

**IN THE HIGH COURT OF HIMACHAL PRADESH,
SHIMLA**

CWP.No. 1266 of 2002.

Judgment reserved on 13.9.2011.

Date of Decision: September 29,2011.

H.P. University.

....Petitioner.

Versus.

State of H.P. and others.

....Respondents.

Coram:

Hon'ble Mr. Justice Dev Darshan Sud, Judge.

Whether approved for reporting1?.yes.

For the petitioner. :Mr.B.C.Negi, Advocate.

For Respondents 1&3. :Ms.Shubh Mahajan, Deputy Advocate
General.

For respondent No.2. Mr.K.D.Sood, Advocate.

Dev Darshan Sud, J.

The petitioner University has challenged the order Annexure:P-1 passed by the Commissioner-cum-Secretary (Education) to the Govt. of Himachal Pradesh directing that taking a "lenient/sympathetic view", the petitioner herein should treat the respondent-Harbans Singh as a regular tenant of the building subject matter of acquisition under the Land Acquisition Act, 1894 (hereinafter

Whether reporters of the Local papers are allowed to see the judgment.yes.

referred to as the 'Act') and the shop in question be kept out of acquisition proceedings under the Act.

2. This litigation has followed a tortuous course. By an order dated 15th July, 1996, in CWP No. 202 of 1996 titled Harbans Singh Vs. State of H.P. and others (in which the petitioner was also one of the parties), a direction was issued by a Division bench of this Court in the following terms:

“.....We have heard learned counsel for the parties and gone through the record. In the facts and circumstances on record, no order is required to be passed in this writ petition, save and except that the petitioner may make representation within a period of three weeks, which will be decided by the competent authority of the H.P. University within a period of four weeks thereafter by a reasoned order. It is further directed that the respondent-University will not dispossess the petitioner, except in accordance with law. The writ petition is disposed of.....”

3. Thereafter, the respondent herein again preferred another writ petition being CWP No 564 of 1999 which was disposed of on 17th December, 1999. In that writ petition, the prayer of the petitioner was considered and disposed of by a Division Bench of this Court holding:

“.....The above writ petition has been filed seeking for the following reliefs.:

i) To direct the respondents not to dis-possess the petitioner from the Hotel/Dhaba comprised in Khasra No.64, measuring 3.00 Biswas, situated in village Chewag, Teh. and Distt. Shimla in pursuance to notice dated 14.12.99 Annexure:P-7, and further the representation dated 25.7.1996 filed by petitioner with the respondents may kindly be ordered to be decided in pursuance to the orders dated 15.7.96 passed in CWP 220/96 by this Hon'ble Court.

ii) *That in the alternative, the respondents may kindly be directed not to dispossess the petitioner from the premises in dispute till some alternative accommodation is provided to the petitioner by the respondents for running the Dhaba/Hotel.”*

Heard Mr.R.K.Bawa, learned counsel for the petitioner. Learned counsel made persuasive as also persistent submissions while projecting the grievance of the petitioner contending that only the land of a few excluded in the order of the Government dated 17.9.1996 and though the petitioner also has made representation through a counsel on 25.7.1996 itself his representation does not appear to have been considered and relief granted. It is pointed out that the move made by some including the petitioner as claimed now was in the teeth of the order of this Court dated 15.7.1996 in CWP.No. 202/96 wherein it has been stated that no order is required to be passed in the writ petition except that the petitioner may make representation within a period of three weeks and the competent authority of the H.;P. University within four weeks thereafter shall decide the matter on the representation. From the facts now placed before us, the Government itself has decided the issue in respect of a portion of the land acquired comprised in Khasra Nos. 65,66,83 and 84.

The occasion for the petitioner to approach this Court at this stage is notice dated 14.12.1999 issued by the Girdawar Kanungo, Tehsil Shimla (Urban) to the petitioner calling upon the petitioner to vacate the land before 18.12.1999 on a threat of coercive action to dispossess the petitioner from the afternoon of 18.12.1999. It is seen from the said notice that the land comprised in Khasra No.64 (old) and khasra Nos. 147 to 153 (new), Khas 7, measuring 104-43 Sq.meters, situated in Chak Chawag has been acquired by the H.P. University in case No.7/1975 and that the amount of compensation has also been paid and the Tehsildar (Urban) has passed the order dated 2.12.1999 for handing over the possession of the aforesaid land to the University, which necessitated the issue of notice dated 14.12.99.

