% 19.05.2005

Present : Mr. P.N. Lekhi, Sr. Adv., Mr. L.R. Gupta, Sr. Adv., Mr. [illegible] Bhasin, Sr. Adv., Mr. N.S. Vasisht, Mr. Sameer Vashisht, and Mr. B.S. Maan, Advocates.
Ms. Meera Bhatia with Mr. Ram Naresh Yadav, Advs., for Respondent No.1/UOI.
Mr. Jagmohan Sabharwal, Sr. Adv. with Mr. Ajay Verma, Mr. B.B. Lal and Ms. Shobhana Takiar, Advs., for Respondent No.2/DDA.
Ms. Geeta Luthra, Ms. Pinky Anand, Ms. Jhum Jhum Sarkar, Advs. for Respondents No.3 & 4.

+W.P.(C) Nos. 240, 241, 242, 243/2000, ... 1833, 2120, 3187, 3229, 3284, 3764, 4150, 7079, 7428/2000, 7776, 136, 337, 1293, 2815, 3229, 3230, 3237, 3238, 3495, 3370, 3231, 4781, 4784, 6450,6453, 6458, 6694, 6743, 7443, 7778, 7779/2001, 1785/2002, 1809/2002, 3414, 3691, 3628, 3626, 3683/2002, 318/2000, 319/2000, 320/2000, 321, 322, 2119, 3301, 3333, 4597/2000, 341/2001, 5809/2002, 5810, 5843, 5846, 6402, 6764, 8336/2002, 2960/2003, 3121/2003, 2311/2002, 2827/2002, 3052, 4229/2002, 2591/1985, 1066/2003, 2089/1985, 1151/1986, 239/2000, 7547/2001, 359/1987, 653/2004, 654, 680, 5539, 5736-38/2004, 3239/2001, 3232/2001, 3253/2000, 3371/2001.

For orders see, W.P.(C) No. 3186/2000.

(SWATANTER KUMAR)
JUDGE

(MADAN B. LOKUR)
JUDGE

May 19, 2005
sk

IN THE HIGH COURT OF DELHI

\+ **W.P.(C) 3186/2000**

Judgment Reserved on : February 28, 2005

% Judgment Delivered on : May 19, 2005

\# Shri Raghubhir & Ors. ...Petitioners

! Through: Mr. P.N. Lekhi, Sr. Adv., Mr. L.R. Gupta, Sr. Adv., Mr. Vinay Bhasin, Sr. Adv., Mr. N.S. Vasisht, Mr. Sameer Vashisht & Mr. B.S. Mann, Advs.

Versus

$ Union of India & Ors.

...Respondents

^ Through Ms. Meera Bhatia with Mr. Ram Naresh Yadav, Advs. for Respondent No.1/UOI.
Mr. Jagmohan Sabharwal, Sr. Adv. with Mr. Ajay Verma, Mr. B.B. Lal and Ms. Shobhana Takiar, Advs. for Respondent No.2/DDA.
Ms. Geeta Luthra, Ms. Pinky Anand, Ms. Jhum Jhum Sarkar, Advs. for Respondents No.3 & 4.

AND

W.P.(C) Nos. 240, 241, 242, 243/2000, 2092/1985, 1833, 2120, 3187, 3229, 3284, 3764, 4150, 7079, 7428/2000, 7776, 136, 337, 1293, 2815, 3229, 3230, 3237, 3238, 3495, 3370, 3231, 4781, 4784, 6450,6453, 6458, 6694, 6743, 7443, 7778, 7779/2001, 1785/2002, 1809/2002, 3414, 3691, 3628, 3626, 3683/2002, 318/2000, 319/2000, 320/2000, 321, 322, 2119, 3301, 3333, 4597/2000, 341/2001, 5809/2002, 5810, 5843, 5846, 6402, 6764, 8336/2002, 2960/2003, 3121/2003, 2311/2002, 2827/2002, 3052, 4229/2002, 2591/1985, 1066/2003, 2089/1985, 1151/1986, 239/2000, 7547/2001, 359/1987, 653/2004, 654, 680, 5539, 5736-38/2004, 3239/2001, 3232/2001, 3253/2000, 3371/2001.

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CORAM:

HON'BLE MR. JUSTICE SWATANTER KUMAR
HON'BLE MR. JUSTICE MADAN B. LOKUR

ORDER
19.05.2005

Vide separate judgments pronounced in court today, all the writ petitions except W.P. (C) No. 2591/1985 titled as 'Ashwani Khurana v. UOI' are dismissed with costs of Rs. 15,000/- each payable to respondent No. 1.

The file of W.P. (C) No. 2591/1985 be placed before Hon'ble the Chief Justice for appropriate orders in regard to the reference of the case to learned third Judge for opinion in accordance with law.

SWATANTER KUMAR
(JUDGE)

MADAN B. LOKUR
(JUDGE)

MAY 19, 2005
NG

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IN THE HIGH COURT OF DELHI

% W.P.(C) 3186/2000

\+ Shri Raghubhir & Ors. ...Petitioner

* Through: Mr. P.N. Lekhi, Sr. Adv., Mr. L.R. Gupta, Sr. Adv., Mr. Vinay Bhasin, Sr. Adv., Mr. N.S. Vasisht, Mr. Sameer Vashisht & Mr. B.S. Mann, Advs.

Versus

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^ Through Ms. Meera Bhatia with Mr. Ram Naresh Yadav, Advs. for Respondent No.1/UOI.
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AND

W.P.(C) Nos. 240, 241, 242, 243/2000, 2092/1985, 1833, 2120, 3187, 3229, 3284, 3764, 4150, 7079, 7428/2000, 7776, 136, 337, 1293, 2815, 3229, 3230, 3237, 3238, 3495, 3370, 3231, 4781, 4784, 6450,6453, 6458, 6694, 6743, 7443, 7778, 7779/2001, 1785/2002, 1809/2002, 3414, 3691, 3628, 3626, 3683/2002, 318/2000, 319/2000, 320/2000, 321, 322, 2119, 3301, 3333, 4597/2000, 341/2001, 5809/2002, 5810, 5843, 5846, 6402, 6764, 8336/2002, 2960/2003, 3121/2003, 2311/2002, 2827/2002, 3052, 4229/2002, 2591/1985, 1066/2003, 2089/1985, 1151/1986, 239/2000, 7547/2001, 359/1987, 653/2004, 654, 680, 5539, 5736-38/2004, 3239/2001, 3232/2001, 3253/2000, 3371/2001.

1. Whether reporters of local paper may be allowed to see the judgment?

2. To be referred to the reporter or not? Yes

3. Whether the judgment should be referred in the Digest? Yes

CORAM:

HON'BLE MR. JUSTICE SWATANTER KUMAR
HON'BLE MR. JUSTICE MADAN B. LOKUR

1. Whether reporters of local paper may be allowed to see the judgment? No.

2. To be referred to the reporter or not? Yes.

3. Whether the judgment should be referred in the Digest? Yes.

SWATANTER KUMAR, J.

Another batch of similar writ petitions were disposed of by the Division Bench vide its judgment dated 3rd March, 2005 pronounced in the case of Chattro Devi Vs. Union of India (CW424/1987). Some of the writ petitions were dismissed by the Division Bench while some other writ petitions relating to six villages referred to in the judgment were referred for opinion to ld. third Judge. The petitioners have raised certain additional pleas while the respondents have vehemently prayed for dismissal of all these writ petitions on the ground of delay and laches and also that majority of the petitioners are subsequent purchasers and as such cannot question the validity of the notification issued by the appropriate Government under section 4 of the Land Acquisition Act (hereinafter

referred to as the Act), their right is restricted to receipt of compensation or praying for enhancement thereof. It was, in these circumstances, that all these 83 writ petitions were heard together on different occasions and now I would proceed to deal with the merit of the contentions raised in these writ petitions by this common judgment.

2. The grounds raised are of general nature and content, but for the purpose of brevity and clarity, I would be referring to the facts of CW 3186/2000, 3187/2000, 239/2000.

