Urban Improvement Trust vs Vidhya Devi on 13 December, 2024

2024 INSC 980 Reportable

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 14473 OF 2024
(ARISING OUT OF SLP (C) NO. 12116 OF 2010)

URBAN IMPROVEMENT TRUST ... APPELLANT

VERSUS

SMT. VIDHYA DEVI AND ORS. ... RESPONDENTS

WITH

CIVIL APPEAL NO. 14474 OF 2024
(ARISING OUT OF SLP (C) NO. 6226 OF 2010)

WITH

CIVIL APPEAL NO. 14475 OF 2024
(ARISING OUT OF SLP (C) NO. 23316 OF 2010)

AND

CIVIL APPEAL NO. OF 14476 OF 2024
(ARISING OUT OF SLP (C) NO. 23313 OF 2010)

JUDGMENT

17:21:48 IST Reason:

J. B. PARDIWALA, J. :

For the convenience of exposition, this judgment is divided into the following parts: -

1. Leave granted.

2. Since the question of law involved in all the captioned appeals is the same, they were taken up for hearing analogously and are being disposed of by this common judgment and order.

3. The present appeals arise from a common judgment passed by the High Court of Judicature for Rajasthan at Jaipur dated 29.10.2009 in D.B. Special Appeal (Writ) No. 669/1999 in Civil Writ Petition No. 2171/1998 and D.B. Civil Special Appeal (Writ) No. 673/1999 in S.B. Civil Writ Petition No, 2204/1998 respectively whereby the High Court allowed the writ appeals and thereby quashed the land acquisition proceedings initiated by the appellant Trust.

A. FACTUAL MATRIX

4. The Urban Development Department, Government of Rajasthan, Jaipur, issued a notice under Section 52(2) of the Rajasthan Urban Improvement Act, 1959 (the "RUI Act"), published in the official gazette on 01.07.1976, to one Ram Narain, proposing to acquire land bearing Survey no. 229 measuring 2 bighas & 2 biswas and Survey no. 229/ 287 measuring 2 bighas & 18 biswas situated in Village Nangli Kota, Tehsil & District Alwar (the "Nangli Kota lands"). These parcels of land were owned and possessed by Yogesh Chandra Goyal, Radheyshyam Goyal, Manohar Lal, Krishan Murari, Omprakash Goyal, Suresh Chandra Goyal and Ashok Kumar Goyal, the sons of Ram Narain as well as Kamla and Kesar Bai, the daughters of Ram Narain.

5. The appellant and the State Government also sought to acquire the land bearing Survey no. 141 measuring 3 bighas and 9 biswas situated in Village Moongaska, Tehsil and District Alwar (the "Moongaska land"), owned and possessed by Ram Narain, Radheyshyam, Manohar Lal and Yogesh Chandra Goyal.

6. Ram Narain was the khatedar of the Nangli Kota and Moongaskar parcels of land. He passed away in 1973. The Nangli Kota land was inherited by his seven sons and two daughters. As regards the Moongaska land, the same was purchased on 25.07.1966 by four individuals jointly by way of different sale deeds. Ram Narain's portion of the Moongaska land was inherited by his seven sons and two daughters after his demise. However, the names of the two daughters were not included in the list of legal heirs submitted by the seven sons of late Ram Narain and did not become a part of the mutation records until much later on 22.03.1985.

Acquisition proceedings for the Nangli Kota lands

7. The acquisition proceedings for the Nangli Kota lands came to be initiated on 01.07.1976 when the Urban Development & Housing Department, Government of Rajasthan, Jaipur issued a notification under Section 52(2) of the RUI Act. Accordingly, Ram Narain was informed about the intention to acquire the Nangli Kota lands.

8. In response to the said notice, the legal heirs of late Ram Narain that is, his seven sons, appeared before the Officer on Special Duty, Urban Improvement Trust (the "OSD") from time to time and sought time to submit proof regarding their ownership of the said land.

9. On 28.04.1977, the OSD sent a letter to the State Government under Section 52(3) of the RUI Act recommending for issuance of notification under Section 52(1) of the RUI Act.

10. Thereafter, the State Government issued a notification under Section 52(1) of the RUI Act on 16.06.1977 and the same was published in the official gazette on 23.06.1977 showing the names of all seven sons of late Ram Narain. In such circumstances, as per the sub-sections (1) and (4) of Section 52, the said lands vested completely, free from all encumbrances, in the State Government.