We have carefully considered the submissions of the learned counsel for the petitioner. The grievance though are many, in our view, cannot be countenanced in this proceedings, at this stage. The fact remains that the acquisition proceedings so far as the land of the petitioner is concerned has become final. The compensation amount has also been paid. If that be the position, it is beyond comprehension and it is also equally not permissible for this Court to collaterally allow the challenge to be made to the acquisition at this state or to stall the taking over of the possession of the property from the petitioner. On this simple ground, we are unable to intervene at the instance of the petitioner to grant him any relief and the writ petition, therefore, shall stand rejected.

The dismissal of the writ petition shall not stand in the way of the petitioner approaching any of the authorities concerned for the reliefs as he may deem fit.

As a matter of great indulgence, we feel that to enable the petitioner to approach the authorities, if he so desires, the threatened dispossession will be kept in abeyance for two weeks.....”

4. I have reproduced this order in some detail as this forms the core of the defence put forth by the respondents herein who have pleaded in detail as to how the University has treated different persons similarly situated whose land was acquired by way of notification issued under Section 4 way back in 1996 and the respondent subjected to hostile discrimination. . It has been pleaded by the respondent-Harbans Singh herein that all other people have been left out of the acquisition proceedings and it is the respondent-Harbans Singh who has been asked to surrender the possession of the land though the area under his possession is negligible. He complains of discriminatory treatment. The University raises the issue of public interest as the land is required for building teaching/administrative blocks.

5. It is undisputed before me that the possession of the land has not been taken over by the respondent State or the University. It is also undisputed that the respondent-Harbans Singh was a tenant under the Municipal Corporation, Shimla, prior to the acquisition as the shop belonged to it. The order Annexure:P-1 notes that acquisition proceedings for a portion of the land was initiated in the year 1981. Even while passing the award, the acquired area measuring 1.6 bighas belonging to one Smt. Kamla Thushu was excluded from the award by the Collector on "sympathetic grounds". The ground urged was that it was a residential house. CWP No. 194 of 1996 was filed in the High Court and the parties in that writ petition were directed to approach the State by submitting an appropriate representation. The order Annexure:P1 passed by Commissioner-cum-Secretary(Education) to the Government of Himachal Pradesh notes and succinctly that consequent to the representations of Chaman Lal Chandan, Yash Pal Sood, Om Perakash Chandan , Smt. Parvati Devi, Jogeshwari Devi Sood and Swaran Sood etc. were decided by the Commissioner-cum-Secretary (Education) on 17.9.1996 leaving the land out of acquisition proceedings despite the pronouncement of the award. What had weighed with the authorities at that time was that if action had been taken to exclude the land of Smt. Kamla Thushu on the ground that it was a residential house, these persons are also similarly situated and therefore deserve the same treatment. The petitioner-University though at that time had opposed the representations, but such opposition was rejected by the State and the land of the persons named hereinabove was allowed. The operative portion of the order (Annexure:P1) reads:

“After having through all the records of the acquisition, order dated 17.9.1996 passed by this Department, the relevant records leading to the passing of said order, the representations and the comments of the H.P. University on the representation and all other connected records, undisputed facts mentioned hereinafter emerge.

That Sh. Harbans Singh came in possession of the aforesaid land as a tenant under the Municipal Corporation Shimla 1981 the acquisition proceedings of this portion of the land with Sh. Harbans Singh and other persons were initiated for the benefit of the H.P. University. Award(s) were passed by the concerned Land Acquisition Collector concerned. Even while passing the award despite the acquisition having been made, portion of the area of 1.6 bighas belonging to one Smt.Kamla Thushu was omitted from being made subject matter of the ward and on her representation such area was omitted from being taken over on sympathetic grounds mainly for the reason that it comprised of her residential house. Other persons affected by this acquisition also moved the Hon'ble High Court of H.P. by way of writ petition No. 194/96 against the said acquisition. The Hon'ble High Court of H.P. on 15.7.1996 ordered the affected parties in the said writ petition for making representations to the concerned authorities. Consequently representations of the other land owners, namely Chaman Lal-Chandan, Aash Pal Sood, Om Parkash Chandan, Smt. Parwati Devi, Yogeshwari Devi Sood, Swaran Sood etc. were considered and decided vide order dated 17.9.1996 No.PS-Commissioner-cum-Secy. Edu-1/96 of this Deptt. Taking into consideration such representations all such persons were allowed to retain their respective properties despite the acquisition and pronouncement of the awards.