CW 3186/2000 & 3187/2000

3. On 25th November, 1980, the appropriate government issued a notification under section 4 of the Act proposing to acquire 50,000 bighas of land of 13 villages in South Delhi. This included the land of the petitioners No.1 to 7 in this petition. From the record, it is clear that petitioners 1 to 5 had executed documents including General Power of Attorney in favour of petitioners No.6 and 7 on or about 30th September, 1988 in relation to part of the acquired land. These petitioners No.6 and 7, thus claimed to be interested persons and alongwith the original owners

of the land have filed this writ petition. According to the petitioners, they filed objections under section 5-A of the Act objecting to the validity of the notification on 24th December, 1980. Division Bench of this Court on 25th November, 1983 dismissed the writ petition filed by some of the land owners in those villages and in the case of Munni Lal Vs Lt. Governor of Delhi (CW No.426/1981) held that Planned Development of Delhi does not mean development in the manner as envisaged by the Master Plan, as it could be amended from time to time in accordance with law. These petitioners had filed writ petitions on 21st January, 1984 challenging the notification under section 4 of the Act on the ground that the prescribed period for issuing declaration under section 6 of the Act had expired. These writ petitions were withdrawn by the petitioners on 3rd March, 1985 with liberty to file fresh writ petitions if the declaration under section 6 was issued. It is the case of the petitioners that the Land Acquisition Collector, Shri Shiv Raj Tyagi had issued notices under section 5A of the Act, but he did not give any opportunity of hearing the objectors and finally on 4th June, 1985 another Land Acquisition Collector Shri G.C. Pillai made a non-speaking report to the authorities under section 5-A of the Act. On the basis of non-speaking report, the Lt. Governor on 5.6.85 passed non-speaking order without any application of mind and directed

that the declaration under section 6 be issued. Resultantly, on 7th June, 1985, section 6 notification was issued in relation to all the lands covered in 13 villages. The Full Bench of this Court in Balak Ram Gupta Vs. Union of India, AIR 1987 Delhi 239 (FB) on 25th July, 1987 held that issuance of declaration under section 6 was valid and the period when the stay was in operation, ought to be excluded while computing the period prescribed under the provisions of the Act for this purpose. On 18th November, 1988, Division Bench of this Court, in the case of Balak Ram Gupta Vs.Union of India, 38 (1999) DLT 243 (DB) had quashed the notifications under sections 4 & 6 of the Act on various grounds. According to the petitioners, the correctness of the Division Bench judgment was not challenged. Neither they filed any appeal against the said judgment, nor possession of the land was taken. Even the compensation which was paid to certain land owners for acquisition of their respective lands were offered refund thereof and surrendered the alternative plots granted to them under the scheme of the Government. The judgment in the case of Balak Ram Gupta Vs. UOI (DB) was not affirmed by the Supreme Court in Delhi Development Authority vs. Sudan Singh (1997) 5 SCC 430. The judgment was acted upon by the Government. However, in another case titled Delhi Administration Vs.

Gurdeep Singh Uban JT (1999) 7 SC 44, writ petitions filed by the petitioners who had not filed objections under section 5-A of the Act were dismissed and it was also held that Balak Ram Gupta's case (DB) (supra) was not a judgment in rem.

4. It is the case of the petitioners further that employees of the respondents had on 18th November, 1999 came to take possession of the land and attempted to forcibly dispossess the petitioners from their lands. Respondents are stated to have issued a circular on 27th December, 1999 requiring the officials to take possession of the land and on 9th June, 2000, the officials of the respondent came with the police to take possession of the land in question compelling the petitioners to file this petition. Thus the petitioners questioned the correctness of the notification issued under sections 4 and 6 of the Act on various grounds stated in the writ petitions.

CW 239/2000

5. The petitioners in this writ petition claimed to be the lawful owners and in actual physical possession of the agricultural land measuring 28 bighas 19 biswas situated in the revenue estate of Village Chhattarpur, Tehsil Mehrauli. Their lands were acquired vide the same

notification and in the same manner as noticed in the above paragraphs. It is stated that the village abadi within the Lal Dora was also covered in this notification. The petitioners in this petition on 5th February, 1981 claimed to have filed objections before the Competent Authority under section 5-A of the Act. According to the petitioners, after the expiry of the statutory period, the authorities have become functus officio and they could not have continued with the acquisition proceedings and also could not issue notification under section 6 of the Act. It is stated that respondents vide their letter dated 31st March, 1989 had informed Delhi Administration that no appeal have been preferred against the order of the High Court (Division Bench in Balak Ram Gupta's case), the land could be released from acquisition and possession not taken, and after judgment of the Supreme Court, the patwaris of different villages were directed to record entries in favour of the respondents in the revenue records on 17.11.99. Thereafter the respondents have threatened to dispossess the petitioners compelling them to file this petition on the grounds which I would shortly proceed to discuss.

6. The petitioners in these writ petitions have vehemently challenged the validity of the notification dated 25th November, 1980

issued under section 4 of the Act and according to them, the declaration issued under section 6 of the Act is invalid and non-est. This argument raised on behalf of the petitioners need not detain me any further in view of the reasons given by me for rejecting both these contentions in Smt.Chhatro Devi Vs. Union of India (CW 424/1987). In view of the judgment of a Division Bench of this Court in Munni Lal Etc. Vs. Lt. Governor of Delhi, 1984 (1) ILR 289 and the Full Bench judgment of this Court in the case of Balak Ram Gupta Vs. Union of India, AIR 1987 Delhi 239 which has been followed by the Division Bench itself in the case of Chhatro Devi with the exceptions carved out for reference to ld. third Judge.

7. The petitioners contend that there is no public purpose for acquiring the lands in question and the public purpose should subsist at all relevant times failing which they would be entitled to release of their lands from acquisition. For this purpose, they rely upon the judgment of the Supreme Court in Aflatoon & Ors. Vs. Lt. Governor of Delhi AIR 1974 SC 2077, Venkataswamappa Vs. Special Deputy Commissioner (Revenue) AIR 1997 SC 503, Smt.Somawanti & Ors. Vs. The State of Punjab & Ors. AIR 1963 SC 151 and Radhey Sham Gupta & Ors. Vs.

State of Haryana & Ors. AIR 1982 P&H 519.

A. Delay & Laches

8. As already noticed, counsel for respondent has raised a serious objection to the very maintainability of these writ petitions on the grounds of the petitions being barred by delay and laches. The objections of the respondent are that the notification under section 4 of the Act was issued on 25th November, 1980 and section 6 declaration was issued on 7.6.85. Various writ petitions were dismissed by this Court holding that the notifications issued by the State Government were proper and in accordance with law. Thereafter whatever benefit could accrue to the petitioners on the basis of the judgment of the Division Bench of the High Court in Balak Ram Gupta's case (supra) was rendered ineffective and inconsequential for other cases in light of the judgments of the Supreme Court in Gurdeep Singh Uban and Abhey Ram's case. Petitioners are approaching the Court, after such a long delay and there is no explanation and justification placed by them on record so as to persuade the Court to entertain these writ petitions and grant any relief to the petitioners. The judgment in the case of Gurdeep Singh Uban (supra) was pronounced in the year 1997, while the petitioners have filed these petitions in the year

2000 or even thereafter. In fact according to the contentions of the respondent, present writ petitions are abuse of a process of the Court and should be dismissed. On the other hand, learned counsel appearing for the petitioners contended that their writ petitions are not hit by the objection of delay and laches in as much as the facts of these writ petitions are very peculiar. The Government itself has delayed and in fact abandoned its public purpose. The principle laid down in the Division Bench of this Court in Balak Ram Gupta's case had clearly given an impression to all persons including the petitioners that their lands cannot be acquired. The State having abandoned its rights now cannot be permitted to take up this objection. Further more, it is stated that the State Administration had written letters on 31st March, 1989 as well as on 6th February, 1996 stating that the State had not filed an appeal in the case of Balak Ram Gupta (supra) and as such steps should be taken even for release of the land. In such circumstances, there could be no delay attributable to the petitioners. Petitioners also contend that they are in possession of the land and as such the question of delay would in any case be inconsequential. In support of their contentions they rely upon the judgment of this Court in the case of Sandeep Kakkar & Ors. Vs. Union of India & Ors 2004(111) DLT 291, Satyendra Kamar & Ors. Vs. Union

of India & Ors1994 (53) DLT 181, Ram Chandra Shankar Deodhar Vs. The State of Maharasthra & ors.1974(1). SCC 317, M/s.Dehri Rohtas Light Railway Company Ltd. Vs. Distt. Board, Bhojpur & ors. (1992) 2 SCC 598, UP Pollution Control Board & ors v. Kanoria Industrial Limited & anr. (2001) 2 SCC 549. First of all, I may notice that the letters written by the Joint Secretary, LSG to the Deputy Commissioner were considered by the Supreme Court in the case of Hari Kiran Kumar Vs. Delhi Administration 2001 (1) SCC 249 and held as under :-

> "This letter has now been held by us to be inoperative. Our decision dated 18-8-2004 is that all other land acquisition proceedings in cases not dealt with by the Division Bench of the Delhi High Court originally remained in force and that was the view of the three-Judge Bench of this Court in the case of Abhey Ram v. Union of India. Hence the land acquisition in respect of all other cases including Mrs. Har Kiran Commar did not stand quashed but remained valid. In the light of the said judgments, the letter of March 1989 cannot be relied upon by the petitioner before us. It cannot be contended that her case is similar to the case of her brother Shri Gurdip Singh Uban. Therefore the petitioner cannot seek a direction similar to the one granted by us in the case of Shri Gurdip Singh Uban. This application is, therefore, dismissed."