11. On 06.06.1980, the respondents submitted a statement of admission agreeing to receive compensation amount of Rs. 90,000/- for the acquisition of the Nangli Kota lands. The OSD issued an order dated 01.07.1980 under Section 53(3) of the RUI Act for settlement of compensation amount at Rs. 90,000/- in respect of the Nangli Kota lands.

12. In the meantime, the Registrar, Board of Revenue, Ajmer sent a letter dated 22.03.1980 to the appellant Trust apprising them of the ongoing litigation before the Revenue Appellate Authority with respect to the land bearing Survey no. 229 and instructed the appellant Trust not to deposit the compensation amount till the final decision of the appeal.

13. According to the appellant Trust, the memo of handing over of the possession of the Nangli Kota lands under Section 52(5) of the RUI Act was signed by all seven sons of late Ram Narain on 23.10.1980 and the subject land was handed over to the State Government by way of voluntary surrender. However, the respondents maintain that possession was not handed over to the State Government either voluntarily or forcibly. No record of possession of the subject land being taken by the OSD has been maintained in the note sheet of the OSD.

14. On 15.01.1981, the possession of the Nangli Kota lands was handed over to the appellant Trust under Section 52(7) of the RUI Act by the State Government. Thereafter, the said lands came to be mutated in the revenue records in favour of the appellant Trust on 15.06.1981.

15. The appellant Trust, on 31.12.1997, made a reference before the court of the Senior Civil Judge, Alwar in which an amount of Rs. 2,72,714/- was deposited i.e., Rs. 90,000/- along with 12% interest p.a. from 15.01.1981 to 15.12.1997.

16. A notice was issued by the reference court to the respondents to collect the amount towards compensation. After receiving the said notice, the respondents challenged the acquisition proceedings before the High Court in S.B. Civil Writ Petition no. 2171/1998 on the ground that since no award was passed within a period of two years, the acquisition proceedings stood lapsed.

17. A single judge of the High Court vide order dated 13.04.1999 rejected the writ petition holding that in view of Section 60A(4) introduced by the Amending Act, 1987, any land having stood vested in the State government prior to the 01.08.1987, the acquisition of the same cannot be challenged on the ground that no amount of compensation was deposited and paid to the landowners in accordance with Section 3A and Section 17A of the Land Acquisition Act, 1894.

18. After the above referred order, the Nangli Kota lands came to be mutated in the name of the appellant Trust.

Proceedings before the Revenue Authorities regarding ownership of the land bearing Survey no. 229

19. The Tehsildar, Alwar presented an application before the Court of Sub-

divisional Officer, Alwar (the "SDO") on 30.11.1968 for correction of entries under Section 88 of the Rajasthan Tenancy Act, 1955 in respect of the land bearing Survey no. 229 (one of the parcels of land constituting the Nangli Kota lands). It was contended by the State Government that since the area under the said land was "Banjar Kadim" that is, it was never under cultivation, therefore, it was wrongly entered into the name of the predecessors of the respondents.

20. After a period of four years, the SDO rejected the application of the Tehsildar, Alwar on 28.03.1972 and held that the land bearing Survey no. 229 was "Abadi" land that is, the land was supposed to be used for residential purposes and was outside the purview of agricultural or commercial land.

21. Aggrieved by the order of the SDO, the Tehsildar, Alwar filed an appeal before the Revenue Appellate Authority, Alwar, which was allowed on 06.07.1977, and the land was declared to be "siwaichak" land or government land available for allotment for agricultural purpose.

22. The appellant Trust addressed two letters dated 02.12.1980 and 05.01.1981 respectively to the Tehsildar, Alwar stating that the land bearing Survey no. 229 already stood vested with the State Government after the issuance of the notification under Section 52(1). It was further informed to the

Tehsildar that as per Jamabandi Khatuni no. 37/ 20 the said land was shown running under the name of Ram Narain and only the compensation amount remained to be paid by the appellant Trust. Further, the appellant Trust requested the office of the Tehsildar to ascertain whether the nature of the subject land was determined to be 'siwaichak' (government land) or was in the name of Yogesh Chandra Goyal. However, the documents put on the record before us show no communication from the Tehsildar, Alwar or any official of the State Government to the appellant Trust informing about the status of the proceedings.

