (e) There was no compulsion on the Government to withdraw from acquisition and; (f) the land in question was required by the DDA in furtherance of public purpose.

65. Before probing into the rival submissions, it would be appropriate to have stock of the circumstances which led to taking the "decision" dated 6th July, 1999 even, at the cost of repetition. As noted above, on representation dated 20th March, 1999 preferred by Sh. Moti Goyal the matter came to be examined a report dated 5th April, 1999 was submitted tracing out the history of the case and referring to Ministry's letter dated 5th March, 1999 wherein it had issued guidelines for involving the private agencies/persons/companies in assembly and development of land and construction of houses on the basis of which it was

suggested that the Government should denotify all such lands which had been tied up in litigation for long time and allow the land to be used to boost housing in Delhi. On this, the Joint Secretary made a note dated 9th April, 1999 asking for fresh report from the DDA. This was done after referring to previous report dated 12th May, 1995, 7th February and 17th February 1997 received from the DDA wherein the DDA had stated that it needed the land for public purpose. However, the fresh report was not taken and the matter was placed before the Urban Development Minister who went by the earlier note dated 5th April, 1999 and recorded the noting dated 13th April, 1999 in the file for denotification of the land in question. The "noting" in question, inter alia, records that "unless we denotify lands tied up in litigation as desired by the Hon'ble Prime Minister in his inaugural speech at the National Housing Seminar, we would not achieve positive results" thereby implying that it was on the understanding that the land in question was tied up in litigation. It is, however, a matter of record that the acquisition of the said land had been challenged and met with failure in terms of the Full Bench judgment of this Court in Roshnara Begum's case (supra) which judgment had been upheld by the Supreme Court in Murari's case (supra). Therefore, the land in question was not tied up in litigation in the sense that the acquisition proceedings had been upheld. It was only the present writ petition which was pending whereby the unofficial respondents herein were seeking the denotification. When the reference is to release of those lands which are "tied up in litigation", it would clearly imply the litigation by which the acquisition has been challenged which challenge is pending in the courts and there may be stay of dispossession by the courts.

66. Now, the matter comes before the successor Minister. He finds that in the meantime the DDA had sent the report which was not before the previous Minister when he recorded the "noting" on 13th April, 1999. In this report it is indicated that possession of 600 high is out of 650 bighas notified for acquisition had already been taken over by the DDA. In the office of the Urban Development Minister, noting dated 10th June, 1999 is made on the basis of this report to the effect that as the possession had been taken, denotification was not legally possible. Thereafter, another development took place as is recorded in the noting dated 17th June, 1999 of the Under Secretary (DDVA). In addition to the report submitted by the DDA, this noting further records that in the meantime the file relating to denotification of land in favor of the Sita Ram Bhandar Trust had been called for by the Prime Minister who had ordered that no land is to be denotified without the previous approval of the Cabinet/PM. In view of this development the Under Secretary suggests that no further action is required in this case. On this basis keeping in view the PM's observations in the file of Sita Ram Bhandar Trust and Minister's own observation dated 14th June, 1999 recorded in the said file, a decision is taken by observing that "there is no justification for denotifying land, particularly when 600 bighas have already been acquired and taken over.",

67. In the light of the aforesaid salient factors, we proceed to determine whether the subsequent "decision" dated 6th July, 1999 of the Minister was arbitrary and

lacked fairness?

68. The aforesaid factual premise makes it clear that when the successor Minister took a decision on 6th July, 1999 after noting of the previous Minister dated 13th April, 1999 he had before him the following material:

(i) Although by note dated 9th April, 1999 fresh report from the DDA on representation dated 20th March, 1999 filed by Sh. Moti Goyal was sought before further action is taken on the matter, before this report could be received, "decision" dated 13th April, 1999 was taken for denotification of the land in question.

(ii) Subsequently, the report had been received from the DDA which indicated that possession of 600 bighas had been taken over. File was put before the Minister for taking fresh decision as it was opined by the office that denotification was not legally permissible in view of the possession having been taken over by the DDA.

(iii) In another case, namely that of Sita Ram Bhandar Trust, the Prime Minister had ordered that no land is to be denotified without the previous approval of the Cabinet/PM and on that basis office had put up another note dated 17th June, 1999 to the effect that no further action was required in this case.

