REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 3023-3024 OF 2022
(Arising out of S.L.P.(C) Nos. 23996-23997 of 2017)

U.P. AWAS EVAM VIKAS PARISHAD
THROUGH HOUSING COMMISSIONER .....Appellant(s)

Vs.

RAM SINGH (D) TH. LRS. & ORS. .....Respondent(s)

WITH

CIVIL APPEAL NOS. 3025-3026 OF 2022
(Arising out of S.L.P.(C) Nos. 23899-23900 of 2017)

J U D G M E N T

K.M. JOSEPH, J.

1. Permission to file SLP(C) Nos. 23899-23900 of 2017 is granted.

Delay condoned.

Leave granted.

2. These appeals have behind them a chequered history. It all began with the issuance of a Notification by the appellant under Section 28 of the U.P. Awas Evam Vikas Parishad Adhiniyam, 1965 (hereinafter referred to as the "Adhiniyam") on 10.11.1973. The said Notification is to be treated as equivalent to a Notification issued under Section 4 of the Land Acquisition Act, 1894, proposing to acquire among other lands, Khasra Plot No. 7 and Khasra Plot No. 3, having a total area of 5.98 Acres in a certain village which

originally belonged to one Shri Ram Ratan. It may be noticed here itself that Ram Ratan has passed away and the respondent-Ram Singh was his son and he has in turn passed away and is represented by his legal representatives. The appellant issued a Notification under Section 32 of the Adhiniyam on 17.8.1977. This is the equivalent to the Notification issued under Section 6 of the Land Acquisition Act. The urgency clause under Section 17(1) of the Land Acquisition Act was invoked on 18.07.1979. According to the appellant, the possession of the land was taken on 11.12.1981 and 31.3.1983.

The further case of the appellant is that there was a case of a sale effected by the original respondent-Ram Singh. There is a reference to the notice issued under Section 9 of the Land Acquisition Act on 25.09.1985 and an Award being passed on 28.09.1985.

3. It is the further case of the appellant that the original respondent-Ram Singh submitted an application on 19.11.1985 claiming compensation stating, *inter alia,* that he was the son of the Original Tenure Holder and that he had not executed any sale deed in respect of the land. There is a copious reference to certain litigation initiated against the subsequent purchasers (Dr. Raj Kumar Chaturvedi & Ors.). To come to the point in issue, it started with the Notification which was issued on 07.07.2005 purporting to exempt Khasra No. 3 and 7 from the acquisition. The appellant thereupon submitted a representation on 24.10.2005, inter alia, pointing out that the land has been acquired and the Award has been passed and what is more, possession was also taken. It is also contended that mutation was effected in favour of the

appellant. This led to the Government issuing Notification dated 25.04.2008. The Government in the said Notification cancelled the earlier Notification dated 07.07.2005 and directed the matter for consideration by the concerned department. Aggrieved by the said Notification dated 25.04.2008, respondent-Ram Singh filed a Civil Misc. Writ Petition No. 49944 of 2008. The said writ petition came to be allowed by the High Court by judgment dated 31.08.2010. Aggrieved by the judgment dated 31.08.2010, the appellant preferred special leave petitions SLP(C) Nos.34271 OF 2010 and 34090 of 2010. Leave was granted and Civil Appeal No. 6272 of 2012 and Civil Appeal No. 6273 of 2012 came to be disposed of by this Court permitting the appellant to seek a recall of the order dated 31.08.2010. The appellant moved an application for recall of order dated 31.08.2010 and the same was rejected by the High Court vide order dated 20.12.2016. The appellant challenges the orders dated 31.08.2010 and 20.12.2016. The other appeals are filed by the same appellant challenging the judgment on similar lines which have been passed in litigation lodged by persons claiming to have purchased from Shri Ram Singh in the year 1984.

4. We have heard Shri Vishwajit Singh, learned senior counsel appearing for the appellant and Shri Yatinder Singh, learned senior counsel appearing on behalf of the legal representatives of the original respondent – Shri Ram Singh as also Shri Anurag Ojha, learned counsel appearing for the subsequent purchaser(s).

5. Learned senior counsel for the appellant Shri Vishwajit Singh would urge before us that this is a case where all that was done by the impugned order dated 25.04.2008 was to withdraw the earlier order and to relegate the matter to the competent authority to take

a decision as to whether the Government should withdraw from the acquisition and there was no warrant for interfering with the said order by the High Court in the writ petition(s) filed by Shri Ram Singh and the so-called purchasers from Ram Singh.

