* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **W.P.(C) No. 3780/2000**

Date of Decision: November 18 , 2005

\# ANANG PAL SINGH & ORS. ..... Petitioners
! Through Mr. Ravinder Sethi, Sr. Adv. with Mr. D.K. Rustagi, Mr. Nikhil Srivastava, Advs.

versus

$ UNION OF INDIA & ORS. ..... Respondents
^ Through : Mr. Sanjay Poddar with Mr.Sachin Nawani, Adv. for R-1, 2 & 3
Ms. Avnish Ahlawat with Ms. Poornima Sethi, Advs. for Respondent No. 4
Mr. M.M. Kalra, Adv. for Respondent No. 5
Ms. Tripti Kohli, Adv. for Respondent No. 7

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CORAM:
HON'BLE MR. JUSTICE T.S. THAKUR
HON'BLE MR. JUSTICE BADAR DURREZ AHMED

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

: **T.S. THAKUR, J.**

In this petition for a writ of certiorari, the petitioner assails the validity of a preliminary notification dated 12.08.1997 issued under section 4 of the Land Acquisition Act and a declaration dated 10.09.1997 issued under section 6 thereof. A mandamus directing the respondents not to interfere with the actual physical possession of the petitioners over the land in

dispute or to demolish the structures existing on the same has also been prayed for. The factual backdrop in which the petition has been filed may be summarised as under :

2. In terms of a notice issued by the Indian Oil Corporation in December, 1994, applications for appointment as a dealer of a company owned retail outlet at Ghewra Morh in West Delhi were invited from eligible persons. On the basis of recommendations of the Oil Selection Board, the retail outlet dealership in question was offered to petitioner No. 1. The letter issued by the Corporation in this regard proposed to develop, for the said petitioner, a retail outlet at Ghewra Morh and provide the same to him with certain facilities such as a suitable plot of land duly developed as an outlet with an office building, storage tank and pump etc. The Corporation appears to have, in that direction, approached the Delhi Development Authority for allotment of a plot in its favour in the above area which request did not fructify as no such allotment came through. According to the petitioners, the Corporation advised them to procure a private piece of land to enable the Corporation to develop the proposed retail outlet in pursuance whereof petitioners Nos. 2 and 3 who happen to be the family members of petitioner No. 1 purchased a piece of land measuring 4 bighas and 11-½ biswas in khasra Nos. 79/21/1 and 85/1/1 situate in the revenue estate of

Village Ghewra, Delhi. While the land so purchased had yet to be developed into a retail outlet, respondent No. 2 issued a notification dated 12.08.1997 under Section 4 read with Section 17(1) and sub-section 4 of the Land Acquisition Act notifying for acquisition the lands mentioned therein including the land purchased by the petitioners. The proposed acquisition was said to be for the purpose of setting up a Sports School near Ghewra Morh as a part of "Planned Development of Delhi".

3. The petitioners' case, as set out in the writ petition, is that the Indian Oil Corporation had, in terms of a letter dated 28.08.1997 requested the Government of Delhi to spare the land purchased by the petitioners from acquisition as the proposed retail outlet was meant to serve the need for such an outlet in that area. The petitioners also claim to have made a representation to the Chief Minister of National Capital Territory of Delhi seeking exemption from acquisition of their piece of land. The authorities appear to have remained unmoved by the said representations as the acquisition proceedings went on to culminate in the issue of a declaration under Section 6 of the Act on 10.09.1997. An award was thereafter made on 09.09.1999 determining compensation payable to the owners of the land acquired from them. Aggrieved by the said notifications and the award, the petitioners have filed the present writ petition, as

already indicated earlier.

4. The petition has been contested by the respondents on several grounds including the ground that the possession of the land in question having already been taken over pursuant to the award made by the Collector, no challenge to the acquisition proceedings was maintainable. According to the respondents, the land stood vested in the State absolutely w.e.f. 13.11.1997 when its possession was taken over by the Collector. The writ petition was, in that view, liable to be dismissed on the ground of unexplained delay and laches.