It heavily weighed with the competent authorities at that time also when order dated 17.9.96 was passed that the reason forward by the petitioners at that time merited sympathetic consideration. It was also found that going by the parameters used to measure the gravity of compassion in favour of Smt.Kamla Thushu there were far greater reasons and justifications not acquire the properties of the petitioners.

Over ruling the view point of the University authorities put forth at that time for the proper accommodation of its employees it was decided that it was not fair to throw out permanent residents with no other house and running small business from the same place from their houses, thus, all the representations were accepted which resulted into the order dated 17.9.1996.

The land belonged to Municipal Corporation Shimla while Sh.Harbans Singh was tenant of it. It had been developed by him after having made huge investments. The land of other persons despite having been acquired, awards passed was later on left out to be retained by them mainly on sympathetic grounds.

Though in the present case, according to the University authorities, they have no knowledge whether or not Sh. Harbans Singh was the tenant under the Municipal Corporation, Shimla. They have pleaded ignorance about his status. However, from the rent receipts submitted and other record it emerges indisputably that the status of Sh.Harbans Singh was that of a tenant on the said land and structures and the rent also stood paid up to 1980-81 till the time the acquisition proceedings were started.

The University authorities are further of the view that University requires the land keeping in view the future plan and growth of the University. These objections of the University do not merit any favourable consideration simply for the reasons that this requirement of future plan and growth of the University was also threat the time when other persons as detailed were allowed to retain their properties which were ordered to be notified despite acquisition on sympathetic grounds. Sh. Harbans Singh is also placed in more graver hardships and required more sympathetic consideration than others solely for the reason that he is an old man and in the event of his being thrown out from the business-cum-residential premises of two shops have already been taken possession of as a result of the acquisition and now is left with only the present premises. Dispossessing him will cause great trouble and hardship to him and there is no reason as to why

he should treated differently from the persons covered under the earlier decision dated 17.9.1996 supra more particularly when he is in possession of a very small chunk of land measuring only 3 biswas whereas land running into bighas of other persons was left out of the impact of acquisition. In case the status and possession of the petitioner in respect of the other property is not protected and he is thrown out of the same he will have to start his life from a scratch without any help.

In view of above and also taking a sympathetic view the Himachal Pradesh University is hereby directed to treat the petitioner as tenant of the University. Further the H.P. University is directed to take regular rent of the building in question as possessed by the petitioner and the petitioner is also directed to make regular payment of the rent to the H.P. University authorities. Failing which necessary action under the law will be initiated against him.

Since this order has been passed taking into account the peculiar facts and circumstances of this case as such it may not be treated as a precedent for future with respect to other cases, if any.

*Sd/-
(S. ,Roy)
Commissioner-cum-Secretary(Edu.) to
the Government of Himachal Pradesh.*

6. This order has been reproduced in detail and it would show that the recipients of the benefit of de-acquisition are similarly situated with the respondent herein which would also be manifest from the order or Annexure:P3 considered hereinafter. It would be clear and evident from reading of this order that Smt. Kamla Thushu and others have been granted the benefit of exclusion of their holdings from acquisition by exercise discretion in their favour and respondent Harbans Singh was left out.

7. The case pleaded by the respondent-Harbans Singh is that he is running a small business in a shop over this land and would be deprived of his sole source of life and livelihood. It was in these circumstances that the Commissioner proceeded to pass the order directing that he be treated as a tenant of the University.