9. The petitioners also cannot claim any advantage from these letters. Further more, by the time petitioners had approached this Court, the matters had become crystal clear, that the Division Bench judgment of this court in **Balak Ram Gupta's** case could not be accepted as a

judgment in rem and as such it was obligatory upon them to approach the Court without any unnecessary delay. In any case, there could be no justification on the part of the petitioners in not approaching the Court, after pronouncement of the judgment in view of the judgments in the cases of **Abhey Ram** and **Gurdeep Singh Uban's** case (supra). Delay, in facts and circumstances of the case can be a vital factor when the Court has to exercise its writ jurisdiction under section 226 of the Constitution of India. If the petitioners are filing writ petitions after a considerable delay and the petition at the face of it suffers from the defect of delay and laches, the Court would normally be not inclined in exercising such jurisdiction in favour of the petitioners. In land acquisition proceedings, the plea of delay and laches has definite effect. On the one hand the authorities concerned may proceed with the progress of the planned development while on the other they may have to stop such progress which would adversely effect the interest of the State as well as the public at large, as it would increase the cost of construction as well as prevent progress because of some legal impediment or an order of the Court. In such circumstances, it is expected of an adversely effected party to approach the Court at the earliest. At this stage, I may refer to certain cases dealing with the question of delay on behalf of the petitioners, more

particularly, in acquisition proceedings. In the case of **Pt.Giridhari Prasad Vs. State of Bihar 1980 (2) SCC 83** it was stated by the Supreme Court that the delay of 17 months in filing the writ petition against the award regarding land acquisition, after notification under section 6 has been made, was an unexplained undue delay in approaching the Court and the writ petitions have been correctly dismissed by the High Court. The case of **Ram Chandra Deodhar** (supra) has been relied upon by both the petitioners and the respondent before us. It was noticed in the judgment that principle, on which the Court proceeded in refusing the relief to the petitioner on the ground of laches and delay, is that rights which have accrued to others for the reasons of delay in filing of petition should not be allowed to disturb, unless there is reasonable explanation for such delay. The principle of law stated in this judgment can hardly be disputed but on facts they are not applicable to the present case. The petitioners have waited for all these time despite the fact that notifications under sections 4 and 6 of the Act had attained finality under the judgments of the Court. It would have certainly been better if all the petitions were dealt with at the first instance i.e. at the time of **Munni Lal's** case (supra). This, in fact is the litigation touching upon the same disputes one after the other. In my opinion, delay in filing the present

petition would have to be taken against the petitioners as they intentionally waited for all this time to raise a challenge to the notification. Various judgments of the Supreme Court which I would shortly refer to would show that the undue delay in approaching the Court in land acquisition matters has been considered to be a vital factor by the Court. If the petitioners slipped over their legal contentions and failed to approach the Court, despite a clear judgment against them, they cannot be permitted to take advantage of that delay on the ground that they are still in possession of the land and as such their land should be released from acquisition. In the case of **Star Wire (India) Ltd. Vs. State of Haryana & Ors (1996) 11 SCC 698**, the Supreme Court while relying upon its judgment in the case of Municipal Corporation of Greater Bombay Vs. Industrial Development & Investment Co. (P) Ltd. (1996) 11 SCC 501 held that the person who approaches the Court belatedly will be told that laches close the gates of the Court for him to question the legality of the notification under section 4(1), declaration under section 6 and the award of the Collector under Section 11 of the Act. In the case of **Municipal Council, Ahmednagar & Anr Vs. Shah Hyder Beig & Ors 2000(2) SCC 48**, the Court in defending terms explained the doctrine of "delay defeats the equity" and applied the same holding that long delays

in relation to acquisition proceedings was belated one and in such writ petitions, petitioner could not be granted the relief. In the case of **Urban Improvement Trust, Udaypur Vs. Bheru Lal & Ors. 2002 (7) SCC 712**, the Supreme Court again held that the writ petitions were liable to be dismissed on the ground that petitioners had approached the Court after a period of more than two years in questioning the validity of notifications under sections 4 & 6 of the Act. This view was followed with approval by the Supreme Court again in the case of **Narain Prasad Aggarwal Vs. State of Madhya Pradesh & Ors. 2000 (11) SCC 456** where the Supreme Court held that "we do not think that the learned Single Judge as well as the Division Bench erred in holding that invocation of extraordinary jurisdiction of the High Court was made belatedly." In this case challenge was to the notification under section 4(1) of the Act. In the case of **Larsen & Toubro Ltd. Vs State of Gujrat & Ors. (1998) 4 SCC 387** the Supreme Court also held that the writ petitions would be liable to be dismissed on the ground of delay and laches if the challenge is not made within a reasonable time. The petitioners cannot be permitted to sit on the fence and allow the State to complete the acquisition proceedings on the basis that notification under section 4 and declaration

under section 6 were valid and then to attack the notifications on the grounds which were available to him at the time when these were published. As otherwise, it would be putting a premium on dilatory tactics.

10. The reliance made by the petitioners upon the judgments of this Court are distinguishable on facts and secondly in face of the abovereferred judgments of the Supreme Court, I would follow the principles enunciated in various judgments of the Supreme Court that plea of delay and laches is available to the respondents in the present writ petitions. Other judgment relied upon by the respondent in **Dehri Rohtas Light Railway Company Ltd.** (supra) has no bearing on the matter in issue. In that case, the Supreme Court was primarily concerned with an illegal demand of cess by the authorities and the suit filed by the petitioner had been dismissed whereafter the petitioner had filed a writ petition. The Supreme Court held that the writ petition could not be dismissed solely on the ground of delay as the cess itself was not chargeable.Similar was the fact in the case of **U.P. Pollution Control Board** (supra) and no discussion was made in any detail by the Supreme Court in this case in regard to the plea of delay or laches. In addition to the other

grounds, which have been answered in this judgment against the petitioner, I am also of the considered view that these writ petitions are liable to be dismissed on the ground of delay and latches as well. The notification which is challenged by the petitioner in the present writ petition was issued on 25th November, 1980 and thereafter various proceedings were pending before the Court which were decided as afore-referred against the interest of the petitioners herein in **Munni Lal Jain's** case (supra); in **Balak Ram Gupta's** (Full Bench) case and thereafter by the Supreme Court in the year 1997 in the cases of **Gurdeep Singh Uban** and **Abhey Ram's** (supra). The inaction on the part of the petitioner cannot be justified and in any case no reason whatsoever has been stated in the writ petition explaining the serious delay and laches on the part of the petitioners.

B. SUBSEQUENT PURCHASER

MERITS OF THE CONTENTIONS RAISED ON BEHALF OF THE PARTIES IN REGARD TO SUBSEQUENT PURCHASER AND HIS RIGHTS IN RELATION TO THE ACQUIRED LAND :-

11. On behalf of all the official respondents, it is seriously and

strenuously contended that the petitioners who are subsequent purchasers of the acquired land, after publication of the notification under Section 4 of the Act have no right to question the legality or validity of the notifications under Section 4, 6 and/or all subsequent acquisition proceedings taken under the Act thereafter. At best, they can claim compensation in terms of the award or such other amount as may be allowed by the Courts. On the other hand, the petitioners contend that they are persons interested and have *locus standi* to question the validity of the notification issued under Section 4 of the Act. The petitioners have interest in the acquired land and as such are persons aggrieved against the action/errors alleged to have been committed by the authorities concerned. There are number of petitioners in the above noticed 83 writ petitions. The lands which are the subject matter of all these writ petitions fall in the Revenue Estate of 5 villages namely Maidangarhi, Satbari, Shayoorpur, Rajpur Khurd and Chattarpur. Out of these writ petitions, as per chart furnished to this court, which was examined by the counsel appearing for all the parties, 32 petitioners are subsequent purchasers. They are the persons who purchased these lands after issuance of the notification under Section 4 of the Act, that is on 25th November, 1980. While the counsel for the petitioner relied upon the judgment of a Full Bench of Punjab and

Haryana High Court in the case of **Radhey Shyam Gupta vs. State of Haryana AIR 1982 Punjab and Haryana 519**, to contend that the statutory definition of 'a person interested' under Section 3 (b) of the Act is couched in wide terms and expressly includes within it, 'any person claiming an interest in the compensation to be made on account of acquisition' and even includes a person interested in any easement affecting the land. Therefore, the petitioners by virtue of being purchasers of land are entitled to, and in any case can claim to be interested in the compensation of the acquired land and as such could maintain a petition under Article 226 of the Constitution of India. This argument is further buttressed from another Full Bench judgment of the Madras High Court in the case of **Seethalakshmi Ammal vs. The State of Tamil Nadu and Anr. AIR 1993 Madras 1** to argue that being a 'person interested' as purchaser of the property after notification under Section 4 and even after declaration under Section 6, they would have right to object to the acquisition proceedings and they can move the Court in their own right'. Reliance is also placed upon the judgment of the Supreme Court in **Smt. Gunwant Kaur vs. Bhatinda Municipality AIR 1970 Supreme Court 802** where the Court had enunciated two

different principles, firstly that rejection of a petition in *limine* would be justified only where the High Court is of the view that petition is frivolous or is not maintainable. Still in some cases, the High Court could exercise its jurisdiction under Article 226, as both fact and law could be determined in exercise of such jurisdiction. Secondly, it was stated that the three appellants who had purchased the land after issuance of Section 4 notification and where the notification under Section 4 was vague and the appellants therein had spent substantial money on structure, then they could raise the issue and would not be debarred from bringing the writ petition only on the ground that the sale was subsequent to Section 4 notification.