5. Mr. Ravinder Sethi, learned senior counsel appearing for the petitioners, argued that the impugned notification under Section 17(4) of the Land Acquisition Act was illegal in as much as the same was unsupported by any order from the competent authority dispensing with the conduct of an inquiry under Section 5A thereof. Relying upon the decision of the Supreme Court in *Union of India vs. Mukesh Hans* **(2004) 8 SCC 14**, Mr. Sethi contended that the mere issue of a notification invoking Section 17(4) of the Act was not enough to dispense with the conduct of such an inquiry. What was important, according to the learned counsel, was that the inquiry was dispensed with in pursuance of an order passed by the competent authority after due and proper application of mind. No such order had,

according to the learned counsel, been passed in the instant case. Heavy reliance was placed by Mr. Sethi upon the decision of this court in *Chaman Lal Malhotra Vs. UOI* ***(WP(C) 4002/1997***), disposed of on 08.08.2005 in support of the submission that this court had already declared the impugned notification and the proceedings taken on the basis thereof to be illegal on the ground that the inquiry under Section 5A of the Land Acquisition Act had not been validly dispensed with. He submitted that the ground urged by the petitioners in the present case having been examined in the *Chaman Lal Malhotra's* case (supra) and accepted, it would be incongruous for this Court to decline a similar relief to the petitioners in the present proceedings.

6. On behalf of the respondents, it was per contra argued by Mr. Poddar that the petitioners were not entitled to any relief in the present proceedings as the grievance made by them was stale and highly belated. It was urged that a notification may be valid qua some of the owners while it may be held to be invalid qua the others. In order to have the acquisition proceedings quashed, it was essential for the land owners aggrieved of the same to approach the court at the appropriate stage which the petitioners had not done. They had, according to Mr. Poddar, acquiesced in the proceedings and remained on the fence till possession of the land was taken over from them. There was,

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6. On behalf of the respondents, it was per contra argued by Mr. Poddar that the petitioners were not entitled to any relief in the present proceedings as the grievance made by them was stale and highly belated. It was urged that a notification may be valid qua some of the owners while it may be held to be invalid qua the others. In order to have the acquisition proceedings quashed, it was essential for the land owners aggrieved of the same to approach the court at the appropriate stage which the petitioners had not done. They had, according to Mr. Poddar, acquiesced in the proceedings and remained on the fence till possession of the land was taken over from them. There was,

according to Mr.Poddar, no cogent explanation for the petitioners' silence till July, 2000 when they should have rushed to the Court immediately after the impugned notification under Section 4 and 17(1) and (4) of the Act were issued in August, 1997. They had not stirred into action even on the issue of a declaration under Section 6 of the Act in September, 1997 or the making of the award in September, 1999. They had challenged the proceedings belatedly eight months after the taking over of the possession from them pursuant to the award made by the Collector. Relying upon a number of decisions of the Supreme Court and those of this court, Mr. Poddar strenuously argued that the present was not a fit case in which the court ought to interfere at the instance of a party who had allowed the acquisition proceedings to go on, acquiesced in the same and belatedly challenged the action on a ground that was available to him even on the date when the impugned notification was issued.

7. The law does not prescribe any definite period of limitation within which a petition under Article 226 may be filed by a citizen aggrieved by any action of the State or its instrumentalities. The extra ordinary jurisdiction exercised by the superior courts in the country remains unaffected and untrammeled by the law of limitation which is a piece of ordinary legislation. The nature, content and the very source of power

exercised by a writ court being superior to any other remedy available under an ordinary piece of legislation, it is but natural that the exercise of any such superior power cannot be controlled by the ordinary law of limitation which bars a remedy without extinguishing the right. Having said so, it is necessary to re-state the well settled proposition of law that the jurisdiction vested in the High Courts under Article 226 is discretionary in nature. A writ court may not exercise its jurisdiction just because it is lawful to do so. It may refuse assistance or relief in cases, where the Court finds the conduct of the petitioner before it to be blameworthy. Lack of bonafides and diligence also provide reasons for the Court to decline relief in appropriate cases. Decisions rendered by the Supreme Court and touching the nature of the writ jurisdiction exercised by the High Courts are a legion. These decisions recognise that the jurisdiction exercised by the writ courts is not only discretionary but equitable also and if the person invoking the same does not approach the Court within a reasonable period, the Court may deny relief to him. That is because delay defeats equity. The courts have, therefore, declined relief in cases where the litigant seeking the same was found to have been indolent. Suffice it to say that judicial pronouncements have evolved certain self-imposed restraints for the exercise of writ jurisdiction by the High Court which

restraints have hardened into rules regulating sound exercise of discretion by such courts.