69. The aforesaid reading makes it abundantly clear that there was fresh material and subsequent developments after the earlier decision dated 13th April, 1999 which had prompted the then incumbent to take fresh view in the matter. He had before him the earlier "noting" dated 13th April, 1999 but based thereon notification had not been published so far for de-acquisition of the land in question. This material having been placed before the Minister, the Minister was within his right to review/modify the earlier "decision". It was not a question of taking a fresh look by successor Minister. It was a matter of chance that in the meantime the earlier Minister had relinquished the office and another Minister has assumed the charge. It could be that had this material been brought to the notice of the earlier Minister who took "decision" dated 13th April, 1999 even he would have modified his earlier decision. Thus, merely because there was change of incumbent in the meantime, the same would have no bearing on the decision making process. The important aspect which is to be noted that the Minister who took "decision" on 6th July, 1999 had additional material before him which justified review/modification of the "decision" taken earlier that too before earlier "decision" dated 13th April, 1999 could be acted upon. This "decision" was neither communicated to the respondents herein nor acted upon.

70. Thus when the successor Minister had before him fresh and additional material which warranted re-look into the matter, it was very well within his jurisdiction to give a second look into the whole issue more particularly when on the basis of earlier uncommunicated "decision" on file and in the absence of notification having been actually issued, no rights accrued in favor of the respondents herein.

1. M.A. Rasheed and Others Vs. The State of Kerala,
2. Baldev Raj Chadha Vs. Union of India (UOI) and Others,
3. State of U.P. and Others Vs. Renusagar Power Co. and Others,
4. M/s. Shri Sitaram Sugar Co. Ltd. and another Vs. Union of India and others, .

71. Now, we proceed to examine the relevance of the aforesaid material which was placed before the successor Minister when he took "decision" dated 6th July, 1999.

I. Admittedly, the report of the DDA which was not available when "decision" dated 13th April, 1999 was taken would be a relevant material. We have seen that although vide note dated 9th April, 1999 fresh report from the DDA was sought for before further action is taken in the matter. However, for the reasons best known, which are discernible from the file, without waiting for this report and within four days thereof, "decision" dated 13th April, 1999 was taken for denotification of the land in question. If after taking this "decision" the report from the DDA is received and the said report states that possession of 600 bighas of land has already been taken, this fact alone sufficiently would warrant the re-examination of the matter. [Refer (1) General Manager, Telecommunication and Anr. v. Dr. Madan Mohan Pradhan and Ors. 1995 (4) Supp. SCC 268. (2) P. Chinnanna and Others Vs. State of A.P. and Others, Balmokand Khatri Educational and Industrial Trust, Amritsar v. State of Punjab and Ors. (1994) 6 SCC 212, (4) Sanjeevanagar Medical & Health Employees Co-operative Housing Society v. Mohd. Abdul Wahab and Ors. (1993) 3 SCC 600, (5) Rajasthan Housing Board and Others Vs. Shri Kishan and Others, and (6) Awadh Bihari Yadav and Others Vs. State of Bihar and Others, .

Undoubtedly, legal position is that if the possession of the land has been taken, the denotification was not legally permissible. In such a situation, legal position is that the land owner has not right in the land after acquisition is complete. Only a beneficiary has a right to object to any order/consideration for denotification. After the possession of the land and placing the same at the disposal of the DDA, it is the DDA which becomes beneficiary. Once such a beneficiary raises objection to the denotification, the competent authority is within its power to review the "decision". [See (1) M/s. Larsen and Toubro Ltd. Vs. State of Gujarat and Others, State Houseless Harizan Employees Assn. v. State of Karnataka and Ors. 2000 IX AD SC 412, and (3) Special Land Acquisition Officer, Bombay and Others Vs. Godrej and Boyce, .

II. We now revert to the most important aspect. It was the case of the respondents herein in the writ petition which was argued with all vehemence before us as well that the possession of the land was not taken by the DDA, and Therefore, review of the earlier "decision" by the impugned "decision" dated 6th July, 1999 was clearly uncalled for. The learned Single Judge has accepted this submission and in fact dealt with this aspect at great length. While coming to the

conclusion that no legal possession of the land was taken over by the DDA. While dealing with this aspect, it would be necessary to take note of certain factual events.

Notification in this case u/s 4 of the Land Acquisition Act was issued on 9th April, 1964 and declaration u/s of the aforesaid Act was issued on 17th December, 1996 which related to 625 bighas and 12 bids was of land in village Kotla Mahigiran. The petitioners had challenged the aforesaid notifications by filing CWP No. 325/82 entitled Ramphal Etc. v. UOI and Ors. and in these proceedings stay was granted to the petitioners in the year 1982. Thereafter, however, various orders were passed in this writ petition vacating stay and directing handing over possession of various lands to the authorities. The details of which are as follows:

Date of Order	Date of Possession	Extent of land
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21.11.86	4.12.86	52 Bighas 17 Biswas
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17.5.87	17.7.87	57 Bighas 03 biswas
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3.5.88	20.6.88	07 Bighas 17 Biswas
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19.10.89		05 Bighas 02 Biswas
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The DDA has placed on record the documents showing taking over possession of the land on the aforesaid dates.