It is pointed out that this is a case where the land in question forms the subject matter of the Notification issued under Section 28 of the Adhiniyam followed by the declaration under Section 6 of the Land Acquisition Act. This is followed up by issuance of notice under Section 9 of the Land Acquisition Act and finally it culminated in an Award. The amount due under the Award was duly deposited. All this is eloquently established by the unequivocal action of the respondent-original owner of the land in addressing a communication dated 19.11.1985:

> **"To,**
>
> **Special Land Acquisition Officer**
> **U.P. Avas Evam Vikas Parishad,**
> **Kamla Nagar, Agra**
>
> **Sir,**
>
> **In connection with taking the meaning of your letter no. 414/81 Dwa. (A.V. Parishad) dated 11.11.85 otherwise, this to inform you that the land of Khasra no. 3 and 7 has continuously been entering in the name of Ram Ratan and the applicant Ram Singh s/o Shri Ram Ratan r/o Nagari Mohalla, Mathura is the only son of Shri Ram Ratan and, thus, he is the sole owner of the said land. It is humbly submitted that the applicant has executed neither any Sale Deed nor Power of Attorney in respect of the aforesaid land. Therefore, you are requested to please grant compensation of the aforesaid entire land to the applicant Ram Singh. Submitted for consideration.**

Thanking you.

Yours faithfully,
Sd/- Illegible
Ram Singh s/o Ram Ratan
r/o Mohalla Nagari, Mathura

Date: 19.11.85

Sd/- Ram Singh"

6. He would submit that having accepted the fact of the Award being passed and what is more not bringing the procedure, antecedent to the passing of the Award under a cloud or not having questioned that the possession was indeed taken prior to the Award being passed, it does not lie in the mouth of the respondents to contend that possession was not taken. If possession was not taken, as is indeed the case, there is absolutely no jurisdiction with the Government to withdraw under Section 48 of the Land Acquisition Act. This went to the root of the matter.

It is further pointed out that apart from possession being taken, the matter had progressed to the stage where lay out had been approved. These lands are central and integral to the execution of a housing scheme evolved to cater to the needs of the Low-Income Group. The case of the appellant is attended with the highest public interest. Withdrawal from an acquisition which is not in conformity with the statutory provisions must not be lightly sabotaged, at the instance of the persons like the respondent herein who has held himself out as limiting his rights to laying a claim for the compensation which has been deposited by the appellant.

7. Per contra, Mr. Yatindra Singh, learned senior counsel

appearing for the respondents would stoutly oppose the appeals by pointing out that this is a case where the entire premise of the appellant is flawed. Possession within the meaning of Section 48 of the Land Acquisition Act cannot be symbolic. In other words, the taboo against withdrawal from acquisition is attracted only if actual possession has been taken. In this case, possession has not been taken. The efforts on the part of the appellant to establish possession through certain documents would at best show that possession was shown to be taken. This does not suffice in law to prevent the exercise of the power under Section 48 of the Land Acquisition Act.

As regards reliance placed on the communication dated 19.11.1985 wherein demand for request for disbursement of compensation is concerned, it is contended that it was deposited only in 2004 and it cannot determine the fate of this case.

More importantly, he drew our attention to the order dated 24.05.2008 which has been set aside by the High Court. He would point out that it has no legs to stand on in law for the reason that it is primarily founded on an order which was passed by the Government after the passing of the Notification dated 07.07.2005. In other words, the Notification dated 07.07.2005 was founded on the power ceded to the Revenue Department by the Government order dated 19.06.2002. The case of the appellant on the other hand which found acceptance with the Government in the order dated 25.4.2008 is based on the contents of the order dated 15.09.2006.

The order dated 15.09.2006 expressly has prospective operation. It does not affect the orders which have been passed earlier to it. On that short ground, the order dated 25.04.2008

would not have any legs to stand on. Secondly, he would point out that contrary to the complaint of the appellant, it is indisputable, having regard to the contents of the Notification dated 07.07.2005 that the appellant was offered an opportunity to make its representation or to be heard before the Notification dated 07.07.2005 was passed.

8. He would further contend that a government order must be judged in terms of what flows from its express terms. It is impermissible for an order passed under a statute by a public authority to be rendered valid by affidavits or submissions made in a Court. It must be judged on its own merits, with reference to the foundation which is laid in the order. Reliance is placed on the judgment of this Court in *Mohinder Singh Gill vs CEC* reported in 1978 (1) SCC 405.

9. The learned counsel for the respondent in the other appeal would also submit that this Court may notice that the appellant did not think it fit to challenge the Notification dated 07.07.2005. Therefore, no interference is called for.

10. The facts which are not in dispute are as follows:

There was a Notification which we will characterize as a Notification issued under Section 4 of the Land Acquisition Act on 10.11.1973. It is followed by a declaration under the provisions of Adhiniyam, which is equivalent to Section 6 of the Land Acquisition Act on 17.08.1977. Undoubtedly urgency clause was invoked under Section 17(1) of the Land Acquisition Act. An award was passed on 28.09.1985. It is also true that the original respondent in the first appeal did seek the compensation on the basis of award on 19.11.1985. On 19.06.2002 the Government has passed an order, the

terms of which read as follows:

"No.: 592/1-13-2002-Ra-13

From,
Harish Chandra
Principal Secretary
Govt. Of U.P.