8. There is a plethora of decisions on the approach which a writ court has to adopt when examining a challenge to the proceedings for acquisition of land. The common thread that runs through all these pronouncements is that delay in challenging acquisition of land for public purpose is viewed with greater concern than in cases involving enforcement of other rights or remedies. The philosophy underlying that approach obviously is that where the acquisition is for a public purpose, an owner cannot sit back, allow the authorities to take steps under the Act and proceed from one stage to the other, but come to the court after the entire process has been completed. The owner-litigant aggrieved of the proposed acquisition is put to proof of the reasons why he remained sleeping over the matter and failed to challenge what was, according to him, illegal at the earliest possible opportunity. In the long line of decisions that have been cited before us at the bar, we have cases where the Court has declined to interfere with acquisition proceedings even when delay was just about a year and a half. We also have decisions where the land owner had allowed the authorities to make an award after issue of a declaration under Section 6. The Court found no reason why the owner should have kept quite and

allowed the Collector to make the award if the inquiry under Section 5A or the declaration under Section 6 was bad. We have similarly cases where the parties came to the Court after they were dispossessed pursuant to the award. The Court found no reason to interfere with the acquisition proceedings if a party had remained silent while a declaration under Section 6 was made and an award under Section 9 published. It was, on the authority of these decisions, argued by Mr. Poddar that the dispossession of the land owners was by itself sufficient to result in dismissal of a petition as if the dispossession of the owner would have the effect of denuding the writ court of its jurisdiction to issue a writ. We have carefully gone through the decisions which have been extensively read before us at times more than once. We, however, find it difficult to read into the said decisions any such proposition of law. The power to issue a writ is constitutional in nature. It embraces within itself the power of judicial review of executive and legislative actions which is a basic feature of the constitution. Even the Parliament cannot, by a constitutional amendment, take away that power of review leave alone do so by an ordinary legislation. The decisions of the Supreme Court have added content and efficacy to the power exercisable by the High Courts under Article 226. It is, therefore, difficult to countenance the argument that such decisions have had the effect of

emasculating the High Courts of their power under Article 226. Mr. Poddar's submission that the decisions relied upon by him render the High Courts powerless in the matter after possession of the land is taken over does not appear to be an accurate statement of law. To bring home that truth, all that one need to do is to read the decisions in the context and perspective in which they have been rendered and ought to be understood.

9. Before we refer to the decisions cited before us by learned counsel for the parties, we need to determine whether the possession of the land had been actually taken over by the authorities. That is because one of the contentions which Mr.Sethi urged before us was that actual physical possession had never been taken over by the petitioners. He contended that the land in question could vest with the petitioners only if the actual physical thereof was taken over and not what, according to Mr.Sethi, tantamounted to only "paper possession". Reliance was placed by Mr.Sethi upon the decisions of the Supreme Court in *Balwant Narayan Bhagde v. M.D. Bhagwat & Ors.* ***(1976) 1 SCC 700*** and *R.L. Jain (D) by LRS. v. DDA & Ors.* ***(2004) 4 SCC 79.*** It was also argued that the alleged taking over of the possession was without compliance with the requirements of sub-section 3A of Section 17 of the Act in as much as 80% of the compensation payable to the owners was not offered to them. This, according

to the learned counsel, was a circumstance that proved that possession of the land was never taken over.

10. The writ petition does not make any assertion leave alone a clear and emphatic one to the effect that possession of the land in question had continued with the owners. On the contrary, the petitioners had prayed for a mandamus directing return of the possession of the land to them if the court came to the conclusion that the same had in fact been taken over by the respondents. That prayer runs as follows :

> "(d) If this Hon'ble court comes to the conclusion that the possession has been taken by the respondents then in that event, this Hon'ble Court be pleased to direct the respondents by issuing appropriate writ, orders or directions for restoring the possession of the land in question to the petitioners."