Award dated 205/86-87 was passed on 19th September, 1986. Thereafter, compensation in the sum of Rs. 77,44,559/- in respect of the aforesaid award was deposited by the DDA on 6th April, 1987. Thereafter the writ petition was heard by the Full Bench Along with other connected matters which were dismissed. The leading case being Roshanara Begum Vs. Union of India, . It would be significant to mention at this stage that even during the pendency of this writ petition. Sh. Moti Goyal as GPA had made a representation on 21st May, 1994 seeking withdrawal from the acquisition which was followed by representation dated 28th November; 1994. Interestingly, at that time also noting dated 7th July, 1995 was made for de-acquisition which was even communicated to Sh. Moti Goyal vide letter dated 28th July, 1995 but it was withdrawn by the Government of India vide communication dated 4th August, 1995, Thus when the Full Bench decided the matter, similar situation, i.e., communication of the "decision" for denotification and withdrawal thereof was before the Full Bench on earlier occasion also. Some of the observations in the said Full Bench judgment, which are relevant for the present case as well, would be referred to at the later stage as at present we are dealing with the claim of the DDA that it had taken possession of the land in question, and Therefore, we are confining our discussion to this aspect alone. On this aspect the observations of the Full Bench in the case of Roshanara Begum (supra) read as under:

"Para 126 : In some of the cases it was urged before us that as awards have not

been made even within two years from the date of the amendment of the Land Acquisition Act prescribing the limitation u/s 11-A of the Act, the land acquisition proceedings should be quashed. However, u/s 11-A the limitation gets extended because as per Explanation given in that Section in computing the period of two years the period during which any action or proceeding to be taken in pursuance of the declaration is stayed by an order of the Court shall be excluded. In all these cases where the orders regarding status quo have been obtained or the stay of dispossession has been obtained, obviously, the period in which such stay remains in operation is to be excluded while computing the period of two years. The acquisition proceedings cannot be quashed in such cases where the awards have not been made and stay granted by the Court is still in operation because of the period in which the stay remained in operation has to be excluded while computing the period of two years. (See *Yusufbhai Noormohmed Nendoliya Vs. State of Gujarat and another*,), wherein in para 8 it has been laid down that the said Explanation is in the, widest possible terms. It was clarified in this judgment that benefit which is to accrue to the landlord would become available to him if the land owner who seeks benefits has not obtained any order from a Court restraining any action or proceeding in pursuance of the declaration u/s 6. It was held that the Explanation covers only those cases of the land holders who do not obtain any order from a court which would delay or prevent making of the award or taking possession of the land. *Patel Virchandbhai Madabhai Vs. State of Gujarat and Another*, , it was made clear that if there is order obtained restraining taking of possession of land that amounts to stay of action or proceeding as contemplated by Explanation to Section 11. It is evident that if stay of dispossession or order of status quo has been obtained the authorities are inhibited from completing the acquisition proceedings and the law requires if the award is made they have also to deposit the amounts of compensation with the Collector and that amount would remain unutilised for years together till the judicial case is decided and stay is vacated. So, it has to be held that once such an order is made by which the constrain is put on the authorities of whatsoever nature by an order of the Court the period in which the stay remains in operation has to be excluded in computing the period of two years prescribed in Section 11-A of the Act. In *Gandhi Grah Nirman Sahkari Samiti Ltd. ect. etc. Vs. State of Rajasthan and others*, the same ratio of law has been laid down. So, we reject this contention also."

After the judgment of the Full Bench of this Court in *Roshanara Begum* (supra) was upheld by the Supreme Court in the case of *Murari & Ors* (supra) decided on 1st November, 1996 it appears that the land acquisition authorities took the physical possession of 276 bighas 5 bids was of the land and handed over possession thereof to the officials of the DDA on 12th December, 1996 and in support of this the DDA has placed on record Annexure PVE which appears at page No. 714 of the writ record. The DDA also relied on the following documents:

1. Affidavit of Shri A. Nedunchezhiyan, LAC, Delhi.

2. DD No. 41B at page 551 (translation at page 552) and Vapsi (return) recorded as Annexure R/5 at page 553. Its translation 45 at 554).
3. Affidavit of Sh. Trilochan Singh, Naib Tehsildar, Land & Building.
4. Affidavit of Sh. Chander Sekhar Patwari, Land Acquisition Collector, Kalkaji.
5. Affidavit of Sh. Shamim Ahmad.
6. Affidavit of Jai Narain, Naib Tehsildar, DDA regarding taking of possession on 12.12.1996 and its handing over to DDA and further handing over to the Engineering Division on 17.1.1997.
7. Affidavit of Sh. Ranvir, Patwari (NL), DDA regarding handing over of possession of part of the land on 21.1.1997 to the Engineering Division and its taking over possession on 12.12.1996.
8. Affidavit of Sh. M.K. Jain, JR, SED-4, regarding taking of physical possession of 117 bighas 16 bids was of land from Sh. Jain Narain, Naib Tehsildar.
9. Letter dated 1.1.1997 bearing No. F.9(30)/96-CRC/South/SI directing the Superintending Engineer, Sarita Vihar, Jasola scheme of the DDA to take over the land from the Revenue staff.
10. Possession report dated 17.1.1997 whereby 117 bighas 16 bids was land was handed over by Sh. Jain Narain, Naib Tehsildar DDA to the Engineering Division.
11. Handing over possession of physical possession of 158 bighas 09 bids was of land on 21.1.1997 by Ranvir Patwari (NL) of DDA to the Engineering Division.
12. Affidavit of Sh. M.P. Jain, EE, SED-4, DDA. Sarita Vihar, New Delhi regarding the issuance of tenders, etc., and development works carried out on the land in question.
13. Affidavit of Sh. Sunil Tayal, JE, SED-4, DDA regarding taking over of physical, possession of 158 bighas 9 bids was of land on 21.1.1997.
14. Sketch showing land position.

The appellants have also argued that the following circumstances would clearly indicate that the possession of the substantial part of the land was taken over by the authorities and put at the disposal of the DDA.

(a) The respondents herein have admitted possession of the DDA. development carried out by it at page 239 (paras 19, 20 of CM 10902/97 filed on 22.12.97) and photographs at page 276. To the similar effect is the admission in the following pleadings:

(I) In CM 10902/97 dt. 22.12.97 (page 230)

(a) Averments of paras 19, 20 at page 239.

(b) Averments in paras 20, 25 at pages 239-240.

(c) Photographs from pg. 276.

(d) Prayers made seeking

(i) restraint of creation of third party interests.

(ii) Orders of status quo of land.

(II) In CM 2676/99 dt. 22.3.99 at pg. 223.

(a) Averments in para 19 at pg. 34 that DDA developing.

(b) Prayer made seeking status quo regarding development of construction restraint against DDA from dealing with the land.

(c) Photograph at pg. 367.

(b) The same admissions have been made at page 341 in para 19 and photographs at page 367. The respondents herein have made admissions of development having been made page 423 para 12.

(c) The respondents herein have made no objection whatsoever to the taking over of possession. The land is in actual physical possession of the authorities. Large scale development works have been carried out thereon. The same has been done openly and within the full knowledge of respondents herein who have raised no objection thereto. Plans, photographs, etc. have been placed on record. Tender notices were issued in national dailies. No objection whatsoever has been raised.

(d) All the documents placed on record amounted to contemporaneous evidence clearly showing that possession taken and such documents could not be brushed aside or disbelieved.

(c) Even in the application filed by the respondents herein in the writ court, no allegation was made that the respondents herein were dispossessed illegally and no prayer to that effect was made in the application.

(f) In the instant case the land forms part of the development project. Compensation stands deposited and possession is taken. The appellants have carried out all around development. The land has been kept embroiled in litigation by or on behalf of the respondents herein till the Supreme Court upheld the acquisition proceedings. A major portion of the scheme stands implemented after possession has been taken and plans and the development have been carried out after spending crores of rupees. There is no rebuttal of these assertions. In fact in view of the admissions on the part of the respondents herein with regard to taking of physical possession by the authorities as well as plethora of documentary record evidencing the same, it was not disputed by the learned senior counsel for the respondents herein that physical possession of the land in question was taken over and given to the DDA. However, what was argued was that the legal possession of the land was not taken over and unless possession was taken in a proper and legal manner as per procedure prescribed

in law, the physical possession could not be treated as legal possession at the hands of the DDA. It was argued that where power is given to do a certain thing in a certain way that thing must be done that way or not at all. This principle was laid down by the Privy Council as early as in the year 1933 in the case of Mohammad Akbar Khan v. Musharaf Shah and Anr., 61 is 371 and the Supreme Court had followed this dicta in number of cases. Therefore, according to the respondents herein, the power having not been exercised legally and validly in accordance with law, while taking physical possession, it could not be held that possession of the land had been taken.

We may note that the aforesaid contention of the respondents herein has been accepted by the learned Single Judge who has held that to place the land at the disposal of the DDA a notification has to be issued in terms of Section 22 of the DDA Act and since no such notification had been published the land could not be put at the disposal of DDA. The learned single Judge has further held that Section 16 of the DDA Act prescribes the method and manner as to how possession of the land can be taken and as per that Section after making the award it is the Collector who is to take possession of the land and after taking such possession the land vests with the Central Government. The learned Single Judge has thereafter referred to the relevant possession of the Delhi Land Revenue Rules as per which the necessary records which patwari is required to maintain and concluded that even if the possession of the land was taken over by the appellants pursuant to Section 16 of the Land Acquisition Act the records were not maintained nor filed to show that possession was taken over by the Central Government in terms of the Act and the rules. The judgment thereafter proceeds with stand of the different appellants taken in their affidavits and concludes that inconsistent stands have been taken by the appellants.