23. The respondents filed a revision application before the Board of Revenue, Ajmer against the order of the Revenue Appellate Authority. The Board of Revenue vide its order dated 30.12.1983 set aside the order of the Revenue Appellate Authority and allowed the revision application of the respondents.

24. Pursuant to the order of the Board of Revenue, the land bearing Survey no. 229 was mutated in the name of the respondents that is, the seven sons of late Ram Narain. The two daughters of Ram Narain also got their names substituted in the mutation records in respect of the said land.

25. Thereafter, the appellant Trust filed a writ petition bearing number S.B. C.W.P. No. 1223/1985 before the High Court praying for setting aside of the order of the Board of Revenue on the ground that the appellant Trust was not impleaded in the proceeding therein despite the transfer of possession of the land bearing Survey no. 229 to it in pursuance of the acquisition proceedings initiated on 01.07.1976. The single judge of the High Court dismissed the writ petition on the grounds that: (1) the appellant Trust should have sought a further relief of decree of possession of the land in addition to a declaratory relief, which was not done in the instant case; and (2) it was incumbent upon the State Government to have informed the Board of Revenue that the possession of the subject land was handed over to the appellant Trust, by giving an application under Order 22 Rule 10A of the Code of Civil Procedure, 1908, as this was a fact that was within the special knowledge of the State Government. It could not come to the knowledge of the respondents that the land had been transferred by the State to the appellant Trust and therefore, the respondents could not be held liable for not impleading the appellant in the proceedings before the Board of Revenue.

26. The appellant Trust, aggrieved by the judgment delivered by the single judge, filed an appeal in D.B. Special Appeal Writ No. 20/2012. The division bench of the High Court in its order dated 01.12.2014 observed that the appellant Trust had only reiterated the submissions made before the single judge. The said submissions were considered at length by the single judge and therefore, did not warrant any interference from the division bench. Consequently, the appeal was held to be devoid of merits and was accordingly dismissed.

27. The appellant Trust filed a Special Leave Petition bearing SLP Civil Diary No. 29045/2018 before this Court, which is still pending adjudication.

28. In the meantime, the State Government issued a notification dated 07.01.1990 under Section 4 of the Land Acquisition Act, 1894 in respect of the land bearing Survey no. 229, which was published in the official gazette on 03.09.1990. The purpose of the acquisition under the said

notification was same as the purposes set out in the notification dated 16.06.1977 under Section 52(1) of the RUI Act. However, the notification under Section 4 was not followed by a notification under Section 6 of the Land Acquisition Act, 1894.

Acquisition proceedings for the Moongaska land

29. The acquisition proceedings for the Moongaska land were initiated on 01.07.1976 when the Urban Development & Housing Department, Government of Rajasthan, Jaipur issued a notification under Section 52(2) of the RUI Act. Late Ram Narain was informed of the same by way of a notice. The subject land was individually purchased by Ram Narain, Radhey Shyam Goyal, Yogesh Chandra Goyal and Manohar Lal, however, the notice did not clearly specify as to from whose portion of land, the acquisition was sought to be done.

30. In response to the said notice, the legal heirs of late Ram Narain that is, his seven sons appeared before the Officer on Special Duty, Urban Improvement Trust (the "OSD") from time to time and sought time to submit proof regarding their ownership of the said land.

31. On 28.04.1977, the OSD sent a letter to the State Government under Section 52(3) of the RUI Act for issuing notification under Section 52(1) of the RUI Act.

32. Thereafter, the State Government issued a notification under Section 52(1) of the RUI Act on 16.06.1977 and the same was published in the official gazette on 23.06.1977 showing the names of late Ram Narain, Radhey Shyam, Yogesh Chandra Goyal and Manohar Lal, being the landowners. In such circumstances, as per sub-sections (1) and (4) of Section 52, the said lands vested completely, free from all encumbrances, in the State Government.

33. The order of the OSD dated 25.09.1978 passed under Section 52(3) of the RUI Act recorded that the amount of compensation could not be determined by way of a mutual agreement, therefore, a reference under Section 53(4) of the RUI Act was made to the Collector, Alwar on 26.08.1982.