11. In the absence of any assertion that the petitioners have continued to be in possession of the land and in the light of the prayer for return of possession to them, it is difficult to see how the petitioners can claim that the taking over of the possession by the authorities was mere 'paper work' hence ineffectual in law. That apart, the assertion of the respondents that possession of the land in dispute was taken over by the authorities on 13th November, 1997 has not been denied by the petitioners by filing a rejoinder. There is no explanation forthcoming from the petitioners for this omission. The

petitioners have, no doubt, made an effort to introduce by way of an amendment an assertion to the effect that the physical possession of the land always remained with them and that the authorities had never taken physical possession thereof, but the said application was filed only in May, 2005, i.e., nearly five years after the filing of the writ petition. In the absence of any rejoinder to the counter affidavit filed by the respondents and in the absence of any assertion in the writ petition as originally filed regarding the possession being with the petitioners, the mere filing of an application for amendment would be of no avail.

12. The other circumstance proving that possession of the land was in fact taken over by the Government is the contemporaneous record and the *kabza karvai* prepared at the time of taking of possession. A reading of the proceedings held on 13th November, 1997 shows that land measuring 191 bigha 18.5 biswas lying vacant has been taken over by beat of drum on that date. Possession of khasra No. 85/27 was not taken over since a factory building stood in the same. There is, in our opinion, no reason for us to disbelieve the veracity of these proceedings especially when the same are supported by a legal presumption that official acts were regularly performed.

13. Last but not the least of the circumstances which proves the taking of possession on the spot is the fact that

possession of land owned by Sh.C.L. Malhotra had also been taken over on 13th November, 1997 although there was an interim order from this court in WP(C) No. 4002/1997 dated 24th September,1997 directing the parties to maintain status quo. Aggrieved by his dispossession in contravention of the said order, Sh.Malhotra had filed a contempt petition as a result whereof possession of the land owned by him was returned to him on 19th February, 1999. This clearly shows that the proceedings held on 13th November, 1997 were not only paper work but had resulted in dispossession of the owners in a manner known to law.

14. The Supreme Court has in *General Manager, Telecommunication and Anr. v. Dr. Madan Mohan Pradhan* ***1995 Supp. (4) SCC 268*** declared that taking of possession of land by drawing up of a memo was a method recognised by law. The following passage from that decisions makes that point good:

> "It is common knowledge that possession would always be taken under a memo and handing over also would be under a memo. It is a recognised usual practice in all the acquisition proceedings."

15. The decision of the Supreme Court in *Balwant Narayan's case (supra)* reliance whereupon was placed by Mr.Sethi does not state the legal position differently. On the contrary, the said decision also recognises that the mode of taking possession would be to do same act which would indicate

that the authority has taken possession. Such act may be in the form of declaration by beat of drum or otherwise or by hanging a written declaration on the spot that the authority has taken possession of the land. The following passage is, in this regard, apposite :

> "It is,therefore, clear that taking of possession within the meaning of Section 16 or 17(1) means taking of possession on the spot. It is neither a possession on paper nor a "symbolical" possession as generally understood in civil law. But the question is what is the mode of taking possession ? The Act is silent on the point. Unless the possession is taken by the written agreement of the party concerned the mode of taking possession obviously would be for the authority to go upon the land and to do some act which would indicate that the authority has taken possession of the land. It may be in the form of a declaration by beat of drum or otherwise or by hanging a written declaration on the spot that the authority has taken possession of the land. The presence of the owner or the occupant of the land to effectuate the taking of possession is not necessary. No further notice beyond that under Section 9(1) of the Act is required. When possession has been taken, the owner or the occupant of the land is dispossessed. Once possession as been taken the land vests in the Government." (*emphasis supplied)*