8. On the merits of the case, the respondent has filed a number of documents in support of his claim. Order dated 17th September, 1996 Annexure:P3/Annexure:R2/1 passed by the Commissioner-cum-Secretary Education to the Government of Himachal Pradesh was passed for the benefit of a few persons. It reads:

*“Government of Himachal Pradesh
Department of Education.*

No.PS-Commr.Secy. Edu-1/96 dated Shimla-2, the 17th Sept., 1996.

ORDER

This concerns acquisition of land comprised in khasra No.58,59,60,61,62,63,64,65,66,67 (115/67/1) 79,80,81,82,83,84 measuring 9.6 bighas in Village Chowag, Tehsil Shimla by the Department of Education for public purpose i.e. for the use of Himachal Pradesh University. Ten of the affected persons, whose land was being acquired in this case, filed CWP No.194/96 in the High Court of Himachal Pradesh. The High Court by order dated 15.7.96 directed that “In view of the facts and circumstances on record, more specifically reply of respondent No.3 to Para 11 of the writ petition, no order is required to be passed in this writ petition, save and except that the petitioners may make a representation within three weeks, which will be jointly decided by the Commissioner-cum-Secretary (Education) to the Government of Himachal Pradesh and the Registrar of the Himachal Pradesh University within a period of four weeks by a reasons order. While deciding the representation of the petitioners, the authorities will keep in view whether the H.P. University really

require the property of the petitioners or it can be de-acquired as it was done in the case of Smt. Kamla Thusu for Khasra Nos. 115/67/2,80 and 81. Till the decision of the representation, the petitioners will not be dispossessed. The writ petition is disposed off"

Accordingly, the petitioners filed a written representation with the department in support of their claim. Chaman Lal Chandan, Yash Pal Sood and Om Parkash Chandan met me on that day and presented their case. Smt. Parvati Devi, Jogeshwari Devi Sood and Swarn Sood informed in writing that they were not in a position to present themselves in person due to reasons such as illness and old age.

The Registrar, Himachal Pradesh University joined in the hearing but stated in writing that since the University was as interested party in the matter and he represented it, he was not in a position to give his decision on the claims of the petitioners.

I have examined the record of the Department and also discussed the case in detail with the Land Acquisition Collector, Shimla and the Registrar of the Himachal Pradesh University., The Himachal Pradesh University was asked to clarify as to why and for what purpose the land of the petitioners was required.

The facts of the case are that the Department of Education Govt. of H.P. issued a Notification under provision of Section 4 of Land Acquisition Act, 1894 on 28.6.1975 that land comprised in Khasra Nos. detailed above of village Chowag, Tehsil Shimla is required for the purpose of Himachal Pradesh University. Thereafter, as per process prescribed under the Act, action was taken to acquire this total land measuring 9 Bighas 6 biswas. The award was announced by the Land Acquisition Collector on 24.6.1981 for 8 bighas only (instead of 9.6 bighas notified to be acquired) and total compensation amounting to Rs.14,44,371.67 paise was determined. The Land Acquisition Collector left out the area measuring 1-6 bigha comprised in Khasra Nos.80 and 81 belonging to Smt. Kamla Thusu which has been explained by the Land Acquisition Collector in detail in the award.

At later stage the owner of khasra No.115/67, Smt. Kamla Thusu has prayed on compassionate grounds that her residential house standing on khasra No.115/67, 80&81 may not be acquired vide her application dated 26.8.80 addressed to the Chief Minister, Himachal Pradesh and copy endorsed to this office. After considering the case on merit, recommendation to the Secretary (University Education) to the Govt. of H.P. was made to the effect that Khasra No.67 may be corrected and the living house of Smt.Kamla Thusu standing on part of Khasra No.115/67, 80 & 81 de-notified. This recommendation was made vide this office letter No.9-SML(1)75)DRA-3774 dated 6.10.1980. Revised notification has not so far been issued by the Government. The owners have been pressing hard for early announcement of award. Accordingly the khasra No.80 &81 have been left out from acquisition and the land of khasra No.115/67 was again got measured and revised tatima was got prepared by the Patwari/Kanungo on the spot in the presence of Smt.Kamla Thusu. Keeping in view the genuine demands of Smt.Kamla Thusu the land comprised in khasra No.115/67/1, measuring 0-7 bigha has been taken into consideration for acquisition purpose.”