It may not be necessary to go into these aspects in detail. We may mention at the outset that such an exercise was not needed in the present case as that was not relevant to the context. It was not a case where the writ petitioners had challenged the legality of the possession of the land taken over by the appellants and Therefore, the court was not called upon to examine this issue. The issue arises in different context all together. It is abundantly clear now that in the writ petition the court was examining the validity of the "decision" dated 6th July, 1999 taken by the successor Minister whereby he decided that de-acquisition of the land was not warranted. To challenge, the validity of this decision it was argued that there was no fresh material before him and there was no challenge in the circumstances after earlier "decision" was taken by his predecessor on 13th April, 1999. In such a case when it was shown that, fresh material infact was placed before him which was the report of the DDA in which the DDA had stated that possession of the land had been taken over and the land was needed by DDA for its own residential schemes, this would clearly constitute fresh material and could validly form the basis for reviewing the earlier "decision". Sitting in judicial review when the court found that there was a material, further enquiry was not even necessary. Even if one has to accept the legal position that

the court could go into the truthfulness of report of the DDA containing this new information/material, at the most the scope of enquiry could be limited to the truthfulness of the assertion, namely, whether possession in fact taken over by the Government of the land was in possession of DDA. Admittedly, it was so. Therefore, while examining in a judicial review, the validity of the "decision" dated 6th July, 1999, in our opinion, the court could not have gone into the question as to whether possession was legally taken or not when this aspect of the matter was not under challenge at all. What the court was examining was as while taking such "decision" dated 6th July, 1999 whether in such decision making process, there was any irrationality, arbitrariness or procedural impropriety when the report comes before the decision making authority to the effect that the possession of the land has been taken which is with DDA now and this report is factually correct, naturally, the decision making authority was not required to go into the question as to whether it was validly taken or not. As a squatter when the taking over of physical possession of the land was not questioned in any proceedings by those whose land was taken the court: was not to go into this question. At the cost of repetition it is stated that the court was sitting in judicial review and only examining the validity of the "decision" dated 6th July, 1999 by which the successor Minister decides that de-acquisition of the land is not required. That apart, even otherwise, we are not in agreement with the approach of the learned Single Judge in dealing with the matter of this nature. In such a case when the land has been acquired, award made, compensation given and thereafter physical possession of the land has been taken, it would not be permissible for the respondents herein to find fault with the process of taking possession, that too in collateral proceedings, on the alleged ground of non-completion of certain formalities. Even if we assume that there were any irregularities or non-completion of any formality, no right would vest in favor of the respondents herein. Non-compliance of any technicality would not render the factual physical possession as illegal when the respondents herein had accepted the physical possession of the DDA. In so far as legal possession is concerned, as per the mandate of Section 16 of the Land Acquisition Act once award is passed the land vests in the State free from all circumstances. In the present case the award No. 205/86-87 was passed in respect of the land in question, and Therefore, the legal possession in any case, vests in the State absolutely free from all encumbrances. This is the legal position as conclusively been held by the Supreme Court in the cases of: (1) Satendra Prasad Jain and Others Vs. State of U.P. and Others, (2) H.M. Kelogirao and Others Vs. Govt. of A.P. and Others, U.P. Jal Nigam, Lucknow through its Chairman and another Vs. M/s. Kalra Properties (P) Ltd. Lucknow and others, So much so as even the symbolic possession is sufficient compliance in the eyes of law. [Refer: Brahm Sarup and Others Vs. The State of Haryana and Others, and Paramount Foods Corporation and Another Vs. Delhi Development Authority and Others, .

It was argued on behalf of the Land & Building Department that Section 16 does not prescribe any mandatory provisions or procedures for taking over the

possession. It was submitted that there was no specific frame under the Land Acquisition Act, nor there was any specific provisions connected as to how" the possession has to be taken. Under the CPC specific provisions have been enacted for taking possession. If no provision is made for the mode of taking possession, non-compliance with maintenance of record by the Halqua patwari u/s 110 of the Delhi Land Revenue Rules can hardly be ground to vitiate the legitimate exercise undertaken by the acquisition authority. The records maintained by the Halqa patwari only for the purpose of revenue.

We find force in the aforesaid arguments. In view of the aforesaid legal position, specious plea of the respondents herein to the effect that the possession of the land was not taken in a legal manner in the present case, is either available not accepted.