16. In *R.L. Jain's case (supra)*, the question which the court was examining was whether possession taken prior to the issue of a notification under Section 4 of the Act could be recognised as possession taken under the Act so as to entitle the owners to claim interest for such period. The Court answered that question

in the negative and held that if the land owner was dispossessed without the issue of a notification under Section 4, he can initiate proceedings for recovery of the possession and for payment of rent or damages. The mode of taking possession under the Act did not call for consideration in that case. Reliance upon that decision, therefore, is of no avail to the petitioners. The argument that since 80% of the estimated compensation was not paid to the petitioners, the possession could not have been taken or that non-payment of such payment is a circumstance that disproves taking over of possession on the spot must also be noticed only to be rejected. It is true that Section 17(3-A) postulates that owner will be offered an amount equivalent to 80% of the estimated compensation for the land before the Government takes possession of it under Section 17(1) but even when 80% of that estimated compensation has not been paid, the taking over of possession or the vesting of the land cannot be said to be illegal. The decision of the Supreme Court in *Satendra Prasad Jain and Others v. State of U.P. And Others* (1993) 4 SCC 369 is a sufficient authority for that proposition. The Court has in that case observed :

> "In the instant case, even that 80 per cent of the estimated compensation was not paid to the appellants although Section 17(3-A) required that it should have been paid before possession of the said land was taken but that does not

mean that the possession was taken illegally or that the said land did not thereupon vest in the first respondent."

17. The respondent's version in any case is that 80% of the estimated compensation was offered but was not received by the petitioners which was a sufficient compliance with the provisions of Section 17(3-A). Be that as it may, the non-payment or non-receipt of the compensation in terms of Section 17(3-A) does not hold the key to finding out whether possession was or was not taken over by the authorities. The non-receipt of the compensation in any case is not a circumstance which can militate against the taking over of possession by the authorities.

18. Let us now examine, in the context of the pronouncements of the Supreme Court, whether the petitioners can assail the validity of the acquisitions proceedings after the making of the award and their dispossession from the land in question. In *Aflatoon and Ors. v. Lt. Governor of Delhi & Ors.* **AIR 1974 SC 2077**, one of the questions that fell for consideration before their lordships was whether the petitioners could be allowed to challenge the validity of the notifications even after publication of a declaration under section 6 of the Land Acquisition Act. The challenge to the acquisition proceedings in that case was primarily on the ground that the preliminary notification did not specify the particular public purpose for

which the acquisition had become necessary. Repelling the attack, the Supreme Court held that a valid notification under Section 4 being a *sine qua non* for initiation of the proceedings for property, there was no reason why petitioners should have waited to challenge the validity of such a notification on the ground that the particulars of public purpose were not specified therein. The court held that the petitioners were sitting on the fence and had allowed the Government to complete the acquisition proceedings on the basis that the notification under Section 4 and the declaration under Section 6 were valid. They could not, therefore, turn around and attack the notification on the grounds belatedly since such grounds were available to them at the time when the notification was published. Granting relief to the petitioner, observed their lordships, would in such circumstances amount to putting a premium on their dilatory tactics.

19. The above reasoning applies with full force to the present case also. The impugned notification under Section 4 and 17(1), 17(4) of the Land Acquisition Act was issued on 12th August, 1997. The argument that the said notification was bad as the same was unsupported by any order of the competent authority directing that the inquiry under Section 5A should be dispensed with was available to the petitioners in August, 1997

itself. There was nothing which the petitioners had to wait for before filing a petition challenging the notification on that ground as they did after the acquisition proceedings had been completed. If the petitioners did not assail the notification and allowed a declaration under Section 6 to be issued followed by their dispossession in November, 1997, a challenge in July, 2000 would, in the words of the Supreme Court, tantamount to placing a premium on their dilatory tactics.

20. In *State of Rajasthan and Ors. vs. B.R. Laxmi & Anr.* ***(1996) 6 SCC 445,*** the award had been made and possession of the land taken over. The High Court had, notwithstanding the completion of the acquisition proceedings, interfered with the same on the ground that no third party rights have been created. In appeal, the Supreme Court reversed the judgment holding that the High Court should not exercise its powers to quash the proceedings when the award had been made and the possession of the land taken over. Discretionary power of the Court under Article 226 of the Constitution, observed their lordships, had to be exercised taking the relevant factors into pragmatic consideration. The following passage in this regard is apposite :

> "When the award was passed and possession was taken, the Court should not have exercised its power to quash the award which is a material factor to be taken into consideration before exercising the power under Article 226. The fact

that no third party rights were created in the case, is hardly a ground for interference. The order or action, if ultra vires the power, becomes void and it does not confer any right. But the action need not necessarily be set at naught in all events. Though the order may be void, if the party does not approach the Court within reasonable time, which is always a question of fact and have the order invalidated or acquiesced or waived, the discretion of the Court has to be exercised in a reasonable manner. When the discretion has been conferred on the Court, the Court may in appropriate case decline to grant the relief, even if it holds that the order was void. The net result is that extraordinary jurisdiction of the Court may not be exercised in such circumstances."