The total land of Kamla Thusu under acquisition proceedings was 1-13 biswas of this 1-6 was left out by Land Acquisition Collector at time of announcement of award on basis of her representation that it in a residential house.

Thereafter, most of the interested persons, the H.P. University and also interestingly the Govt. of H.P. filed reference petitions under Section 18 of the Land Acquisition Act which was forwarded to the District Session Judge, Shimla and were all dismissed. After, exhausting this channel the interested persons filed CWP No.12 of 1985 in the High Court of Himachal Pradesh which was decided on 24.4.85 and was rejected. Thereafter, the party filed a SLP No.10463 of 1985 against the order of High Court of H.P. dated 24.4.85 before the Supreme Court of India. It was disposed off on 29.10.90 by granting an opportunity to the petitioners to file representation to the concerned authorities with regard to their grievances.

Now the interested persons have filed CWP No.194/96 in the Highs Court which has been directed to be treated as a representation by me.

The position that emerges is that 9-6 bighas were notified to be acquired and the process under Act was followed in respect of this total area. The Land Acquisition Collector has announced the award in respect of 8 bighas only by excluding 1-6 bighas of land belonging to Smt.Kamla Thusu at his own level on compassionate grounds without the same being de-notified by the Govt. The amount of compensation was deposited by the H.P. University with the Land Acquisition Collector on 30.5.1984. A sum of Rs.5,62,741.02 paise (for 3 bighas 5 biswas) of the total amount of Rs. 14,44,371/- (for 8 bighas) has been paid as compensation as per details below:

- | | |
|--|------------------------|
| <i>1. Dr.Pushkar Nath through Kamla Thusu</i> | <i>Rs.1,03,002.62.</i> |
| <i>for Kh.No.115/67/1 area 0-7 biswa.</i> | |
| <i>2.Smt.Mohinder Kaur Wd/o Major Naginder</i> | <i>Rs. 8,222.50.</i> |
| <i>Singh for kh.No.63, area 0-3 biswa.</i> | |
| <i>3.Commissioner, M.C.Shimla</i> | <i>Rs. 65,754.15</i> |
| <i>Kh.No.59,64,63 total area 8 biswa.</i> | |
| <i>4.Dr.Balduri Kohli</i> | <i>Rs.3,85,941.75.</i> |

<i>Total:</i>	<i>Rs.5,62,741.02.</i>
---------------	------------------------

The remaining amount of Rs.8,81,630.65 paise for 4 bighas 15 biswas is still lying with the Land Acquisition Collector and has been deposited in the Bank of this area of 4 bighas 15 biswas for which compensation is still to be paid is comprised in khasra No.65,66,82,83 & 84 measuring 18 biswas belongs to private persons and the petitioners. The remaining area belongs largely to North, West Indian Railway (i.e. 2 bighas and 3 biswas) and the rest to the Govt. of H.P. and the Govt. of India. The point is whether this 18 biswas of land comprised in khasra Nos. 65,66,82,83 and 84 is really required by the Himachal Pradesh University and whether there is a case to consider leaving out this area from being acquired in reference to Smt.Kamla Thusu's case.

These petitioners have given several reasons as to why this area should not be acquired:-

(i) 3 residential house exist on this piece of land. The area of these pieces varies from 2 biswas to 6 biswas. In some cases this is the only house owned by them.

(ii) Mostly, these residential houses are being used for business purpose also. For example Matwal Chand Sood is running his business by a name of Natraj Caterers and Suresh Chander Sood is running his business by name of M/s Kashyap Coal Company from their residences. Similarly the dependants of O.P.Chandan are running small business from their residences. In case of Smt. Kamla Thusu the huge building and vast lands were being used for residential purpose only. By the yard stick applied in Kamla Thusu's case the compassionate grounds in case of these petitioners are more forceful and convincing.

(iii) The next relevant point is of the nature and character of persons residing in these houses. Jogeshwari Devi is 82 years old, C.L.Chanden is on the verge of retirement from Government service. O.P.Chanden is a retired Govt. servant. Further Jogeshwari Devi is a widow suffering from Syncopial attach since February, 88 and cordial pace maker has been planted in September, 1988 at Chandigarh. Her problems are aggravated by loss of eye sight. Parwati Devi is 80 years old.