34. The OSD wrote a letter dated 29.05.1982 asking the respondents to handover the vacant and peaceful possession of the Moongaska land under Section 52(5) of the RUI Act within 30 days failing which, the possession would be taken over by force under Section 52(6) of the RUI Act. On 16.07.1982, the possession of the said land was taken over by the State Government under Section 52(6) of the RUI Act. However, the respondents maintain that no actual or physical possession of the subject land was ever taken by the State Government. Further, the payment of compensation by the appellant Trust was condition precedent for transferring possession of the subject land to it, yet the same was not done in contravention of the provisions of the RUI Act.

35. On 22.07.1982, the possession was handed over to the appellant Trust by the State Government under Section 52(7) of the RUI Act.

36. By order dated 17.01.1988 passed by the City Magistrate, Alwar in compliance of Section 60A of the Rajasthan Urban Improvement (Amendment) Act, 1987 (the "Amending Act, 1987"), the total

amount towards compensation was fixed at Rs. 27,600/-. The appellant Trust was liable to pay compensation to the extent of 80% of the total compensation decided, which was to be distributed amongst Radhey Shyam, Yogesh Chandra Goyal and Manohar Lal. A notice was issued to the respondents by the City Magistrate, Alwar on 27.01.1988, to collect the 80% compensation amount by 30.01.1988. A messenger from the appellant Trust also went to the residence of the respondents on 28.01.1988 to hand over the compensation amount but the respondents declined to receive the same on the grounds that compensation for the Moongaska land was supposed to be computed in accordance with the Land Acquisition Act, 1894, which was not done in the instant case and that no separate apportionment of the amount towards compensation was done for different owners.

37. The respondents challenged the legality and validity of the acquisition proceedings before the High Court in S.B. Civil Writ Petition no. 2204/1998 on the ground that since no compensation had been paid to the respondents, the acquisition proceedings stood lapsed. A single judge of the High Court vide order dated 13.04.1990 rejected the writ petition holding that no fault could be found with the final notification which was published in 1977 and having regard to the provisions of Section 60A(4) introduced by the Amending Act, 1987, the proceedings cannot be interfered with merely on the ground that compensation was not paid to the respondents. However, liberty was reserved in favour of the respondents to collect the amount towards compensation if they had not been paid yet.

38. The Land Acquisition Officer, Urban Improvement Trust, Alwar wrote a letter dated 11.08.1999 to Vinod Kumar Goyal and other respondents to collect the compensation amount otherwise, the same would be deposited in court through reference. After the order passed by the single judge, the Moongaska land was mutated in favour of the appellant Trust. Impugned judgment of the High Court

39. A division bench of the High Court allowed the appeal filed by the respondents herein on three grounds. First, there was no substantial delay in filing of the writ petitions by the landowners.

40. Secondly, it was held that Section 52(2) mandatorily required that individual notices be served on the landowners so that each owner would be in a position to lodge objections against the intended acquisition. It was also held that issue of individual notices under Section 52(2) is condition precedent to the issuance of notification under Section 52(1). As the notices under Section 52(2) were not served properly in accordance with the provisions of the said section in connection with both the Nangli Kota lands and Moongaska land, the notification under Section 52(1) was liable to be quashed.

41. Thirdly, the appellant herein and the State Government had failed to determine the amount towards compensation in respect of the Moongaska land in accordance with Section 60A of RUI Act as introduced by the Amending Act, 1987.

B. WRITTEN SUBMISSIONS OF THE APPELLANT

42. As regards the Nangli Kota lands, Ms. Archana Pathak Dave, the learned senior counsel for the appellant submitted as follows:

> a) Ms. Dave addressed herself mainly on two issues: (1) Whether the appellant fully complied with the mandatory requirements as laid in Section 52 of the RUI Act for the purpose of acquisition of the Nangli Kota lands and whether the acquisition proceedings initiated vide the notification dated 16.06.1977 could have been declared void?; and (2) Whether the appellant was required to pay Rs. 90,000/- towards compensation for the acquisition of the Nangli Kota lands?
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> b) As regards the first issue, the learned senior counsel submitted that the appellant issued a notification dated 01.07.1976 under Section 52(2) of the RUI Act to Ram Narain proposing to acquire the Nangli Kota lands.