To,
1. All Principal Secretaries/Secretaries
Government of U.P.

2. All Department Heads/Divisional Commissioners/District Magistrates, U.P.

Revenue Deptt.-13 **Lucknow: 19 June, 2002**

Sub: Regarding exemption of land from acquisition u/s 17 of the Land Acquisition Act, 1894

Sir,

On the aforementioned subject, I have been directed to state that the State Government has been receiving complaints from time to time that almost each case of land acquisition, Section 17 of the Land Acquisition Act is being used and despite using Section 17 of the Act, most of the Acquisition Bodies are neither providing required amount of compensation nor trying to take possession of the land. In some cases, where half-hearted efforts are made u/s 17 of the Act by the Administrative Departments of the Acquisition Body, they have been proved to be contrary to the essence of using Section 17 toward development projects of the State Government. In fact, most of the Acquisition Bodies, despite there being no necessity, used to make requests for using Section 17 of the Act in the proposed Scheme/Projects. As a result, even after passing of several years, neither the Acquisition Body takes possession of the acquired land nor the farmers get their compensation because of not providing funds from the Body.

In the event of using the provisions of Section 17

of the Land Acquisition Act, 1894, the provisions of Section 5A gets extinct and the landowners lost their right of opportunity of hearing. It is provided in Section 17 that possession of the land, in which Section 17 has been applied, should be taken on the expiration of fifteen days. As a result of not taking immediate possession and non-deposit of required money, the importance of Section 17 proves to be ineffective.

Therefore, with a view to prevent misuse of implementation of Section 17 in various development projects and after due consideration, it has been decided that the Acquisition Bodies should take immediate possession of the land where provisions of Section 17 have been used. Only the Revenue Department shall have the power to exempt any part of land whose possession has not been taken and such lands where necessity of acquisition is not required. The Administrative Deptt. of the Acquisition Body shall have no power to do so.

Yours faithfully,
Harish Chandra
Principal Secretary"

11. The respondents (sons of the respondent-Ram Singh) submitted the representation on 12.11.2003 to the Minister of Revenue complaining that they had not been issued any notice or opportunity of hearing and the entire acquisition was finalized ex-parte.

There was also a representation by the alleged subsequent purchasers on 10.12.2004. It is acting upon the same that the Government invoked Section 48 of the Land Acquisition Act, and issued a notification dated 07.07.2005. It reads as follows: -

"GOVERNMENT OF UTTAR PRADESH

REVENUE SECTION-13

No.: 31 RM/2-13-2005-7-5(11)/2004

Lucknow: 7 July, 2005

NOTIFICATION

For the purpose of acquiring land for the "Maholi Bhumi Vikas Evam Grihsthan Yojana No.2, Mathura" of the Uttar Pradesh Avas Evam Vikas

Parishad, Notification u/s 28 and 32 of the Uttar Pradesh Avas Evam Vikas Parishad Adhiniyam, 1965 were published on 10.11.1973 and 10.9.1977 respectively. The land of Khasra no. 7 rakba 3.12 acre and Khasra no. 3 rakba 2.66 acre (total rakba 5. 78 acre) situated in village Palikheda, Tehsil and Dist. Mathura was included in the aforesaid Yojana. The landowners of Khasra no. 7 and 3 sent their representation to the government on 12.11.2003 thereby requesting that the aforesaid land may be excluded from the acquisition mainly on the ground that the land is under their tenure and possession. That an electric tube well was installed in Khasra no. 3 which was used to irrigate both khasras. That a Shiv Temple comprising of two rooms was also situated on the said land which was built in 1970. Houses of the landowners are there near the Shiv Temple and at the time of acquisition, the Government overlooked the Shiv Temple and the houses/constructions on the land. As per rule, this land cannot be acquired. It was further submitted that on the aforesaid grounds, some land was exempted in the Maholi Yojana Part-1 vide Awas Anubhag G.O. dated 2.3.2001.

2. Photocopy of the aforesaid application of the landowners was sent to District Magistrate, Mathura and his report was sought in the matter. In this connection, the Special

Land Acquisition Officer, U.P.Avas Evam Vikas Parishad, Agra, who carried out the acquisition proceedings for the Yojana, vide his letter dated 16.6.2004, has informed that the landowners have not received the amount of compensation and the land is in their possession and they are dwelling on the land.

3. After getting aforesaid report from the Special Land Acquisition Officer, U.P.Avas Evam Vikas Parishad, Agra, another letter dated

7.8.2004 was sent to District Magistrate, Mathura, asking him as to whether Notice u/s 9 of the Land Acquisition Act, 1894 (as amended in 1984) was sent to the landowners or not. In reply to the query from the government, the Special Land Acquisition Officer, U.P.Avas Evam

Vikas Parishad, Agra, vide letter dated 7.10.2004 informed that as per the available record in the file, Notice u/s 9 of the Land Acquisition Act was not sent to the landowners.