(iv) The area under consideration is merely 18 biswas mostly occupying a width of 30 feet, adjoining a Municipal Road, Sufficient area is to be left on either side of the road for any construction to come up under Municipal Law and Rules Regulations of the Town & Country Planning Department.

(v) In fact the award has been rendered a piecemeal one account of de-notification of 1 bigha 6 biswas of land belonging to Kamla Thusu which was adjacent and contiguous to these plots of land.

(vi) The award was announced in 1981. The amount of compensation determined 16 years ago, has not yet been paid to the land owner/petitioners. Payment at that rate in 1996 would be grossly inadequate without any relevance to the present. This also appears to indicate that the University was in no immediate and urgent requirement of this land.

As far as the H.P. University is concerned they have informed that the property in question is contiguous to the campus of the University and is required by the University for its bonafide use. It is proposed to be used as possible accommodation for the Non-teaching employees of the University and eventually to bring up a shopping complex as per approved Master Plan of the H.P. University.

After due consideration I am convinced that the reasons forwarded by the petitioners merit, sympathetic consideration. Basically the award is invalid to the extent that the Land Acquisition Collector did not announce the award for the total area as notified by the Government under provisions of the Act. He had no powers to exclude the area of Kamla Thusu measuring 1 bigha 6 biswas at the time of announcing the award. Going by the parameters used to measure the gravity of compassionate grounds in the case of Kamla Thusu there is far greater reason and justification not to acquire the properties of the petitioners. Above all there is no doubt that the University has to arrange for proper accommodation of its employees. But it is not fair to throughout permanent residents with no other house and running small business from the same place from their houses. Especially when some of these very houses or their portions have been rented out by employees of the Himachal Pradesh University. In fact to force people to move out of their houses to bring up a shopping complex is even less convincing and justifiable as a reason.

In view all these, the representation of the petitioners is accepted. The land of these petitioners may not be acquired.

Sd/-

*(Rajwant Sandhu),
Commr.cum-Secy (Education) to
the Government of Himachal Pradesh."*

9. The State has also filed reply to the petition which in fact states nothing. Respondent-State places on record certain notifications

showing the commencement of the acquisition proceedings under Section 4 of the 'Act' way back in 1996.

10. On the pleadings, learned counsel appearing for the University submits that the order Annexure:P1 cannot be sustained for the reason that withdrawal from acquisition proceedings has to be notified in accordance with law for which purpose a notification is required.. Learned counsel Mr.Bipin Negi, appearing for the University relies upon the decision of the Supreme Court in *Rajinder Singh Bhatti and others Vs. State of Haryana and others, (2009) 11 SCC 480* The Court holds:

“18 On the contentions urged, two points arise for our consideration:

(1) Whether in view of the decision of the government in not approving the award proposed by the Collector, the award could not be made within the period of two years from the date of publication of declaration (final notification under Section 6) and the acquisition of land lapsed, would such lapse of acquisition proceedings amount to withdrawal from the acquisition by the State Government under Section 48(1) of the Act ?

(2) Whether the decision of the State Government for withdrawal from the acquisition under Section 48 (1) is mandatorily required to be published in the official gazette ?.....

30. The question now needs to be considered is: whether the decision of the Government for withdrawal of acquisition under Section 48(1) is required to be published in official gazette ?

31. It is true that Section 48 does not in express terms require the decision of the government for withdrawal of acquisition to be published in the official gazette. In Abdul Majeed, this Court has held that there should be publication of

the withdrawal of the notification published under Section 4(1) and declaration under Section 6 by exercising power under Section 48(1). Even on first principles, such requirement appears to be implicit. The Act provides for the publication of notification and declaration under Sections 4 and 6 of the Act in official gazette. Obviously the withdrawal from land acquisition proceedings by taking resort to Section 48(1) of the Act also must be in the like manner. As a matter of fact, this aspect is no more res integra.