III. We now proceed to the examination of the material in the form of PM in the file of "Sita Ram Bhandar Trust. What was sought to be argued by the respondents herein that it was a noting relating to file in Sita Ram Bhandar Trust which could not have been made a shield for arriving at a "decision" in the present case. However, this argument, loses sight of the expression intention in the said "noting" which may be in the file of the Sita Ram Bhandar Trust's case. When, in such as case, the action was initiated for denotification of the land, the direction of the PM was categorical by stating not to proceed with denotification of land belonging to Sita Ram Bhandar Trust or any other land till clear policy regarding denotification of such land under acquisition proceedings is evolved with the approval of the Cabinet. Thus the mandate was very clear. Not only the land in favor of Sita Ram Bhandar Trust but no other land was to be denotified without previous approval of the Cabinet/PM. It was, on the basis of these observations, that when the Minister dealt with file of Sita Ram Bhandar Trust, he directed that it be attached with the file in the present case and then this is also a reason to rescind the earlier "decision".

72. Thus, from the aforesaid discussion, it can safely be concluded that the "decision" dated 6th July, 1999 was not actuated with malice; there was sufficient material before the Minister which warranted the said "decision"; the said material was relevant; noting placed before him was factually correct and not false; the discretion was exercised objectively and with proper application of mind and it cannot be said that the Wednesbury's principle of lack of fairness in action which warrants interference with the discretion of the authority is attracted in the present case. Accordingly, we are also unable to subscribe to the observations of the learned Single Judge to the effect that the Minister while taking "decision" dated 6th July, 1999 was influenced by his own personal conviction.

73. At this stage, it could be relevant to deal with some other aspects of the matter, particularly the fact of NHP which was stoutly pressed into service by the learned senior counsel for the respondents herein. For this and other related aspects, it would be better to start with the judicial pronouncement in the case

relating to this very land, namely, in Roshanara Begum (supra) and Murari and Ors. (supra). The relevant portions of touching these aspects are found in the following paragraphs:

"135. It was also urged on behalf of the petitioners that large trust of land already required by the DDA have been encroached by unauthorised person and the DDA which does not have the machinery to protect its land, should not clamour for having more land for development purposes. It was urged that if the authorities are serious in carrying out the development in accordance with the Master Plan, the authorities should first strictly use the land, so encroached upon, for developing such land after evicting the en'croachers for public purpose of planned development of Delhi. It is to be emphasised that the development of Delhi in a planned manner was a dream or a vision envisaged by the authorities and every endeavor has to be made by the authorities to realise the said dream. But there can be failures here and there. That would not lead to the conclusion that the public purpose which is enshrined in the Master Plain is to be given up and the authorities should not go on making efforts to acquire the land for laudable object of planned development of Delhi. On this ground that some land of the authorities had been trees passed illegally by a large number of persons would not, in our view, furnish any valid, legal ground to the petitioners for challenging the acquisition proceedings in question.

142 : In some of the cases, contentions were raised that improvements have been already made and the constructions have already been raised and the authorities would not be justified in acquiring the said land as they would be only demolishing the constructions and making the land available for raising other constructions. In case of Jatan Singh (supra), the Supreme Court has already held that the acquisition proceedings cannot be quashed on mere fact that certain constructions have been raised after issuance of a Section 4 notification. So, this contention has no merit.

144: This circular was not doubt acted upon by one of us (P.K. Bahri, J.) (2) in case of Birla Cotton Spinning and Weaving Mills Ltd. v. Union of India (1990) 42 DLT 332, in quashing the acquisition proceedings but this judgment was not approved by the Division Bench in case of Sh. Bhagwan v. Union of India 1991 (2) Delhi Lawyer 59, where it was discovered as a fact that the circular was not acted upon by the authorities. In detailed discussion, it was held that question of promissory estopped does not apply and such inter-departmental instructions could always be withdrawn by the authorities and no vested right had accrued to the persons whose land was sought to be acquired on the basis of such a circular.

146: In case of Gandhi Grah Nirman Sahkari Samiti Ltd. ect. etc. Vs. State of Rajasthan and others, one of the contentions raised was that the land sought to be acquired is already being used for public purpose and has been properly developed and thus the. notifications issued for acquisition of such land for public purpose be quashed. The Supreme Court held that once it is clear that the acquisition is for public purpose, no fault can be found with the proceedings on

the ground that land is already being used for some beneficial purpose. So, even if some land has been developed by the land owner according to his own notions and may be the construction raised by him on the said land is also serving some public purpose, still that cannot be a substitute for planned development of Delhi which object is visualised by the authorities. If the public object for which the land is sought to be acquired by the authorities is justified, it cannot be frustrated because the land owner has developed the land is utilising the land for some other public purpose. So, this contention also does not survive in view of the law held down by the Supreme Court.