4. In this connection, report was also sought from the U.P.Avas Evam Vikas Parishad vide letter dated 18.1.2005 followed by three reminders, but so far no report or interim reply has been received from the Avas Vibhag.

5. It is clear from perusal of all documents that the landowners did not receive compensation of Khasra no. 7 and 3 rakba 3.12 acre and 2.66 acre respectively (total 5. 78 acre). Despite passing 28 years from the dates of publication of Notification u/s 28 and 32 of the Parishad Adhiniyam for acquiring the land in question i.e. 10.11.1973 and 10.9.1977 respectively, the Acquisition Body did not

take any action for taking possession of the land. More so, any Notice u/s 9 of the Land Acquisition Act, which is a compulsory step for the acquisition, was not issued to the landowners. It indicates that the Acquisition Body does not have any interest on the land in question. In this connection, opinion of the Administrative Department of Acquisition Body i.e. Avas Evam Shahari Niyojan was sought vide letter dated 18.1.2005 but so far no reply has been received despite several reminders. Therefore, in view of the aforementioned facts and circumstances, specially in view of the fact that presently the land in question is under the physical possession of the landowners and no notice was sent to them u/s 9 of the Land Acquisition Act, 1894 (as amended in 1984) the Governor of Uttar Pradesh, while allowing the representation dated 12.11.2003 submitted by the landowners, has been pleased to exempt Khasra no. 7 and 3 rakba 3.12 acre and 2.66 acre respectively (total 5.78 acre) situated in village Palikheda, Tehsil and Dist. Mathura from acquisition u/s 48(1) of the Land Acquisition Act, 1894 (as amended in 1984).

Amarnath
Under Secretary”

It is apposite that the appellant did not deem it fit to challenge the same. Instead, appellant moved the Government on 24.10.2005. It is necessary to notice what the appellant has stated.

U.P. Avas Evam Vikas Parishad
(Land Acquisition Section)
No.: 242/ _____ /
Dated 24.10.05

To,

Principal Secretary
Govt. Of U.P.
Housing & Urban Planning Deptt.
Lucknow.

Sub.:Regarding exemption of Land Khasra no. 7 and 3 areas 3.12 Acre and 2.66 Acres respectively (total 5.78 Acres) situated Village Palikheda, Tehsil and District Mathura under Maholi Bhumi Vikas Evam Grihsthan Yojana No. 2 in District Mathura floated by Uttar Pradesh Avas Evam Vikas Parishad.

Dear Sir,

On the aforementioned subject, please refer to letter no. 1258/1-13-2005-7-5(II)/2004-Ra-13 dated 25.7.05 of the Revenue Deptt. 13, Government of U.P. and Notification No. 31/RM/2-13-2005-7-5(II)/2004 dated 7.7.05 (copy enclosed) by which copy of Gazette publication on this matter was sent for information and necessary action.

2. In this connection, it is to inform you that land Khasra no. 7 Rakba 3.12 Acre and Khasra No. 3 Rakba 2.66 Acres (total 5.78 Acres) situated Village Palikheda, Tehsil and District Mathura have been properly acquired under Maholi Bhumi Vikas Evam Grihsthan Yojana No. 2 in District Mathura and possession of the said land has already been given by the Special Land Acquisition Officer, Agra. Award of this land has also been declared and the land has been mutated in favour of the Parishad.

3.In regard to the aforesaid land, the Parishad obtained stay order on 29.4.92 in favour of the Parishad from the Hon'ble High Court of Allahabad by which the Hon'ble Court stayed all

actions for changing of nature and transfer of the said land.

4. The Layout Plan of the aforesaid land has been approved and work could not be carried out because of the Stay Order.

5. In case the Khasra numbers in question are exempted from acquisition, the road construction work as per the layout plan will be obstructed.

6. The Parishad had deposited the entire amount of compensation against the Award passed.

In view of the aforesaid facts, it does not appear proper to exempt land whose possession has already been taken. You are, therefore, requested to reconsider the orders relating to land exemption and get the order revoked.

Sd/- Niraj Kumar Gupta
Housing Commissioner

12. In the meantime, or rather after the notification dated 07.07.2005 and the request made by the appellant dated 24.10.2005, Government brought out another order dated 15.09.2006 which reads as follows:

No.: 1291/1-13-2006-20(46)/2002-Ra-13

From,
V.K. Sharma,
Principal Secretary
Govt. Of Uttar Pradesh.

To,
All Principal Secretaries/Secretaries
Govt. Of Uttar Pradesh.