21. Applying the ratio of the above decision to the instant case, it is evident that having allowed the proceedings to progress to the stage of making the award and taking of possession, the petitioners cannot now assail the same. Their inaction in the matter would dis-entitle them to any relief under Article 226.

22. To the same effect is the decision of the Supreme Court in *Market Committee, Hodal v. Krishan Murati & Ors.* ***(1996) 1 SCC 311*** where the Supreme Court has, in similar circumstances, observed :

"The award having been validly made on May 19, 1984 and possession of the lands having been taken, the lands vest in the Government u/s. 16 absolutely free from all encumbrances. The High Court was not justified in interfering with the exercise of power by the Government u/s. 17(4) dispensing with the enquiry u/s. 5-A at that belated stage."

23. A reference may also be made to a decision of the

Supreme Court in *Senjeevanagar Medical & Health Employees Cooperative Housing Society v. Mohd. Abdul Wahab & Ors.* ***(1996) 3 SCC 600*** where the Apex Court did not approve of the High Court's interference with the acquisition proceedings after the possession of the land had been taken over from the owners and the land stood vested in the Government.

24. Reference may also be made to the decision of the Supreme Court in *Municipal Council, Ahmednagar & Anr. v. Shah Hyder Beig & Ors.* **(2000) 2 SCC 48** where the Court observed :

> "It is now a well-settled principle of law and we need not dilate on this score to the effect that while no period of limitation is fixed but in the normal course of events, the period the party is required for filing a civil proceeding ought to be the guiding factor. While it is true that this extraordinary jurisdiction is available to mitigate the sufferings of the people in general but it is not out of place to mention that this extraordinary jurisdiction has been conferred on to the law courts under Article 226 of the Constitution on a very sound equitable principle. Hence, the equitable doctrine, namely, "delay defeats equity" has its fullest application in the matter of grant of relief under Article 226 of the Constitution. The discretionary relief can be had provided one has not by his act or conduct given a go-by to his rights. Equity favours a vigilant rather than an indolent litigant and this being the basic tenet of law, the question of grant of an order as has been passed in the matter as regards restoration of possession upon concellation of the notification does not and cannot arise." (*emphasis supplied*)

25. To the same effect are the decisions of the Supreme Court in *Municipal Corporation of Greater Bombay v. Industrial Development Investment Co. Pvt. Ltd.* **(1996) 11 SCC 501**, *Northern India Glass Industries v. Jaswant Singh & Ors.* **(2003) 1 SCC 335** and *Larsen & Toubro Ltd. v. State of Gujarat & Ors.* **(1998) 4 SCC 387.**

26. The legal position emerging from all these decisions is that while the High Courts have the discretion to entertain a petition under article 226, it would be sound exercise of that discretion if the court refuses to interfere with land acquisition proceedings in cases where the land owners have allowed the authorities to complete the acquisition proceedings and challenged the same only after the owners have been dispossessed. The land owners cannot allow the proceedings to go on, accepting by their silence, the validity of the notifications under Section 4 and 6 of the Act, but turn around to challenge the same after the Collector has made his award and dispossessed the owners on the basis thereof. That is precisely what has happened in the instant case also. The notification under Section 4 read with Section 17(1) and (4) of the Act was not assailed by the petitioners for a period of three years although the ground on which the challenge was eventually mounted was available to the petitioners even on the date the said notification

was issued. No challenge was thrown to the notification even after a declaration under Section 6 has been issued or possession taken by the authorities in November, 1997. The petition filed three years after the petitioners first had the cause of action to file the same is, therefore, liable to be dismissed on the ground of unexplained delay and laches.