147: In Civil Writ No. 325/82, *Ram Phal v. Union of India*, an application (C.M. No. 5036/95) has been moved by the petitioners mentioning that the Central Government has issued an order u/s 48 of the Land Acquisition Act withdrawing the acquisition proceedings in respect of the land, subject-matter of the writ petition and thus, on this basis the land acquisition proceedings be quashed. This application is hotly contested by the respondents. It is pleaded that in fact, no order has been made by the Central Government for withdrawing from acquisition of land in question and due to some misreading of the orders made in the file, the officials had wrongly issued the communication to the petitioner that the petitioner's land stands withdrawn from acquisition u/s 48 of the Act, Mr. Madan Lokur, Standing Counsel for the Union of India, has also gone to the extent of urging that that if this Court was to infer that the any such order has been made by the Central Government the same he deemed to be non est and be declared as void and illegal and arbitrary as it is not based on any reasons particularly when the land is sought to be acquired for planned development of Delhi and with regard to the same notification issued u/s 4 and declaration issued u/s 6, there are other land owners who have also filed writ petitions challenging the acquisition proceedings in respect of whom no such order has been made u/s 48 of the Act.

151: It appears that in this case representation was made by the land owner praying for release of the land from acquisition proceedings. The noting in the file shows that on January 9, 1995, it was indicated that as the property had been acquired at the instance of the Delhi Development Authority for the planned development of Delhi a report be obtained from the Delhi Development Authority with regard to the aforesaid representation but no report was received as per further noting in the file. In the meanwhile another representation was received from Shri Moti Goel on behalf of the petitioners and noting dated April, 20, 1995, shows that matter was already under consideration and report from the Delhi Development Authority was still awaited and a reminder was required to be issued. On May 19, 1995, the noting shows that response has been received from the Delhi Development Authority and the Delhi Development Authority appears to be showing no interest in acquisition of this particular land and it was indicated that reference has been made in the representation that land belonging to Hamdard Dawakhana, which was subject-matter of the same notification, had been already released. However, the noting of the Director shows that the opinion

that perhaps the reply of the Delhi Development Authority is not clear as it has not been given any categorical comments whether the land was required or not required for planned development of Delhi. Mr. J.P. Singh has then made a noting on the file mentioning that previous note be considered and then he had added with hand that the Hon"ble Minister has the power to release the land u/s 48 of the Land Acquisition Act. Then the matter was sent to the Private Secretary of the Minister who made the following noting which was approved by the Minister on July 1995 "UAEM has observed that even though the Delhi Development Authority has mentioned this land is a part of its residential scheme known as Sarita Vihar and Jasola, they do not appear to have made any effort to get possession of land for these schemes for nearly three decades. Delhi Development Authority has also not clearly stated for what purpose they intend to use the land. UAEM is, Therefore, of the view that this old pending case can be closed. However, the land so released will be used by the owner for the purpose earmarked in the Master Plan/approved layout "plan. In view of the above, UAEM has directed that the matter may be taken up with Government of NCT Delhi for denotifying, and release of the land immediately, UAEM may kindly see before the file is sent to the office."

171: The learned counsel for the petitioner has also drawn our attention to the National Policy with regard to housing issued by the Central Government which contemplates a major role of private sector in constructing houses in urban areas. Although there is no mention of this policy in any of the notings which were made on the representations of the petitioner seeking cancellation of the notifications, yet it was sought to be urged that the order issued by the Minister being in consonance with the National Policy of housing cannot be considered to be arbitrary in any manner. An order which has not been issued on the reasons given in the order or in the files cannot become, in our opinion, valid by the petitioner giving some more reasons to show that the same is valid.

214: In this writ petition and in many other writ petitions, a plea has been taken that constructions had been raised in the land notified for acquisition u/s 4 of the Act and large number of illegally constructed colonies have been regularised by the Central Government, by the Delhi Administration and by the Municipal Corporation from time to time and the process of regularisation of unauthorised colonies is still continuing and it is really unjust on the part of the authorities to not to regularise the constructions raised by the petitioners in the land, subject matter of their petitions. It is urged that it amounts to unreasonable discrimination by not regularising the illegal constructions raised by the petitioners when such illegal constructions have been regularised on large scale by recognising the said illegally constructed colonies.

215: It is true that from time to time the Government had been regularising the illegally constructed colonies on account of varied reasons are large number of people might have spent their last penny in raising the houses which were allowed to be constructed without any objection and such colonies remained in

existence for sufficient long time that a policy decision was taken by the Government to regularise such illegally constructed colonies and the Government itself had been reviewing the dates prior to which colonies so constructed are to be regularised on certain terms and conditions. The Government had regularised quite a few such colonies. It is one thing to say that certain illegally constructed colonies have been recognized by the Government and it is another matter to be considered whether constructions raised by individuals in the land, subject-matter of acquisition, should be regularised."