Revenue Deptt. 13 Lucknow: 15 Sept, 2006

Sub: Delegation of the powers conferred u/s 48(1) of the Land Acquisition Act, 1894 (Amended 1984).

Dear Sir,

On the subject mentioned above, I have been directed to state that vide G.O. no. 592/1-13-2002-Ra-13 dated 19 June, 2002, decision has been taken that the Acquisition Bodies should take immediate possession of the land which has been acquired u/s Section 17 of the Land Acquisition Act. The Revenue Department shall have the power to release a part of land whose possession has not been taken and any such land where acquisition is not required by the Body. The Administrative Deptt. of the Acquisition Body shall have no power to that effect.

2. After passing the aforesaid G.O., it was realized that practical difficulties, especially, there was unduly delay in deciding the applications of landowners for exemption of their land. Therefore, it was found to be appropriate that proper and speedy decision can only be taken only by the Department who had carried out the acquisition proceedings of such land.

3. Therefore, after due consideration, the Government has decided that, while vacating the G.O. no. 592/1-13-2002-Ra-13 dated 19 June, 2002 with immediate effect, henceforth all applications relating to exemption of land from acquisition will be decided u/s 48(1) of the L.A. Act by the Administrative Department of the Acquisition Body, who carried out its acquisition proceedings.

4. Please ensure taking action in accordance with the aforesaid Government Order.

Yours faithfully,
Sd/- Illegible
V.K. Sharma
Principal Secretary

It is thereafter that the order in controversy, namely, the order dated 25.04.2008 came to be passed. The said order reads as follows.

GOVERNMENT OF UTTAR PRADESH
Revenue Section – 13

No.: 69/1-13-08-7-5(11)/2004-Sa.-13
Lucknow: 25 April, 2008

NOTIFICATION/CANCELLATION

The Revenue Department, by means of Notification No. 34/RM/1-13-2005-7-5(12)/2004 dated 7th July, 2005, had passed orders for exempting Khasra no. 7 rakba 3.12 acre and Khasra no. 3 rakba 2.66 acre (total 5.78 acre) from acquisition which was acquired in the year 1973 for its Maholi Bhumi Vikas Evam Grihsthan Yojana No. 2 in District Mathura under the provisions of U.P. Avas Evam Vikas Parishad Adhiniyam, 1965 in village Palikheda, Tehsil and District Mathura. The said Notification was issued by the Revenue Department in exercise of the power conferred in Govt. Order no. 592/1-13-2002-Ra.-13 dated 19 June, 2002 relating to exemption of land from acquisition.

2. While cancelling the aforesaid G.O. dated 19 June, 2002, the powers of Revenue Department relating to exemption of land from acquisition u/s 48(1) of Land Acquisition Act, 1894 (as amended in 1984) have been allocated to all Administrative Departments, vide G.O. No. 2991/1-13-2006-20(46)/2002-Ra.-13 dated 15

September, 2006. As per these orders, now the Department who carried out acquisition proceedings for the land shall have the power to dispose off the land exemption application and to take action thereon. The aforesaid powers were delegated to all Administrative Departments for the reason that sometime disputes arise in the event of possession and opinion of the Acquisition Body/Administrative Department do not receives in time to the effect as to whether possession of such land has been taken or not or whether the land is required by the Acquisition Body/Administrative Department or not. In this connection, it has been found that the Administrative Department of the Acquisition Body can take proper decision on all the aforesaid points.

3. The Awas Vibhag (Administrative Department) has raised objection against the contents of Para-1 and the Notification no. 34/RM/1-13-2005-7-5(12)/2004 dated 7th July, 2005 on the ground that the said Notification has been issued without taking consent from the Acquisition Body/Administrative Department which are adversely affecting the Schemes of the U.P. Avas Evam Vikas Parishad. The Administrative Department has requested for cancellation of the aforesaid Notification dated 7 July, 2005 of the Revenue Department.

4. After due consideration in the matter, it has been found that in the light of the situation mentioned in para 2 as well as contents of Notification no. 1291/1-13-2006-20(46)/2002-Ra-13 dated 15 September, 2006, it appears to be appropriate that disposal of applications received in this regard should be

done by the Administrative Department (Avas Vibhag). Therefore, the aforesaid Notification dated 7 July, 2005 is hereby withdrawn. The application of the landowner along with the report of the District Magistrate, Mathura is being forwarded to the Administrative Department (Avas Vibhag) with the remark that the matter may please be disposed off and proper/final decision taken in the light of the G.O. dated 15 September, 2006 issued by the Revenue Department and take further action accordingly.

Balwinder Kumar
Principal Secretary

It is this order which has been set aside and which has generated the appeals in question.

13. We may, before dealing with the controversy, notice the law on the point laid down by this Court. An acquisition of land is permitted to be made in public interest. Undoubtedly, Article 300A declares that it is a constitutional right of a person to protect his property from deprivation and deprivation can be permitted only in accordance with law.