32. *In the case of Larsen & Toubro Ltd. vs. State of Gujarat And Ors., (1998) 4 SCC 387, the identical contentions which have been advanced before us by the senior counsel were raised in that case. Section 21 of the General Clauses Act, 1897 was also pressed into service there. This Court considered: (SCC pp.407-08, paras 30-31)*

"30. It was submitted by Mr. Salve that Section 48 of the Act did not contemplate issue of any notification and withdrawal from the acquisition could be by order simpliciter. He said that Sections 4 and 6 talked of notifications being issued under those provisions but there was no such mandate in Section 48. It was thus contended that when the statute did not require to issue any notification for withdrawal from the acquisition, reference to Section 21 of the General Clauses Act was not correct. Section 21 of the General Clauses Act is as under:

"21. Power to issue, to include power to add to, to amend, vary or rescind, notifications, orders, rules or bye-laws.--Where by any Central Act, or Regulation, a power to issue notifications, orders, rules, or bye-laws is conferred, then that power includes a power, exercisable in the like manner and subject to the like sanction and conditions (if any) to add to, amend, vary or rescind any notifications, orders, rules or bye-laws so issued."

Mr. Salve said that Section 21 expressly referred to the powers being given to issue notifications etc. under an Act or Regulation and under this that power included power to

withdraw or rescind any notification in a similar fashion. It was therefore submitted that when Section 48 did not empower the State Government to issue any notification and it could not be read into that provision that withdrawal had to be issued by a notification. His argument, therefore, appeared to be that on correct interpretation of Section 21 of the General Clauses Act before reaching the stage of Section 48, the State Government could withdraw notifications under Sections 4 and 6 of the Act by issuing notifications withdrawing or rescinding earlier notifications and that would be the end to the acquisition proceedings. We do not think that Mr. Salve is quite right in his submissions. When Sections 4 and 6 notifications are issued, much has been done towards the acquisition process and that process cannot be reversed merely by rescinding those notifications. Rather it is Section 48 under which, after withdrawal from acquisition is made, compensation due for any damage suffered by the owner during the course of acquisition proceedings is determined and given to him. It is, therefore, implicit that withdrawal from acquisition has to be notified.

31. Principles of law are, therefore, well settled. A notification in the Official Gazette is required to be issued if the State Government decides to withdraw from the acquisition under Section 48 of the Act of any land of which possession has not been taken".

In view of the legal position exposited by this Court in the case of Larsen & Toubro Ltd., with which we respectfully agree, we hold, as it must be, that decision of the government for withdrawal from acquisition has to be published in the official gazette. We answer point (two) in affirmative."

(Pp.486,489,490&491)

11. Mr. Negi, learned counsel submits that the stage from the withdrawal of the acquisition and cancellation is before the actual possession is taken. In ***Mysore Urban Development Authority Vs. Veer Kumar Jain and others, (2010) 5 SCC 791***, the Court holds:

“12. We may first refer to the relevant principles in regard to withdrawal from acquisition under Section 48(1) of the LA Act:

(i) Sub-Section (1) of section 48 clearly provides that the Government will have liberty to withdraw from the acquisition of any land, of which possession has not been taken. Therefore, the power under Section 48(1) of the LA Act could only be exercised before the possession of the acquired lands is taken. Once possession of the land is taken by the government, the land vests in the government and the power of the government under Section 48(1) of the LA Act to withdraw acquisition in regard to such land would cease to exist.

(ii) Where possession of the acquired land has not been taken, the power and discretion under Section 48(1) of the LA Act can be exercised by the state government, but only in a fair and non-arbitrary manner. Consequently, no order under Section 48(1) of the LA Act can be passed by the government, without hearing the local authority for whose benefit the acquisition is made, particularly when the preliminary notification has been issued by such local authority, and the final declaration states that the lands are acquired for such authority for a public purpose. (Vide: Amarnath Ashram Trust Society v. Government of UP - 1998 (1) SCC 591, Larsen & Toubro Ltd. v. State of Gujarat - 1998 (4) SCC 387 and State Government Houseless Harijan Employees Association vs. State of Karnataka - 2001 (1) SCC 610).” (P.795)

12. Learned counsel also contends that no writ petition challenging acquisition proceedings is maintainable after the passing of the award. He relies upon the decision of the Supreme Court in ***Municipal Council, Ahmednagar and another Vs. Shah Hyder Beig and others, (2000) 2 SCC 48***. In particular, the court holds:

“17. In any event; after the award is passed no writ petition can be filed challenging the acquisition notice or against any proceeding thereunder. This has been the consistent view taken by this Court and in one of recent cases (C. Padma & Ors. v.