The said notice was also published in the official gazette. The learned senior counsel fairly conceded that on 01.07.1976, Ram Narain was dead and gone.

c) In response to the said notice, the legal heirs of Ram Narain that is, his seven sons appeared before the Officer on Special Duty (OSD) and sought time to place on record the proof of their ownership of the Nangli Kota lands. The respondents submitted various representations in respect of the proposed acquisition proceedings vide letters dated 30.10.1976, 01.11.1976, 30.12.1976, 17.01.1977, 07.02.1977, 24.02.1977 and 10.03.1977. However, the respondents never apprised the OSD that there was a litigation pending between them and the state government regarding the nature and ownership of one parcel of the Nangli Kota lands bearing Survey no. 229. This, according to Ms. Dave, was a willful concealment of facts on part of the respondents.

d) On 28.04.1977, the OSD sent a letter to the State Government recommending for the issuance of a notification under Section 52(1) of the RUI Act for acquisition of the Nangli Kota lands.

e) The State Government, on 16.06.1977 issued a notification under Section 52(1) which was published in the official gazette on 23.06.1977. The learned counsel has submitted that since the said notice showed the names of all the seven sons of late Ram Narain, the notification under Section 52(1) was valid as per the provisions of the RUI Act.

f) The learned counsel relied on this Court's judgment in Pratap v. State of Rajasthan, reported in (1996) 3 SCC 1 to submit that after the issuance of the notification under Section 52(1), the land vested completely in the State Government free from all encumbrances, as per sub-sections (1) and (4) of Section 52.

g) Further, the respondents were aware of the proposed acquisition proceedings and appeared before the OSD who heard them at every stage of the proceedings. This is substantiated by the fact that the respondents sought time on multiple occasions to produce proof of their ownership of the Nangli Kota lands. The respondents also had the benefit of legal expertise and guidance all throughout the acquisition proceedings which is evident from the power of attorney or vakalatnama

placed on record on behalf of the respondents. Therefore, it could not be said that the respondents being laymen had no proper knowledge of the legal implications involved in the acquisition process.

h) The learned counsel relied on this Court's judgment in Special Deputy Collector, Land Acquisition CMDA v. J. Sivaprakasam and Ors., reported in (2011) 1 SCC 330 to submit that there was no requirement on the part of the acquiring authority to prove actual service of notice of proposal to acquire land, on the person whose land is sought to be acquired. The purpose of notice is to make the owner(s) or interested parties aware about the proposed acquisition and therefore, such knowledge can also be inferred by way of implied or constructive notice.

i) The notification issued under Section 52(1) of the RUI Act contained names of all the seven sons of late Ram Narain and the same was issued after the respondents had appeared before the OSD. Therefore, the purpose of issuing the notice under Section 52(2) notice was achieved when all the interested parties appeared before the OSD and no individual service of notice or pasting of the notice at a conspicuous place of the locality was required. The learned senior counsel submitted that the High Court erred in holding the notice to be invalid taking a hyper technical view.

j) There is a presumption as per illustration (e) of Section 114 of the Evidence Act, 1872 that the notification under Section 52(1) was in conformity with the provisions of the RUI Act. Such presumption has not been dislodged by the respondents as no specific plea has been taken by them in respect of: (a) lack of power/authority of the person issuing the notification; and (b) that the procedure prescribed has not been followed in entirety, that is, no notice at all was issued to and served on any of the owners. Moreover, once the respondents participated regularly in the acquisition proceedings before the OSD and also handed over the possession of the lands proposed to be acquired on 23.10.1980, no question of argument of non-compliance of the provisions of the RUI Act could have been accepted.

k) Further, the respondents filed a writ petition before the High Court in the year 1998. There was an inordinate delay of 21 years in challenging the acquisition proceedings which were initiated in the year 1976. The High Court erred in holding that the delay in approaching the court could be at best 5 to 6 years on the reasoning that the State Government issued and published the notification in the gazette to acquire the Nangli Kota lands on 03.09.1992. The appellant clarified that although the respondents were seeking to challenge the notification dated 16.06.1997 yet, the acquisition proceedings had begun in the year 1976. The subject land was handed over to the appellant on 15.01.1981. Therefore, taking the year 1976 to be the point of cause of action, the appellant submitted that the respondents approached the High Court 21 years after vesting of the said lands in the State Government. The learned senior counsel made an additional submission that once the land stood vested in the State and the possession was handed over to the appellant, the appellant could be said to have acquired ownership of the land.

l) The Nangli Kota lands were acquired in the year 1977 for the purpose of a residential scheme. The general public would have been the beneficiary. However, the protracted litigation and inordinate delay frustrated the very purpose for which the land was even though the subject land has been in the possession of the appellant and lying vacant for almost 50 years.