74. The paras relevant in *Murari and Ors.* (supra) are the following:

"17: Shri P.N. Lekhi, Dr. Rajeev Dhavan and various other counsel appearing for the appellants contended that the Government by its order dated 4-8-95 had withdrawn its notification issued u/s 4 of the Act involving certain areas of land sought to be acquired in exercise of its power u/s 48 of the Act and, Therefore, it was submitted that if one part of the land is released from the public purpose the whole land covered under the notification will stand released as the Government cannot give a differential treatment which will be hit by the principles enunciated in Article 14 of the Constitution. As against this the learned counsel for the respondents refuted the allegation with regard to the withdrawal of certain land from the acquisition for the planned development of the city of Delhi. Alternatively it was submitted that the withdrawal of certain and included in the notification u/s 4 could be effected only by denotifying the release and since there is no such notification denotifying the release it could not be regarded as a release within the meaning of Section 48 of the Act. In other words Section 48 of the Act may be applied only when the release is published in the Official Gazette in the same manner as the notification u/s 4 and declaration u/s 6 of the Act are published in view of the provisions contained in Section 21 of the General Clauses Act and since no such notification was published in the Official Gazette, mere information given with regard to the withdrawal from acquisition will be of no consequence. Various decisions were cited for and against by the parties at the Bar but we do not propose to burden this judgment by citing them all except those which are most relevant on the point in controversy. 22. After overall consideration of the issues involved in these transfer cases and the appeals we find no ground to take a different view than the one taken by the High Court in the impugned judgment. Consequently, the acquisition proceedings could not be quashed on any grounds. We also find ourselves in respectful agreement with the view taken by this Court in the case of *Ram Chand*. Consequently, the appeals fail and are hereby dismissed. The transfer cases are allowed in terms of the order made in the case of *Ram Chand* directing that the transfer petitioners and the appellants shall be paid an additional amount of compensation to be calculated at the rate of 12 per cent per annum, after the expiry of two years from the date of decision of *Aflatoon* case i.e. 23-8-1974 till the date of the making of the awards by the Collector, to be calculated with reference to the market value of the land in question on the date of notification u/s 4(1) of the Act. In the facts and circumstances of the case we make no order as to costs.

75. It may also be noted that the Full Bench of this court as well as the Supreme Court also held that particularisation of principle user in Master Plan and Zonal Plan was not necessary: argument regarding Section 48 and withdrawal from acquisition in other cases was rejected specifically holding that denotification of Hamdard Dawakhana or all other land did not create any right to claim denotification: the construction of the respondents herein was unauthorised and not in consonance with the public purpose of acquisition; there was no bar to the acquisition of build up property; argument based on Minister's "nothings", any claim for withdrawal from acquisition u/s 48(1) of the Land Acquisition Act was untenable. It may further be noted that the Supreme Court restricting the reports only with regard to "built up structures" and in the present case there are no such "built up structures".

76. In view of the aforesaid conclusive findings in respect of this very land, argument on National Housing Policy may not cut the ice. It is the same National Housing Policy which was discussed in the aforesaid judgment on which reliance was placed by the learned senior counsel for the respondents herein. There are also certain statements made thereafter that may not create an automatic right in favor of any land owner "seeking de-acquisition of the land. It may be noted that reliance on PM's address in November, 1998 relating to a chunk of land tied up in litigation would be of no avail to the respondents herein when in the present case no litigation in respect of acquisition of the land was pending. The challenge having been rejected up to the highest level in judicial hierarchy. If the land has been acquired and more particularly when the said acquisition has been upheld by this Court and the Supreme Court as well. In such circumstance, it was entirely within the discretion of the Government to take a decision about de-acquisition, if at all. Once the "decision" dated 6th July, 1999 is held to be based on valid considerations and does not suffer from the vices of arbitrariness and actuated with mala fides, the petition claiming de-acquisition as a matter of right would not be maintainable.

77. There are certain other factors which are to be borne in mind and these are as follows:

(i) This original owners have already sold their land and it is Sh. Moti Goyal who has purchased the land from some of the land owners and he craves for de-acquisition although taking shelter of some of the ex-land owners and dubbing them as "poor persons".

(ii) The writ petition at the instance of Sh. Moti Goyal was not even maintainable. Moreover, as a subsequent purchaser, his claim should be limited only to compensation.

(iii) The DDA had made developments at the said land by spending substantial amounts. Therefore, it was not in public interest to denotify the land.

(iv) These cannot be any compulsion on the part of the Government to withdraw from acquisition. [Refer: S.P. Subramanya Shetty and others Vs. Karnataka State

of Road Transport Corporation and others,

78. The result of the aforesaid discussion would be that the writ petition filed by respondents herein was misconceived and devoid of any merit. Accordingly we set aside the impugned judgment and dismiss the writ petition.

79. The appellants shall also be entitled to costs qualified at Rs. 50,000/- in each case.