14. However, in exercise of powers of eminent domain in regard to which law finds its manifestation in the Land Acquisition Act from time-to-time, lands/properties of individuals may have to be acquired, for which the procedure is stipulated in the Land Acquisition Act inter alia. Starting with a notification under Section 4 passing through the declaration under Section 6 followed up by notices under Section 9, finally it culminates in an award. In the meantime, if urgency warrants the immediate possession being

taken, possession can be taken by even dispensing with the inquiry under Section 5A when the notification is issued under Section 4 and after 15 days of the notice issued under Section 9(1) of the Land Acquisition Act. Section 48 of the Land Acquisition Act, 1894 read as follows:

> **"48. Completion of acquisition not compulsory, but compensation to be awarded when not completed. –(1) Except in the case provided for in section 36, the Government shall be at liberty to withdraw from the acquisition of any land of which possession has not been taken.**
>
> **(2) Whenever the Government withdraws from any such acquisition, the Collector shall determine the amount of compensation due for the damage suffered by the owner in consequence of the notice or of any proceedings thereunder, and shall pay such amount to the person interested, together with all costs reasonably incurred by him in the prosecution of the proceedings under this Act relating to the said land.**
>
> **(3) The provisions of Part III of this Act shall apply, so far as may be, to the determination of the compensation payable under this section."**

15. At first blush, it gives the impression that it gives an unbridled license, as it were, to the Government to withdraw from an acquisition. Since it is a power which is vested with a statutory authority as in the case of all power, the trammels of fairness in Governmental action and the imperative need to avoid

arbitrariness is inevitable in the exercise of the power under Section 48. This has been made clear by this Court in the Judgments reported in 1998 (1) SCC 591 and 1998 (4) SCC 387. In 1998 (1) SCC 591, the acquisition was made of land adjacent to the appellant's school. The government invoked Section 48 of the Land Acquisition Act, 1894. The reason stated for withdrawing was that as no part of the cost was to be borne by the government, the acquisition would not be sustained as for a public purpose. The court found the reason illegal being based on a misconception, arbitrary and not bonafide. The appellant succeeded. The government was left free to reconsider the matter. There is no arbitrary power to withdraw from the acquisition. The decision under Section 48 was held to be a justiciable issue.

In Larsen & Toubro Ltd. v. State of Gujarat and Others, 1998 (4) SCC 387 this court declared that a notification is to be published if power is to be exercised under Section 48, and furthermore opportunity must be given to the company for which the acquisition was being made. We notice the following discussion.

> **"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. An owner need not be given any notice of the intention of the State Government to withdraw from the acquisition and the State Government is at liberty to do so. Rights of the owner are well protected by sub-section (2) of Section 48 of the Act and if he suffered any damage in consequence of the acquisition proceedings, he**

is to be compensated and sub-section (3) of Section 48 provides as to how such compensation is to be determined. There is, therefore, no difficulty when it is the owner whose land is withdrawn from acquisition is concerned. However, in the case a company, opportunity has to be given to it to show cause against any order which the State Government proposes to make withdrawing from the acquisition. Reasons for this are not far to seek. After notification under Section 4 is issued, when it appears to the State Government that the land in any locality is needed for a company, any person interested in such land which has been notified can file objections under Section 5-A(1) of the Act. Such objections are to be made to the collector in writing and who after giving the objector an opportunity of being heard and after hearing of such objections and after making such further enquiry, if any, as the Collector thinks necessary, is to make a report to the State Government for its decision. Then the decision of the State Government on the objections is final. Before the applicability of other provisions in the process of acquisition, in the case of company, previous consent of the State Government is required under Section 39 of the Act nor unless the company shall have executed the agreement as provided in Section 41 of the Act. Before giving such consent, Section 40 contemplates a previous enquiry. Then compliance with Rules 3 and 4 of the Land Acquisition (Company) Rules, 1963 is mandatory required. After the stage of Section 40 and 41 is reached, the agreement so entered into by the company with the State Government is to be published in the Official

Gazette, This is Section 42 of the Act which provides that the agreement on its publication would have the same effect as if it had formed part of the Act. After having done all this, State Government cannot unilaterally and without notice to the company withdraw from acquisition. Opportunity has to be given to the company to show cause against the proposed action of the State Government top withdraw from acquisition. A declaration under Section 6 of the Act is made by notification only after formalities under part VII of the Act which contains Section 39 to 42 have been complied and report of the Collector under Section 5-A(2) of the Act is before the State Government who consents to acquire the land on its satisfaction that it is needed for the company. A valuable right, thus, accrues to the company to oppose the proposed decision of the State government withdrawing from acquisition. The State Government may have sound reasons to withdraw from acquisition but those must be made known to the company which may have equally sound reasons or perhaps more which might persuade the State Government to reverse its decision withdrawing from acquisition. In this view of the matter it has to be held that Yadi (Memo) dated 11.4.91 and Yadi (Memo) dated 3.5.91 were issued without notice to the appellant (L&T Ltd.) and are, thus, not legal.