Dy Secretary to the Govt of T.N. & Ors, reported in [1997] 2 SCC 627. This court observed as below :-

"4. The admitted position is that pursuant to the notification published under Section 4(1) of the Land Acquisition Act, 1894 (for short "the Act") in GOR No. 1392 Industries dated 17.10.1962, total extent of 6 areas 41 cents of land in Madhavaram Village, Saidapet Taluk, Chengalpattu District in Tamil Nadu was acquired under Chapter VII of the Act for the manufacture of Synthetic Rasiua by Tvl. Reichold Chemicals India Ltd., Madras. The acquisition proceedings had become final and possession of the land was taken on 10.4.1964. Pursuant to the agreement executed by the company, it was handed over to Tvl, Simpson and General Finance Co. which is a subsidiary of Reichold Chemicals India Ltd, It would appear that at a request made by the said company, 66 cents of land out of one acre 37 cents in respect of which the appellants originally had ownership, was transferred in GOMs No. 816. Industries dated 24.3.1971 in favour of another subsidiary company, Shri Rama Vilas Service Ltd., the 5th respondent Which is also another subsidiary of the company had requested for two acres 75 cents of land; the same came to be assigned on leasehold basis by the Government after resumption in terms of the agreement in GOMs No. 439 Industries dated 10.5.1985. In GOMs 546 Industries dated 30.3.86, the same came to be approved of. Then the appellants challenged the original GOMs No. 1392 Industries dated 17.10.62 contending that since the Original purpose for which the land was acquired had ceased to be in operation, the appellants are entitled to restitution of the possession taken from them. The learned Single Judge and the Division Bench have held that the acquired land having already vested in the State, after receipt of compensation by the predecessor-in-title of the appellants, they have no right to challenge the notification. Thus the writ petition and the writ appeal came to be dismissed."

18. *Similar is the view in an earlier decision of this Court in the case of Municipal Corporation of Greater Bombay v. Industrial Development Investment Co, Pvt. Ltd and Ors, reported in [1996] 11 SCC 501. Incidentally, the decision last*

noted was also on the land acquisition and requisition under the Maharashtra Regional and Town Planning Act, 1966 and in paragraph 29 of the report, this Court observed : (SCC p.520)

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

(Pp.55 &56)

13. Turning to the last plea first, on the maintainability of the writ petition, that point was to be urged before the learned Division Bench of this Court which had entertained the petitions on 15th July, 1996 and 17th December, 1999. I need not enter into this controversy. On the first two points urged, it is clear that the possession of the land has not been taken and that a notification is required for de-acquisition. Order Annexure: P-1 cannot be treated as a notification. It has been urged by the State that in the case of other persons whose lands/houses etc. were de-acquired as mentioned in Annexure:P3 and

Annexure:P1, a notification, in fact, was issued de-notifying their acquisition.

14. It is also undisputed before me that the University has not agitated the de-acquisition of the holdings of these persons, who are mentioned in Annexure:R2/1(Annexure:P3) and Kamla Thushu but it is only respondent-Harbans Singh whose de-acquisition has been challenged. It would indeed be a very harsh step to resort to in the factual matrix of this case in case respondent No.2 is deprived of the possession of this shop. But since the possession has not been taken and the Government has already arrived at a decision vide Annexure:P-1, it will be open to the respondent-State to issue notification in accordance with law as laid down in *Mysore Urban Development Authority case (supra)*.

15. Before parting with this writ petition, I wish to make it absolutely clear that the respondent-Harbans Singh shall not be dispossessed in case the respondent-State is to issue a notification. I also see no reason as to why a notification cannot be issued when other persons as noticed above, have already obtained the benefit of de-acquisition. The writ petition is accordingly disposed of. No order as to costs. All interim order shall stand vacated.

**(Dev Darshan Sud),
Judge.**

September 29,2011(R)