12. I may also refer to certain judgments of the Supreme Court in regard to the status of a subsequent purchaser for challenging the legality or validity of a notification under Section 4 of the Act. In the case of **Ajay Krishan Shinghal & Ors. vs. Union of India and Ors.**, **(1996) 10 Supreme Court Cases 721** the Court while explaining this aspect, held as under:-

> "Another contention raised by Shri Ravinder Sethi is that the claimant in the first appeal had purchased the property after the declaration under Section 6 was published and that

therefore he does not get any right to challenge the validity of the notification published under Section 4 (1). Since his title to the property is a void title, at best he has only right to claim compensation in respect of the acquired land claiming interest in the land which his predecessor-in-title had. In support thereof, he placed reliance on the judgments of this Court in *State of U.P. vs. Pista Devi (1986) 4 SCC 251; Gian Chand v. Gopala 91995) 2 SCC 528; Mahavir v. Rural Institute (1995) 5 SCC 335 and Laxmi Engineering Works v. P.S.G. Industrial Institute (1995) 3 SCC 583.* We need not deal at length with this issue as is the settled legal position. But since other appellants are owners of the lands who are challenging the validity of the notification and since we have upheld the validity of the notification though others have challenged its validity, it is not necessary to dismiss the appeal of Bahadur Singh on this ground alone as we are upholding the notification under Section 4 (1) in the appeals of other appellants."

13. In the case of **Star Wire (India) Ltd. vs. State of Haryana and Ors.** (1996) 11 Supreme Court Cases 698, again the Court held as under:-

"In this case, admittedly, the petitioner has purchased the property covered by the notification under Section 4(1) after it was published and, therefore, its title is a void title. It has no right to challenge the acquisition proceedings much less the award. The Division Bench of the High Court has exhaustively reviewed the case-law to negate the claim of the petitioner. We do not find any illegality in the judgment of the High Court warranting interference."

14. In **U. P. Jal Nigam, Lucknow and Anr. vs. Kalra**

Properties (P) Ltd. (1996) 3 Supreme Court Cases 124, the Court held as under:-

> "It is settled law that after the notification under Section 4 (1) is published in the Gazette any encumbrance created by the owner does not bind the Government and the purchaser does not acquire any title to the property. In this case, notification under Section 4 (1) was published on 24-3-1973, possession of the land admittedly was taken on 5-7-1973 and pumping station house was constructed. No doubt, declaration under Section 6 was published later on 8-7-1973. Admittedly power under Section 17 (4) was exercised dispensing with the enquiry under Section 5-A and on service of the notice under Section 9 possession was taken, since urgency was acute, viz., pumping station house was to be constructed to drain out flood water. Consequently, the land stood vested in the State under Section 17 (2) free from all encumbrances. It is further settled law that once possession is taken, by operation of Section 17(2), the land vests in the State free from all encumbrances unless a notification under Section 48 (1) is published in the Gazette withdrawing from the acquisition. Section 11-A, as amended by Act 68 of 1984, therefore, does not apply and the acquisition does not lapse. The notification under Section 4(1) and the declaration under Section 6, therefore, remain valid. There is no other provision under the Act to have the acquired land divested, unless, as stated earlier, notification under Section 48 (1) was published and the possession is surrendered pursuant thereto. That apart, since M/s Kalra Properties , respondent had purchased the land after the notification under Section 4(1) was published, its sale is void against the State and it acquired no right, title or interest in the land. Consequently, it is settled law that it cannot challenge the validity of the notification or the regularity in taking possession of the land before publication of the declaration under Section 6 was published.
>
> The next question is: whether the respondent is

entitled to compensation and, if so, from what date and at what rate? The original owner has the right to the compensation under Section 23 (1) of the Act. Consequently, though the respondent acquired no title to the land, at best he would be entitled to step into the shoes of the owner and claim payment of the compensation, but according to the provisions of the Act. It is settled law that the price prevailing as on the date of the publication of the notification under Section 4(1) is the price to which the owner or person who has an interest in the land is entitled to step into the shoes of the owner and claim payment of the compensation, but according to the provisions of the Act. It is settled law that the price prevailing as on the date of the publication of the notification under Section 4(1) is the price to which the owner or person who has an interest in the land is entitled to . Therefore, the purchaser as a person interested in the compensation, since he steps into the shoes of erstwhile owner, is entitled to claim compensation."

15. In the case of U. P. Awas Evam Vikas Parishad, Lucknow (U.P.) vs. Pushpa Lata Awasthi (1995) 3 Supreme Court Cases 573, the Supreme Court held that the respondents in that case, who were subsequent purchasers, had no right to challenge the notification. In Smt. Sneh Prabha etc. vs. State of U. P. and Anr. JT 1995 (8) Supreme Court 267, the Court took the view that after section 4 (1) notification was published, a person who purchases land thereafter was not the owner as on the date on which the notification under Section 4 (1) was issued, and as such was not even entitled to the benefits of the policy and the

appellants in that case had not satisfied the conditions stipulated in the policy of the Government for alternative plots. The Court further cautioned that even if a benefit is wrongly given in favour of such other purchaser, it does not clothe the petitioner with a right to perpetrate the wrong and the courts cannot give countenance to such action, though they are blameworthy and condemnable, it will not create any right. Somewhat similar view was also taken in the case of **Gyan Chand vs. Gopala and Ors. 1995 (2) Supreme Court Cases 528.**

16. From the above noticed judgment of the Supreme Court, it is clear that a subsequent purchaser does not have an absolute right to challenge the notifications issued under the Act. It appears that such purchaser would be entitled to compensation based on the vendors title. The rights of the State are no way affected and the agreement to sell and even the sale deeds would not bind the State once they are subsequent to the notification and declaration issued under sections 4 & 6 of the Act respectively. Vendors of these subsequent purchasers did not challenge the notifications and filed no writ petition as is clear from the chart submitted before the Court. Some of the original owners had filed objections under section 5A of the Act which were dealt with and

disposed of by the authorities whereafter the award was made and possession of the land had been taken by the appropriate authority. The expression "interested person" appears in sections 18 and 29 of the Act. In the case of former, the person interested in any land which has been notified under section 4(1) within 30 days from the date of publication of the notification, has right to file objections to the acquisition of the land which has to be disposed of in terms of the provisions of the Act. In the later case, the interested person who has not accepted the award by a written application to the Collector required that the matter be referred to the Collector for determination by the Court praying for enhancement of compensation. Where there are several interested persons, their apportionment shall be in terms of the award which is the conclusive evidence of the correctness of true area, value of land and the apportionment of computation between interested persons. The dispute in that regard can be referred again to the Court under section 30 of the Act. Thus Scheme of the Act indicates two different segments in which the right of the interested persons are divided and controlled. The person who is owner of the land at the time of issuance of notification under section 4 has to file his objections within the stipulated time failing which the right to file such an objection is lost. The term `person interested'

would connote a limited interest available to a subsequent purchaser in terms of grant/enhancement of compensation and other matters incidental thereto. The interested person who can receive compensation could be even a subsequent purchaser and he can do so for himself and/or for and on behalf of the original owner. Any agreement entered into by the parties after issuance of notification under section 4 of the Act would not clothe the vendee with the right to challenge the notification after lapse of such a long period. In fact the above judgments of the Supreme Court specifically lays down that the subsequent purchaser would hardly have a right to question the legality and validity of the notification issued under section 4 and declaration under Section 6 of the Act, that too after lapse of such a long period.

17. It cannot be disputed that the lands in question were acquired for a public purpose which can itself be a continuing public purpose like 'Planned Development of Delhi'. Large chunks of land are acquired for the development projects from time to time. Once a notification is issued under section 4 of the Act and it is clearly indicated by way of a notification for the benefit of public at large that the land is sought to be acquired by the appropriate Government, in such circumstances, any sale,

mortgage or creation of a charge subsequent thereto would be ineffective. Such transactions would be in apparent conflict with the provisions of Delhi Land (Restriction on Transfer) Act as well as the Indian Contract Act, 1892. Under section 3 of the Delhi Land (Restriction on Transfer) Act, there is a complete prohibition to the effect that no person shall purport to transfer, sale, gift, lease or otherwise any land or part thereof situated in the Union Territory of Delhi which the Central Government under the Land Acquisition Act or any other law for acquisition of land for public purpose. Sections 4 & 5 of the abovesaid Act intends to regulate the transfer of the lands in regard to which acquisition proceedings have been initiated and the manner in which such an application is to be filed before the Competent Authority. Section 4 would come into the play where declaration under section 6 has been issued and the land has not been withdrawn by the Central Government under section 48 of the Act. In the case of Krishan Kumar Malik Vs. Union of India & ors AIR 1985 Delhi 225, this Court has held that the effect of permission under the Act is that the sale, may be recognised as valid for the purposes of claiming compensation or other benefits arising therefrom, which in absence of the permission would be deemed to be a void sale thus conferring no right at all. In the case of O.P.C. Jain Vs.