16. The decision to withdraw from acquisition is justiciable. In other words, what is described as a liberty or a power with the Government must be understood also as being attended with the duty to act in a fair and bona fide manner. This means that present the

inevitable and indispensable requirement, namely, that actual possession of the land has not been taken under the Act, it is open in a fit and appropriate case and bearing in mind public interest and the facts for the Government to withdraw from the acquisition. It is the duty of the authority to be mindful of all relevant inputs before it takes a decision to withdraw from the acquisition. It is also clear that withdrawal from the acquisition must be preceded by offering an opportunity to the beneficiary at whose instance the acquisition is to be made. It is also clear that the withdrawal from acquisition can be made only by issuance of a notification. The reasoning for the same has been elaborately supplied in the judgment of this Court in the case of 1998 (4) SCC 387 (supra). In 2001 (1) SCC 610 this court reiterated that an opportunity of being heard must be given to the beneficiary before power is involved under Section 48.

17. A question may arise as to what is the true nature of the power exercised under Section 48. It is a power which is vested with a statutory authority. No doubt the power would be exercised in terms of the orders under which the competent authority would be empowered to act in the matter. Whoever is the authority which is exercising the power in accordance with the extant norms, he is exercising the power which would be subject to judicial review on well-settled principles in the face of a challenge to the exercise of the power.

18. The question would arise as to whether once the power has been exercised in the proper manner and it has culminated in a notification spoken of by this Court in 1998 (4) SCC 387 (supra), it is open to the authority to withdraw the notification. In this

case, a representation was given by the land owner and the alleged purchasers from the land owner. It was, inter alia, their case that possession had not been taken. On the basis of the said request, a Notification under Section 48 has been issued on 07.07.2005. The contents of the notification would tend to indicate, inter alia, that possession of the land was not taken and taking of possession is not actual possession. We have already noticed that the taking of possession which would prevent the exercise of power under Section 48 must be taking of khas possession or actual possession. The notification dated 07.07.2005 further recites that the appellant was notified about the proposal and what is more it was followed up by three reminders. It is further noticed that there was no response from the appellant. Therefore, this is not a case where flouting the law laid down by this Court, withdrawal from the acquisition was made under Section 48 without compliance with principles of Natural Justice as far as the beneficiary is concerned.

19. The order recites no doubt that there is no notice issued under Section 9 (3) of the Land Acquisition Act. Here we may notice that a perusal of Section 17 (1) of the Land Acquisition Act would show that the possession can be taken in cases where urgency clause is invoked, upon the expiry of 15 days of the publication of notice under Section 9 (1). Here the authority apparently has not looked into the question as to whether possession was taken with reference to the relevant date which is the publication of notice under Section 9 (1). Section 9(1) of the Land Acquisition Act in fact speaks about the need to give a public notice. Section 9 (3) speaks about duty to give individual notices to land owners. As correctly

pointed out by Shri Vishwajit Singh, non-service of notice under Section 9 (3) would not be sufficient to invalidate the acquisition. But then the relevance of Section 9(3) notice as pointed out by Shri Yathendra Singh is that if it had been produced and proved, it would have gone a long way in proving the case of the appellant that possession had in fact been taken. In this regard, it is apposite to notice that in the appeal carried by the appellant to this Court, the appellant held out that it had material to show that notice was issued. We may notice the contents of the order passed by this Court on 11.02.2016 in Civil Appeal No. 6272 of 2012.

> **"1. The challenge in the writ petition before the High Court was in respect of a notification dated 25.04.2008 cancelling an earlier notification dated 07.07.2005 by which the subject land was exempted in exercise of power under Section 48 of the Land Acquisition Act, 1894 (for short, "the Act"). The High Court allowed the writ petition and set aside the order dated 25.04.2008, inter alia, holding that the notification dated 07.07.2005 was legal and valid inasmuch as no notice 2 under Section 9 of the Act was issued nor possession had been taken over under Sections 16 or 17 of the Act. Accordingly, the High Court held that there was no power to issue the impugned notification dated 25.04.2008 superseding the earlier notification dated 07.07.2005.**
>
> **2. Before us, it is contended on behalf of the appellant that the High Court has committed a factual error in holding that no notice under Section 9 of the Act had been issued or that**

possession of the land had not been taken. The above-mentioned argument is sought to be canvassed on the strength of certain documents which have been laid before us along with memo of appeal. On being queried it is stated on behalf of the appellant that the said documents were also laid before the High Court but were not considered. The plea urged would find support from the counter affidavit filed on behalf of the appellant before the High Court. 3. As a consideration of the said documents would require us to determine several connected questions/issues of fact and may also require looking into the documents in original, we are of the view that instead of entertaining this appeal any further, it would be more appropriate for the appellant to move the High Court for recall of impugned order, if it so desires.