27. Mr. Sethi, however, argued that the petitioners' explanation for the delay was reasonable and ought to be accepted. He submitted that a representation had been made by the petitioners to the Chief Minister of Delhi to drop the proceedings and that even the Indian Oil Corporation had sent a communication for deletion of the land in question from the acquisition proceedings. These representations, according to the petitioners, sufficiently explained the reason why the petitioners had not come to the Court earlier. There is, in our opinion, no merit in that contention. It is true that the Indian Oil Corporation had addressed a letter to Secretary, Land & Building Department, Government of Delhi requesting the latter to exempt the land in question from acquisition so that a retail outlet could be established in the same, but apart from making of the said representation in August, 1997, there is no other follow-up action taken either by the Corporation or by the petitioners to pursue the matter with the authorities. As regards the

representations allegedly filed by the petitioners in terms of Annexure P-7 to the petition, it is noteworthy that the same do not bear any date or acknowledgement of its receipt by the concerned authority. Even assuming that the alleged representations had been made, the mere pendency thereof could not explain the inaction by the petitioner in challenging the acquisition proceedings at the appropriate stage especially when the authorities were taking effective steps despite the representations, if any received from the petitioners. The filing of a representation is, in any event, a non-statutory remedy which could constitute sufficient cause and explain the delay in filing the petition only if and for the period the petitioners had a reasonable hope to get relief from the authorities. A party cannot, however, hope against hopes by sitting quite and endlessly waiting for relief from a non-statutory executive or administrative authority. It cannot allow the proceedings to be completed and then belatedly challenge the same on the ground that it had made a representation to the authorities. In order that representations made by the petitioners constitute a sufficient reason for not filing the petition, it must be established to the satisfaction of the Court that the petitioners had a reasonable and bonafide belief that they are likely to get the relief prayed for by them at the administrative level making recourse to legal

proceedings unnecessary. In the instant case, the petitioners have failed to do so. Apart from submitting a representation, there is nothing to prove that the matter was pursued by them or processed by the authorities at any level to constitute a reasonable cause for the delay.

28. That brings us to the submission made by Mr.Sethi that it is incongruous for this court to deny relief to the petitioner after having found the impugned notification to be legally bad in Chaman Lal Malhotra's case (supra). In other words, the submission was that once the notification has been found to be bad qua one land owner, it must invariably be held to be so qua every other land owner covered by the same regardless of whether the challenge is barred by delay and laches. There is, in our opinion, no merit even in that submission. It is true that the impugned notification has been quashed by this court in Chaman Lal Malhotra's case (supra) but then the said petition had been filed shortly after the issue of the notification unlike the petitioners who allowed the proceedings to be completed and the possession of the land to be taken before rushing to this Court. It is fairly well-settled that a notification may be good qua some while it is declared to be bad qua some others.

29. The decision in Chaman Lal Malhotra's case related only to the land of the petitioner in that case and not to the entire

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land covered by the notification. This is evident from the following passage from the judgment in Malhotra's case:

> "In the result, we allow this petition in part and quash the impugned notification to the extent the same dispensed with an inquiry under Section 5A of the Land Acquisition Act qua land measuring 44 bighas owned by the petitioners. Consequently, all further actions taken by the respondents pursuant to the said notification including the declaration under Section 6 and the award made on the basis thereof to the extent the same relate to the land owned by the petitioners shall also stand quashed."

30. We may also refer to the observation made by the Supreme Court in B.R. Laxmi's case (supra) that even when an order may be void, if the party does not approach the Court within reasonable time to have the same invalidated or if the party has acquiesced or waived its objection regarding the order, the Court may not exercise its discretion in favour of such a party. The Court may, in such situations, decline to grant relief even if the order is void. Professor Wade has summed-up the very same principle in the following words :

> "The truth of the matter is that the court will invalidate an order only if the right remedy is sought by the right person in the right proceedings and circumstances. The order may be hypothetically a nullity, but the court may refuse to quash it because of the plaintiff's lack of standing, because he does not deserve a discretionary remedy, because he has waived his rights, or for some other legal reason. In any such case, the 'void'

> order remains effective and is, in reality, valid. It follows that an order may be void for one purpose and valid for another; and that it may be void against one person but valid against another."

31. In the result, this petition fails and is hereby dismissed with costs assessed at Rs.2,000/-.

T.S. THAKUR, J

BADAR DURREZ AHMED, J

November 18, 2005
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