ADM 42 (1990) DLT 478, Division Bench of this Court took the view that if no notification under sections 4 & 6 of the Act has been issued, there is no need for obtaining a certificate or permission or no objection certificate under the Provisions of the Delhi Land (Restriction on Transfer), Act. In the case of Meera Sawhney & Ors Vs. Lt. Governor 89 (2001) DLT 484, a Full Bench of this Court took the view that the very object of 1972 Act was to curb such illegal transaction of sale and purchase of lands. The Bench held as under :-

> "16. We are of the view that NOC is of no legal consequence. We also hold that no permission under Section 5 of the 1972 Act was ever sought regarding transfer of the land in question nor any permission was granted. The alleged transfer, therefore, is clearly in violation of the provision of the 1972 Act. It has no legal validity. The Act does not envisage any NOC. Section 5 only recognises a permission in writing for transfer of lands under Sections 4 and 6 notifications and the permission is to be granted by the Competent Authority under the Act alone. In fact the learned Counsel for the petitioner did not dispute that permission was a sine qua non. His entire case, however, was that the alleged NOC amounted to permission under Section 5 of the Act. We are unable to accept this. The onus was clearly on the petitioners to show that they had applied for permission under Section 5 and they had obtained the same in accordance with the provisions of Section 5 of the 1972 Act. The petitioners have miserably failed to discharge this

onus. The very object of the 1972 Act was to curb such illegal transactions of sale and purchase of lands and to protect unwary customers in this behalf. The object of the Act is given in the preamble which runs as under :

An act to impose certain restrictions on transfer of lands which have been acquired by the Central Government or in respect of which acquisition proceedings have been initiated by the Government, with a view to preventing large scale transactions of purported transfers, or, as the case may be, transfers of such lands to unwary public."

17. The transactions of the type involved in the present petition were really intended to be curbed by the Act. Unfortunately the desired result could not be achieved because ways were found to circumvent the provisions of the Act."

18. In the present cases, the petitioners have not made out a case being the subsequent purchaser that permission as required under the 1972 Act was in fact obtained and documents executed in accordance with law. No such case was made out in the writ petitions originally. In fact, in the document filed at page 125 of CW 3186/00 in clause six of the document it has been stated that Vendee was authorised to obtain NOC from the competent authority under the 1972 Act. This power of attorney was executed on 30th September, 1988 much subsequent to the date of notification issued under section 4 of the Act. In the case of Subhash

Goel (CW 4662/81) it was brought to the notice of the Court that no NOC was given as the land had duly been notified in the declaration under section 6 of the Act. It was for the petitioners in all these petitions to specifically plead that they satisfy and have duly complied with the requirements of the provisions of 1972 Act which they have failed to establish by proper cogent reading and filing documents in support thereof.

19. Further more the documents executed in favour of the petitioners (subsequent purchasers) are also opposed to the provisions of the Indian Contract Act in as much as they offend the provisions of sections 23, 24 of the Act. The Supreme Court in the above judgment have clearly stated that they have no right as these contracts are void. One of the main essentials for a contract to be valid is that the agreement should not be opposed to public policy. Keeping in view the effect of acquisition policy of the State, public at large being beneficiary of such acquisition and their being specific restriction upon transfer of land in terms of the provisions of 1972 Act there can be no doubt that such contracts would be opposed to public policy. No right would vest in such purchasers to question the legality and validity of the notifications.

C. Possession

20. The chart which has been submitted before the Court and stated to be based upon the records maintained by the respondents and as already noticed has also been checked by the petitioners, shows that according to the respondents, possession of the lands falling mainly in villages Maidangarhi, Satbari, Shyoorpur, have been taken and part thereof already handed over to the DDA from time to time. However, in relation to the land falling in the revenue estate of Village Chattarpur even according to the respondent, the possession has not been taken. The petitioners have raised some disputes with regard to taking of possession even in relation to part of the land in other villages. The basic factors which is apparent from the record is that the possession of the land has been taken in some of the villages on 14th July, 1987 and the respondents have placed on record copies of Kabza Karbai under which possession of the land has been taken. In relation to Village Maidangari, alongwith their counter-affidavit the respondents have filed the possession report while in relation to other lands, photo copies of Kabza Karbai of the report has been placed on record and the originals were produced before the Court. I have already noticed that large number of petitioners are subsequent purchasers and they would hardly have any right to question

the validity and legality of the notification issued by the Appropriate Government under sections 4 and 6 of the Act. Where the possession has been taken, the rights of those petitioners would be placed lower to that of others. Once possession of the land has been taken and the award has already been pronounced, the land would vest in the Government free of all encumbrances or restrictions under section 16 of the Act.

21. Learned counsel appearing for the petitioners contended that their right to sue would commence only when such right is infringed by the respondents. According to them, possession of the land in question had not been taken despite the fact that the award had been made in relation to that land and it is only when the respondents actually threatened to take physical possession of the land that the right to sue will accrue in their favour. In this regard, reliance was placed upon the judgment of the Supreme Court, in the case of Mst. Rukhmabai Vs. Lala Laxmi Narayan & Ors. AIR 1960 SC 335. Further the contention of the petitioners while relying upon the judgment of the Supreme Court in Sandhu Bal Botre Vs. Nanado Bapuji, Karala 1996 (8) SCC 296 and Tamilnadu Housing Board Vs. A.Viswasan, 1996 (8) SCC 259 and Sanjeevnagar Hospital Society Vs. Mohd.Quas Nawab & Ors.1996 (3)

SCC 600, is that actual physical possession of the acquired land should be taken by the authorities concerned and as the petitioners continued to be in possession of the land, the provisions of section 16 of the Act would be in-operative against them. It is also the contention of the petitioners that they (subsequent purchasers) cannot be dispossessed in furtherance to the notification issued against the erstwhile owners of the land. The petitioners have also argued that they have already raised construction on the land and/or using the same for the purposes of residential or farm houses and the actions taken by the State after a considerable delay would justify grant of prayer in favour of the petitioners. Reliance is also placed upon a judgment of this Court in Gajender Kumar Vs. Union of India & Ors 110 (2004) DLT 591 that as the petitioners have not been dispossessed, the question of delay would not be of any consequences for determining rights of the petitioners.

22. Before I refer to the various judgments of the Supreme Court and the principles in relation to taking of symbolic and physical possession and consequences thereof, it will be relevant to mention at the very outset the discussion on this very issue in the case of Tamilnadu Housing Board (supra) which was relied upon by the petitioner itself, the

Supreme Court held as under :-

> "It is settled law by series of judgments of this Court that one of the accepted modes taking possession of the acquired land is recording of a memorandum or Panchnama by the LAO in the presence of witnesses winged by him/them and that would constitute taking possession of the land as it is would be impossible to take physical possession of the acquired land. It is common knowledge that in some cases the owner/interested person may not cooperate in taking possession of the land."

23. In the case of Mahavir & Anr. Vs. Rural Institute 1995(5) SCC 335, the Supreme Court took the view that where interest and the land was transferred after notification under section 4(1) of the Act, such transaction would not bind the State and furthermore where the land has been transferred to the Society which in turn became the owner, the plea of continuity/adverse possession could not be held in favour of such subsequent purchasers. In the present case also parts of lands in the revenue estate of different villages have been taken possession by recording memorandum of taking possession commonly known as Kabza Karbai and thereafter the land has been placed at the disposal of the DDA. In relation to these lands it can safely be stated that the lands have been vested in the State free of any encumbrances.

24. In the case of Balmukund Khatri Education, Amritsar Vs. State of Punjab 1996 I(4) SCC 212, the Court held as under :-

> "4. It is seen that the entire gamut of the acquisition proceedings stood completed by 17-4-1976 by which date possession of the land had been taken. No doubt, Shri Parekh has contended that the appellant still retained their possession. It is now well-settled legal position that it is difficult to take physical possession of the land under compulsory acquisition. The normal mode of taking possession is drafting the panchnama in the presence of panchas and taking possession and giving delivery to the beneficiaries is the accepted mode of taking possession of the land. Subsequent thereto, the retention of possession would tantamount only to illegal or unlawful possession.
>
> 5. Under these circumstances, merely because the appellant retained possession of the acquired land, the acquisition land, the acquisition cannot be said to be bad in law. It is then contended by Shri Parekh that the appellant-Institution is running an educational institution and intends to establish a public school and that since other land was available, the Government would have acquired some other land leaving the acquired land for the appellant. In the counter-affidavit filed int eh High Court, it was stated that apart from the acquired land, the appellant also owned 482 canals 19 marlas of land. Thereby, it is seen that the appellant is not disabled to proceed with the continuation of the educational institution which it seeks to establish. It is then contended that an opportunity may be given to the appellant to make a representation to the State. We find that it is not necessary for us to give any such liberty since acquisition process has already been completed."

25. A Division Bench of this Court, in the case of Nagin Chand Handa Vs.Union of India 2003(70) DRJ 721 took the view that taking of symbolic possession is sufficient compliance to the provisions of the Act and if the petitioner is enjoying the possession after symbolic possession of the property has been taken, he does so as the trustee and it cannot be considered to be a ground to contend that possession is not taken. In this case, the Court had discussed various judgments of the Supreme Court as well as this Court. Still another Bench of this Court in the case of Mohd. Ishaq & Ors. Vs: DDA 2002 (8) AD (Delhi) 444 rejected the contention that unless the land is placed at the disposal of the DDA, for the purposes of development by means of a notification under section 22 of the Act, the same cannot be taken over and possession would not vest in the Government. The view taken was that the possession of the land had been taken over on paper on the given date and thereafter land have been given to the DDA. This was considered to be substantial compliance of the provisions of the Act and petitions filed by the petitioners were rejected.