4. We, accordingly, dispose of the appeal in the above terms maintaining the interim order passed by this Court for a period of six weeks, within which it will be also open for the appellant to seek interim relief from the High Court.

5. We make it clear that we have expressed no opinion on the merits of the case."

20. An attempt was made by Shri Vishwajit Singh, learned senior counsel to lay store by notice dated 25.09.1985 and to claim it to be a notice under Section 9 (3):

"NOTICE
OFFICE OF THE SPECIAL LAND ACQUISITION OFFICER (II),
U.P. AVAS EVAM VIKAS PARISHAD, AGRA

No.: 6/8-SLAO(AVP) – Dated: 25.9.85

Subject: Maholi Bhumi Vikas Evam Grihsthan Yojana No. 2, Mathura

Shri Ram Ratan s/o Ghure

Village Nakati, Mathura

By way of this Notice, this is to inform you that 28.9.85 has been fixed for passing Award for the land of Village Palikheda, Pargana, Tehsil and District Mathura which has been acquired under the aforesaid Yojana.

Therefore, it is requested to be present on the aforesaid date before me in Collectorate, Mathura and be informed about the Award.

Sd/- illegible
25.9.85
Atma Ram Tripathi
Special Land Acquisition Officer
U.P. Awas Evam Vikas Parishad, Agra

Sd/- Ram Singh

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Sir,

As per your instructions, I went to the aforesaid address to deliver the Notice. Receiver Ram Ratan was not found to be present in the house.

Therefore, one copy of the notice was handed over to the son of the addressee and obtained his signature.

Sd/- Ram Autar"

21. The contents of the notice would clearly show that it cannot be understood as a notice under Section 9(3). Instead, it is a notice notifying the owner about the fact that the award is going to be passed on 28.09.1985. We may notice that the date of the so-called notice under Section 9 (3) is 25.09.1985. A notice under section 9 is to be followed by enquiry under Section 10 and award under Section 11 certainly cannot be confused with notice which merely notifies the owner about the date fixed for passing the award. There is only a gap of three days between the date of the notice and the date fixed for passing of the award. Therefore, the appellants have not been able to establish any notice under Section

9 (3) was issued.

22. It is no doubt true that Shri Vishwajit Singh is correct in pointing out that the recitals in the award are that the respondent (original owner's son) was heard and, in the award, it is mentioned also that there was a money suit which was decreed against the respondent and the decretal amount came to be partially adjusted from out of the proceeds of the award.

23. However, passing on to the premise of the impugned order dated 25.04.2008, we find that after referring to the request made by the appellant, the authority has purported to draw support from the order dated 15.09.2006 issued by the Government. The order dated 15.09.2006 undoubtedly proclaimed that exemption from acquisition or rather withdrawal from acquisition must receive the attention of the concerned department. Its terms would indicate that Government decided to do away with the earlier order passed in the year 2002. The order dated 15.09.2006 is explicit in that, it was to have an 'immediate effect'. This means that it was not retrospective. This further inevitably means that it cannot affect orders/notifications which had been issued invoking power under Section 48 prior to 15.09.2006. Yet a perusal of the order dated 25.04.2008 would reveal that the Government has proceeded to act on the basis of order dated 15.09.2006. In other words, the impugned order which has been set aside by the High Court is entirely based on an order which has no application to the facts. We say this for the reason that we wish to clarify that it is not as if when a notification is issued under section 48, it can never be undone irrespective of the facts obtaining in a case. Apart from the fact that it is open to challenge in a court of law at the instance of an aggrieved party

in a given case if it is shown it is procured by fraud, it may be open to the authority to undo the same. It is an administrative order, no doubt issued under a statutory provision by a public authority. Since the law is that principles of natural justice apply and the power can be exercised only after offering an opportunity to the beneficiary as distinct from the owner, in a case where it is found that a notification was issued without notice, which is indispensable to passing of a valid notification, it may be open to the Government to undo the effect of the notification. In the facts of this case, it is not even the case of the appellant in its representation that the recital in the notification that it was given opportunity to make its representation against the proposed action was wrong. The appellant did not have a case in its representation that it was not given any opportunity to represent against the order. The appellant seeks to make good this omission by contending that a ground was raised that there was violation of natural justice. We do not think we should permit the appellant to make good an omission which stares in our faces, in the facts of this case. We think that the appellant has not made out a case for interference with the impugned orders. Thus, the appeals stand dismissed. This will not stand in the way of the appellant to acquire the lands in accordance with law. Parties are left to bear their respective costs.

.....J.
(K.M. JOSEPH)

.....J.
(HRISHIKESH ROY)

New Delhi;
April 20, 2022.