26. In the light of the above cited judgments, it would be clear that it is not always necessary to take actual physical possession of the

acquired land. Looking into the ground reality it may not always be possible to take physical possession by metes and bounds and taking of symbolic possession by execution of proper documentation and making it known to the public, can be substantial compliance to the provisions of the Act so as to vest the property in the Government, free of encumbrances, under section 16 of the Act. In the present cases, admittedly, possession of some of the lands have been taken while in regard to some other land in the revenue estate of some villages, there is dispute. Of course, Kabza Karbahi has been prepared but the petitioners claimed that they are still in possession of the land in question. The respondents have conceded before the court that they have not taken the possession of the land falling in the revenue estate of village Chhattarpur as yet. Particularly in relation to Vilages Satbari, Shayoorpur, Maidangari and Rajpur Khurd where the actual, physical possession or the symbolic possession has been taken, the petitioners are not entitled to any relief as the land has already vested in the appropriate Government, free of any restriction and encumbrances and the petitioner cannot question the validity of the notifications issued under section 4 of the Act even on this ground now. The petitioners whose land is situated in the revenue estate of village Chattarpur have an advantage of the fact that they have not been

dispossessed of their land as yet. This advantage would not be a great significance to the petitioners inasmuch as they are subsequent purchasers of the land who at best have a very limited right and cannot question the validity of the notification. I must notice here that it was obligatory upon the respondents to take possession of the lands in question particularly when there was no restriction placed upon the respondents in this regard. The respondents have certainly failed to perform their public obligation. The mere fact that the possession has not been taken by the appropriate Government, after pronouncement of the award, would not automatically result in lapse of acquisition proceedings. A Division Bench of this Court in the case of N.K. Ahuja Vs. Union of India & Ors. 107 (2003) DLT 295 took the view that there is no automatic termination of acquisition proceedings on account of delay in taking possession; there cannot be deemed withdrawal of proceedings once award is made; it continues to be operative and date of possession may be different and the contentions raised by the petitioners in those petitions were not accepted by the Bench. In this regard, reference can also be made to the judgment in Executive Engineer Jal Nigam Central Stores Division UP Vs. Sureshanand Julekha 1997 (9) SCC 224 where the Supreme Court held that mere fact that on account of pendency of litigation construction was

made or there was increase in prices and only symbolic possession was taken, would be no ground to say that notification under section 4(1) of the Act was bad. Under section 16 of the Act when the Collector has made an award under section 11, he may take possession of the land. Taking of possession is an expression of wider contention and meaning. There cannot be an absolute rule defining this expression. It means deprivation of a right in the property. The law provides that after award is made, the Collector may take possession. Taking possession by itself is a mode of deprivation and is comprehensive to include all forms of taking away rights of the property. An award is a conclusive proof of its contents which determine the compensation payable to a claimant in relation to the land which is owned by him and of which he is divested. Where the award is announced, symbolic possession is taken, in the cases of present kind, would be substantial compliance. Large extent of land was acquired under these notifications. The Collector claims to have taken the possession of the land which is disputed by the petitioners. Even if the petitioners have re-entered and continued in possession thereafter, it would given them no benefit much less a right to question the correctness of the notification issued under Sections 4 and 6 of Act. In the case of Dwarkadas Shrinivas Vs. The Sholapur Spinning & Weaving

Co.Ltd. AIR 1954 SC 119, their Lordships of the Supreme Court stated that no hard and fast rule can be laid down in relation to such deprivation . Each case must depend upon its own facts, but if there is substantial deprivation, the provisions would be attracted. It may also be noticed that the petitioners filed the present writ petitions after considerable delay and thereafter in most of the writ petitions there are interim orders restraining the respondents from dispossessing the petitioners from the land in question. This itself shows that the petitioners were holding the possession under the orders of the Court and in the event, they are found not entitled to the relief on merits, the mere factum of possession would be inconsequential and of no help to the petitioners. They cannot take undue advantage of the interim orders passed by the Court in these cases.

27. Recording of memorandum of Panchnama relating to taking over and handing over possession was also disputed by the petitioners on the ground that the Kabza Karbahi have been prepared not by the Collector himself and also that they are not true to the facts on site. At the cost of repetition, I may notice that as per records before the Court, possession of part of the land has been taken over and it is specifically averred that possession of the land has also been handed over to the DDA.

Where the memorandum of taking over and handing over has been prepared by the officers of the circle concerned as well as the DDA officials were present, the possession delivered to them can hardly be questioned by the petitioner merely by denial of such facts. The presumption is in favour of the Panchnama of *Kabza Karbahi* of the reports and the revenue records prepared in the normal course of business of the State and not against them. The Supreme Court in the case of **Larsen & Toubro Ltd. Vs State of Gujrat & Ors.** (supra) clearly held that the High Court could not convert itself into a revenue court and hold that inspite of the *panchnama* and the revenue records actual physical possession of the acquired land had not been handed over to the acquiring body. In view of such observations of the Supreme Court, I do not think that on the facts of the present case any finding can be recorded in favour of the petitioners contrary to the revenue records and in relation to the lands where *Kabza Karbahi* reports have been placed on record.

D. **Objections in relation to violation of provisions of Section 5A, inter alia on the ground that it was a quasi-judicial function**

28. Petitioners contended that the proceedings under section 5-A are of judicial and/or quasi-judicial nature and the authorities concerned

are expected to grant personal hearing and act in complete adherence to the principles of natural justice before submitting a report under section 5-A of the Act. It is also contended that the canons of administrative law as enunciated in various judgments of the Supreme Court, place an obligation upon the respondents to deal with the objections under section 5-A as if they were discharging the functions of a judicial or quasi-judicial body and strict compliance to the provisions of section 5-A is condition precedent to the declaration under section 6 of the Act. The challenge is raised also on the ground that there is non-application of mind by the authorities and they have completely rendered the protection and substantive right available to the applicant under section 5-A of the Act, as infructuous. The inquiry is not inconsonance with the statutory provisions. Reliance in support of these contentions is placed by the petitioners, on the judgment of the Supreme Court in Farid Ahmed Abdul Samad & Anr. Vs. The Municipal Corporation of the City of Ahmedabad & Anr. AIR 1976 SC 2095, Union of India & Ors Vs. Mukesh Hans (2004) 8 SCC 14, Indian National Congress (I) Vs. Institute of Social Welfare & Ors. (2002) 5 SCC 685, Hari Ram Kakkar Vs. Union of India & Ors. 2002 (61) DRJ 86 (DB), Gullapalli Nageswara Rao & Ors Vs. Andhra Pradesh State Road Transport Corporation & Anr. AIR 1959 SC

308; Ahuja Industries Ltd. Vs. State of Karnataka & Ors (2003) 5 SCC 365, Delhi Administration Vs. Gurdip Singh Uban & Ors. (1999) 7 SCC 44 and B.R. Gupta Vs. Union of India & Ors. 37 (1989) DLT 150. While relying upon the judgments of this Court in Mohd. Swallehin & Ors. Vs. Lt. Governor, Delhi & Ors. AIR 1977 Delhi 184 and Adveppa Irappa Morabad & Ors Vs. State of Mysore & Ors AIR 1968 Mysore 205, it is also submitted that there being non-compliance to the provisions of section 5-A, declaration under section 6 is invalid and improper.

29. In the case of **Chhatro Devi** (supra) all these objections raised by the respondents were considered by the Court on the basis of the record produced before the Court and which is common to all these cases as well as the bunch of cases heard along with Chhatro Devi's case. For the reasons recorded by the Division Bench, the writ petitions relating to the lands in the revenue estates of Maidangarhi, Shyoorpur and Rajpur Khurd are liable to be dismissed on merits. In my humble view even the writ petitions relating to lands in the revenue estate of Village Satbari and Chhattarpur are also liable to be dismissed for the reasons stated by me in my judgment dated 3rd March, 2005 in **Chatro Devi's** case (supra).

30. I would still proceed further to discuss the matter in some detail so as to completely put at rest the controversy raised by the petitioners with reference to subsequent judgment of the Supreme Court and/or some judgments which were not specifically noticed by me in that judgment. In the case of **Farid Ahmed Abdul Samad** (supra), the Supreme Court expressed the view that hearing should be granted to the land owners during an enquiry under Section 5A, wherever it is demanded. There is nothing on record before us that petitioners made a request for grant of hearing which was not granted. They raised no objections at the time of the proceedings or immediately thereafter, though the reports submitted by the Collector under Section 5A of the Act specifically notes that hearing was granted to the objectors during enquiry under Section 5A, which was later submitted to the authorities. The present writ petitions have been filed during the years 1987 to 2000 and some of them even thereafter. The Supreme Court in the case of Larsen & Toubro (supra) specifically held that such writ petitions should be dismissed on the ground of delay and laches as petitioners could not be permitted to sit on the fence and cause multiplicity of litigation. The judgment of the Supreme Court in **Indian National Congress (I)** (supra) as noted above is also of no help to the petitioners in as much as in that

case the Court was concerned with the provisions of representation of People's Act, 1951 and the Court discussed the attributes and distinctions between a quasi-judicial and Administrative Act. It was stated that where (a) a statutory authority empowered under a statute to do any act (b) which would prejudicially affect the subject (c) although there is no lis or two contending parties and the contest is between the authority and the subject and (d) the statutory authority is required to act judicially under the statute, the decision of the said authority is quasi-judicial. This preposition of law can-not be disputed as such, but the provisions of section 5-A of the Act do not require the officer of the State to exercise judicial powers or to determine a controversy judicially, as he is not required or called upon to arrive at a decision upon determination of factors contemplated in law, but has to make merely a report. It is an administrative action where the authority is required to act fairly and judiciously. The said provision does not contemplate any specific procedure or the principle of the Court to be followed, but an administrative action in-consonance with the principles of natural justice would be sufficient compliance to the requirement of section 5-A. Furthermore, this contention of the petitioners need not detain the Court any further particularly in view of the fact that the Constitution Bench of

the Supreme Court in the case of Jyantilal Amratlal Shodhan Vs. F.N. Rana & Ors. AIR 1964 SC 648 unambiguously dealt with this question and held as under :-

> "Again the Collector is not required to arrive at any decision. He has to submit the case for the decision of the appropriate Government together with the record of the proceedings held by him and a report containing his recommendations on the objections. Prima facie, such a report would be an administrative report, relying upon which the Government makes its decision under S.6 whether or not to notify the land for acquisition. The decision that any particular land is needed for a public purpose is an administrative decision and it is for the purpose of arriving at that decision that the Act requires that certain inquiries be made. It is true that the Collector is required to follow the procedure prescribed and to give an opportunity to the Objector of being heard in person or by a pleader. It is, however, open as S.5A expressly provides to the Collector to make an independent inquiry, apart from the enquiry on the objections submitted. It cannot in the circumstances be said that the inquiry is a judicial or a quasi-judicial inquiry. There was in the present case no delegation of any judicial power vested in the Central Government."

31. Even in the case of Sam Hearing Co. Vs. A.R. Bhujbal & Ors. JT 1996 (2) SC 406, the Supreme Court laid down that the Land Acquisition Officer is not a judicial authority or a quasi-judicial authority. He exercises the power under section 5-A as an Administrative Authority, but the Act requires that he should consider the objections and if asked, to

give an opportunity of hearing. Where the opportunity is given, objections are considered, the principles of natural justice are complied with and such finding would not suffer from any error of law warranting interference by the Court. The judgment of the Constitution Bench as well as the judgment of the Supreme Court in other cases makes it clear that the proceedings before the Collector are not judicial or quasi-judicial. They are administrative in nature and substance. Once the record shows compliance to the basic principle of natural justice of consideration and grant of hearing if demanded, the provisions of section 5-A would be complied with. In the present case, I have already noticed that as an administrative authority, the Collector has complied with in substance with the requirements of section 5-A of the Act and his reports were duly accepted by the appropriate authority under the provisions of the Act. In its more recent judgment, the Supreme Court in the case of Tej Kaur & Ors Vs. State of Punjab & Ors. AIR 2003 SC 2414 declined to quash the acquisition proceedings on the ground that no hearing was granted and objectors were not heard during the enquiry under Section 5A of the Act , for the reason that the objectors took no steps, even immediately after declaration under Section 6 of the Act was published and held as under :-

"It is true that Section 5-A inquiry is an

important stage in the acquisition proceedings and a person who is aware of Section 4(1) Notification can raise objection to the effect that his property is not required for acquisition and he is also at liberty to raise the contention that the property is not required for any public purpose. It is also true, that the objector must also be given a reasonable opportunity of being heard and any violation of the procedure prescribed under S.5-A would seriously prejudice the rights of the owner of the property whose land is sought to be acquired. In the instant case, however, it is pertinent to note that the Collector had, in fact, conducted the Section 5-A inquiry, though there is no material on record to show that the appellants in Civil Appeal No.66 of 1998 were heard in person. The facts and circumstances of Civil Appeal No.66/1998 clearly show that the objection raised by the appellants was considered and partly allowed by the Collector. About eight acres of land was sought to be acquired from the appellants as per the notification, but out of that, an extent of six acres was excluded from acquisition and only one and half acre of land was actually acquired by the authorities. This would clearly show that the objection filed by the appellants was considered by the Collector. Moreover, Section 6 Declaration was made on 18.3.1992 and the award was passed on 15.3.1994. The appellants filed the writ petition only on 12.4.1994. In spite of the Section 6 declaration having been made on 18.3.1992, the appellants allowed the acquisition proceedings to go on until the award was passed. This fact clearly indicates that the appellants did not have a genuine grievance against Section 5-A inquiry held by the Collector. Therefore, we are not inclined to interfere with the judgment on the grounds now advanced by the appellants." (emphasis supplied)

32. In the present case, declaration under section 6 was issued on 7th June, 1985 while the writ petition argued as lead case before the Court, was filed in the year 2000. For this inordinate and unexplained delay, the excuse that the petitioners were not physically dispossessed from their lands would be of no consequence specially in view of the fact that as per the respondents, possession of part of the land had been taken and handed over to Delhi Development Authority.

33. The judgment of the Supreme court relied upon by the petitioners have no application to the facts and circumstances of the present case, as those judgments relate to different facts and statute. The principle enunciated in the decision of the Constitution Bench of the Supreme Court in the case of **Jyantilal Amratlal Shodhan** (supra) is applicable to the facts of the present case appropriately on *ratio decidendi*. The judgment of the Constitution Bench in **Jayantilal's** case (supra), principle laid down in **Sam Hearing Co.** (supra) and **Tej Kaur & Ors.** (supra) are consequently applicable to the facts of the present case. The Supreme Court in the case of **Padma Sundara Rao (Dead) & Ors. Vs. State of T.N. & Ors (2002) 3 SCC 533**, stated as under :-

"9. Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case, said Lord Morris in Herrington v. British Railways Board. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusion in two cases."

34. Following the above principle, I have no hesitation in stating that law as enunciated by the Supreme Court in the judgment abovereferred, is undoubtedly against the petitioners and they cannot be granted the relief prayed for.

E. **Public Purpose**

35. The petitioners questioned the legality and validity of the notification issued under section 4 of the Act dated 25.11.80 and the acquisition proceedings taken thereafter, on the ground that there was no public purpose stated in definite terms in the notification for which the lands were acquired. It was stated in the notification that lands are being acquired at public expense and for public purpose (Planned Development

of Delhi). This does not in any way indicate any definite purpose of acquisition and in fact it is no public purpose. It is also contended that the purpose of acquisition has been frustrated, the Government cannot alter the purpose of notification. The land should be used for the purpose for which it was acquired. A notification which is issued without preparation of definite development schemes is invalid as a pre-scheme notification is pre-mature and liable to be quashed. The public purpose seizes to exist. The notification would lapse in law and as the appropriate Government is incapable of using the land for which it was acquired; the acquisition proceedings are vitiated and the petitioners are entitled to release of their lands. In support of this multi-dimentional attack to notification under section 4, the petitioners placed reliance upon the judgment of the Supreme Court as well as of this Court in the cases of **Farid Ahmed Abdul Samad & Anr. Vs. The Municipal Corporation of the City of Ahmedabad & Anr. AIR 1976 SC 2095, Union of India & Ors Vs. Mukesh Hans (2004) 8 SCC 14, Indian National Congress (I) Vs. Institute of Social Welfare & Ors. (2002) 5 SCC 685, Hari Ram Kakkar Vs. Union of India & Ors. 2002 (61) DRJ 86 (DB), Gullapalli Nageswara Rao & Ors Vs. Andhra Pradesh State Road Transport**

Corporation & Anr. AIR 1959 SC 308; Ahuja Industries Ltd. Vs. State of Karnataka & Ors (2003) 5 SCC 365, Delhi Administration Vs. Gurdip Singh Uban & Ors. (1999) 7 SCC 44 and B.R. Gupta Vs. Union of India & Ors. 37 (1989) DLT 150.

36. It may be noticed that in most of the writ petitions, there are no allegations to support these contentions and wherever such averments have been made, they are vague and unsupported by any documentation. Some of the petitioners claimed to have availed their right to file objections, under section 5-A of the Act. The objection were considered and report submitted thereupon, was duly considered by the authority and accepted. These contentions at some length have been dealt with by the Court in Chhatro Devi's case (surpa) which could be read as reasons in support of this judgment as well. Lack of proper pleadings causes inherent defect in the submissions made on behalf of the petitioners. Despite having rejected all these contentions in the connected cases of Chhatro Devi (supra), I would still proceed to notice some of the judgment which might not have been specifically dealt with in that judgment.

37. In order to properly examine the development of law in relation to the meaning `significance and implication of acquisition of land for a public purpose and its scope of implementation', I may begin with the judgment of the Constitution Bench of the Supreme Court in the case of Smt.Somawati & Ors. (supra) where the Court noticing the definition of public purpose under section 2(f) of the Act said that a public purpose would include a purpose in which the general interest of the community, as opposed to the particular interest of individuals, is directly and vitally concerned. Their Lordships of the Supreme court stated that the public purpose is bound to vary with the times and prevailing conditions in a given locality and therefore it would not be a practical preposition even to attempt a comprehensive definition of it. It is a matter which primarily falls within the domain of the Government and the declaration by the Government as to public purpose is final except where it is colourable exercise of power. The Court held as under :-

> " The declaration under section 6 that a particular land is needed for a public purpose or for a company is not to be made by the Government arbitrarily, but on the basis of material placed before it by the Collector. The provisions of sub-s.(2) of S.5A make the decision of the Government on the objections final while those of sub-s.(1) of S.6 enable the Government to arrive at its satisfaction. Sub-section (3) of S.6 goes further and says that such a declaration shall be for a public

purpose or for a company. The conclusiveness or finality attached to the declaration of Government is not only as regards the fact that the land is "needed" but also as regards the question that the purpose for which the land is needed is in fact a public purpose of what is said to be a company is really a company.

The Act has empowered the Government to determine the question of the need of land for a public purpose or for a company and the jurisdiction conferred upon it to do so is not made conditional upon fact. It is the existence of the need for a public purpose which gives jurisdiction to the Government to make a declaration under S.6(1) and makes it the sole judge whether there is in fact a need and whether the purpose for which there is that need is a public purpose. The provisions of sub-section (3) preclude a court from ascertaining whether either of these ingredients of the declaration exists."

38. In the case of **Aflatoon & Ors. Vs. Lt. Governor of Delhi & Ors. (supra)**, the Supreme court held that the notification under section 4 (1) must specify the particular purpose for which the land is needed so as to enable the owners to file objections under section 5-A and avail of that right properly. The Constitution Bench of the Supreme Court in **Aflatoon & Ors** (supra) also held that the writ petition filed in the year 1972 challenging the validity of the notification issued under section 4(1) of the Act in the year 1959 and section 6 declaration in 1966 were liable to be dismissed even on the ground that particulars of the purpose were

not specified and that Chief Commissioner was not competent to issue the notification and also stated that the Planned Development of Delhi could be in accordance with the provisions of Delhi Development Act, but there was no inhibition in acquiring the land for the Planned Development of Delhi under the Land Acquisition Act even before the Master Plan was ready.

39. In the case of **Raj Kumar & Anr. vs. Union of India** **ILR 1974 (2) Delhi 81**, a Division Bench of this Court took the view that the details of the public purpose need not be practically raised in the notification itself and the data or material available can easily be relied upon to explain the public purpose stated in the notification to be "Planned Development of Delhi". The public purpose thus is incapable of strict construction so as to defeat the very legislative intent behind it. The law requires a liberal and larger construction of this expression so as to further the cause of the legislation and to ensure that the general interest which is vital for the development is not defeated. The 'Planned Development of Delhi' is a continuing public purpose and acquiring the land at regular intervals would be no way offending the spirit of the statute. Thousands of bighas of land was acquired in the revenue estate of 13 villages in South Delhi for proposed "Planned Development of

Delhi" out of which, the court is concerned with 5 villages in the present writ petitions. Merely, because there has been a procedural delay or possession of the land was not taken under a mistaken impression and/or under the orders of the Court at the instance of the petitioners would be of no avail to them for getting the notifications quashed on the ground of infirmity in the notification under section 4 of the Act in relation to public purpose. All the petitioners without exception have stood and waited for all this time to question the notifications. It can hardly be legitimately said in favour of the petitioners that they could stand and watch completion of the acquisition proceedings and then challenge the validity of the initial notifications to stall the complete development. In the facts and circumstances of the case, there is nothing on record of the Court which could show that public purpose has frustrated or cannot be achieved at all. On the contrary, the stand of the respondent is that they have taken possession of part of the land out of which lands have also been handed over to the DDA while the remaining land they have to take possession, in accordance with law. In the case of **Ajay Krishan Shinghal Vs. Union of India & Ors. 1996 (10) SCC 721**, their Lordships of the Supreme court held that a notification stating that the area was acquired for planned development would be a public purpose where large

area of land is acquired and the notification under section 4 would not be vitiated on account of the fact that the Planned Development was not specified with particularisation of the land, in the notification. It was also held that where it is recorded that notification has been affixed at some conspicuous place in the locality, the presumption under section 14 (3) (e) of the Evidence Act would be in favour of the official act. In the case of **Chandragouda Ramgonda Patil Vs. State of Maharashtra 1996(6) SCC 405**, the Court while giving specific dimensions to the concept of public purpose, stating that the land acquired for a public purpose can be utilised for another purpose and held, "it is axiomatic that the land acquired for a public purpose would be utilised for another public purpose though use of it was intended for the original public purpose". In the case of **Union of India Vs. Jaswant Rai Kochhar 1996 (3) SCC 491** the Supreme Court specifically held that a notification cannot be quashed on the ground of change of user, reiterating the decision of the Court in earlier cases also held that it is a well settled law that land sought to be acquired for one public purpose may be used for another public purpose". In the case of **Jai Narian & Ors. Vs. Union of India & Ors (1996) 1 SCC 9** in the circumstances where in the notification under

section 4, it was stated 'likely to be needed', apparently suggesting that there was absence of urgency and the land was then actually utilised for the purposes of construction of sewage treatment plants for Planned Development of Delhi under the directions of the Court. The Court held that even provisions of the urgency could be read into it, the High Court should look into the records and the expressions `likely needed'. In the background of the order of the Court could be utilised for invoking urgency clauses even at some variance from the language of the original notification. In the case of Venkataswamappa (supra) where the land was acquired for providing houses to members of the co-operative society was held to be a public purpose and the fact that on earlier occasions, the land of the owner was acquired for such purpose or other public purpose would not make the subsequent notification malafide nor some foible irregularity in publication of the notification in gazette and/or newspaper simultanously would vitiate the notification. In Nasik Municipal Corporation Vs. Harbanslal Laikwant Rajpal & Ors. (1997) 4 SCC 199, the Supreme court reiterated the principle that land acquired under the scheme of Town Planning Act, but subsequently was needed for a different public purpose, there was no bar in law in suitably varying the purpose of acquisition. In the case of Bhagat Singh Vs. State of U.P. &

Ors. (1999) 2 SCC 384 held that the land having been acquired for a public purpose may not be used for the same purpose or for a purpose as mentioned in the Master Plan or the Zonal Plan, but it could be used for another purpose subject to the beneficiary taking permission of the competent authority under the provisions of the relevant laws. Still in a more recent judgment, the Supreme Court in the case of Northern Indian Glass Industries Vs. Jaswant Singh & Ors. (2003) 1 SCC 335 held as under :-

> "The High Court was also not right to ordering restoration of land to the respondents on the ground that the land acquired was not used for which it had been acquired. It is undeniable that after passing the award and taking possession under section 16 of the Act, the acquired land vests with the Government free from all encumbrances. Even if the land is not used for the purpose for which it is acquired, the landowner does not get any right to ask for revesting the land in him and to ask for restitution of possession.
>
> If the land was not used for the purpose for which it was acquired, it was open to the State Government to take action but that did not confer any right on the respondents to ask for restitution of the land. The State Government in this regard has already initiated proceedings for resumption of the land. It is concluded that there arises no question of any unjust enrichment to the appellant Company."

40. The above enunciated principles emerging from the judgments of the Supreme Court and this Court clearly show that the various

contentions raised by the petitioners in these writ petitions are devoid of any merit. The prolonged litigation in relation to the notifications in question which were issued in the year 1980 clearly show that the petitioners were granted protection by the Courts in other connected matters as well as the present writ petitions. But for the interim orders granted wherever the appropriate authorities have not taken the possession of the land, in normal course they would have taken the possession. Even if it is assumed that certain constructions have been raised on the part of the land in question, it is a direct consequence of intervening factors resulting from the pendency of the proceedings from the Court. The orders and acts of the courts would not prejudice right or interest of the parties to the lis. The alleged inaction on the part of the respondents and actions of the petitioners themselves during this interregnum period thus can hardly be buttressed as an additional ground for quashing the notifications issued by the Government. The public purpose was specified in the notification as Planned Development of Delhi, which has been accepted as a continuing public purpose and even an emergent purpose which would allow invocation or urgency provisions under the Act. Certainly inaction on the part of the concerned officers of the respondent and particularly the field staff, in not acting with complete

responsibility and expeditiousness has seriously prejudiced the interest of the State. But this prejudice is not of the kind that it would vest the petitioners with any indefeasible right to have their lands released from acquisition by process of judicial intervention. The larger public interest essentially must precedence over the limited private interest. I find no justification whatsoever in accepting the contention of the petitioners.

41. In addition to the reasons stated by me in **Chhatro Devi's** case (supra) and while partly relying upon the order of the Division Bench in the same case and more particularly for the two additional grounds of delay and laches and large number of petitioners being subsequent purchasers, I would dismiss all these petitions.

(SWATANTER KUMAR)
JUDGE

May 19. 2005
rds/sk

Certified that the corrected copy of the judgment has been transmitted in the main Server.