m) As regards the issue of quantum of compensation raised by the appellant, the learned counsel submitted that sub-section (3) of Section 53 provided for methods of determination of compensation. One of the methods provided therein was that compensation can be determined by way of an agreement between the State Government and the person to be compensated. Section 53(4) provided that where no such agreement could be reached, the State Government shall have to refer the case to the Collector for determination of the amount of compensation to be paid.

n) In the case of Nangli Kota lands, the amount towards compensation to be paid to the respondents was decided as per the statement of acceptance dated 06.06.1980 and a draft agreement under Section 53(3) duly signed and submitted on a stamp paper, by the seven sons of late Ram Narain. The said agreement stipulated that the respondents shall accept an amount of Rs. 90,000/- in lieu of the 5 bighas of the land. The respondents also agreed to hand over vacant and peaceful possession of the subject lands to the State Government or any other person specified in their behalf. The appellant submitted that the State Government agreed to the amount of compensation as proposed in the draft agreement and eventually paid the said amount in the court and therefore, whether the draft agreement was signed or not by the State Government was of no significance.

o) The appellant submitted that the Registrar, Board of Revenue, Ajmer vide its letter dated 22.03.1980 addressed to the appellant Trust had instructed that in view of the pending litigation with respect to the ownership of the Nangli Kota land before the revenue authorities, the amount towards compensation need not be deposited in court. Therefore, the payment towards compensation got delayed till the year 1997. The appellant thereafter, had addressed a letter dated 02.12.1980 to the Tehsildar, Alwar informing that the Nangli Kota land had already been vested with the State Government with the issuance of the notification under Section 52(1) of the RUI Act and asked the Tehsildar, Alwar vide letter dated 05.01.1981 that the issue as regards the ownership of the said land, once decided, should be informed to the appellant immediately.

p) The State Government had moved an application before the court of sub-divisional officer, Alwar seeking correction of entries with respect to one of the parcels of the Nangli Kota lands and had asked for a declaration of the same as “sivaichak land” (barren land) to be recorded in the name of the State Government. The court of sub-divisional officer rejected the said application and declared the concerned land to be an “abadi” land whose ownership was to remain with the respondents. Thereafter, on appeal, the Revenue Appellate Authority heard the matter ex parte and declared the said land to be “sivaichak” land, to be recorded in the name of the State Government. In pursuance of this order, the mutation of the lands was done in the name of the State Government. The State Government mutated the Nangli Kota lands in favour of the appellant Trust on 15.06.1981. The respondents filed a second appeal before the Board of Revenue, Ajmer against the aforesaid order but did not make the appellant a party to the litigation. The Board of Revenue allowed the second appeal on 30.12.1983 and ordered for the transfer of the land in the name of the respondents. On 20.03.1985, the relevant entries were mutated in the revenue records which transferred the Nangli Kota land from the Department Urban Improvement Trust, Alwar to the seven sons and two daughters of late Ram Narain.

q) On 31.12.1985, the appellant filed a writ petition before the High Court against the order of the Board of Revenue, Ajmer dated 30.12.1983 on the ground that the said order affected the rights of the appellant, without being joined as a party before the Board of Revenue. A single judge of the High Court dismissed the writ petition on 30.08.2011 which was upheld by a division bench on 01.12.2014. The appellant has had filed a SLP before this Court, which is pending adjudication.

r) The appellant clarified the revenue entries and status of possession of both the parcels of lands forming part of the Nangli Kota lands as under:

> • The lands bearing Khasra no. 229 as well as Khasra no. 229/287 situated in Village Nangli Kota, were mutated in favour of the appellant Trust on 15.06.1981.
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> • The order of Board of Revenue dated 30.12.1983 led to the mutation of only Khasra no. 229 in favour of the seven sons and two daughters of late Ram Narain. The appellant asserted that the names of the two daughters never figured in any ownership documents of the said land before and was also never mentioned by the seven sons of late Ram Narain, who regularly appeared before the OSD in the acquisition proceedings. • The land bearing Khasra no. 229 was again mutated in favour of the appellant Trust and till date continues to remain recorded in favour of and possession of the appellant Trust.
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> s) It was submitted that in the case of compulsory acquisition, there is no provision in the RUI Act which provides that the landowners may decline to hand over the possession of the land being acquired if the compensation amount had not been paid to them and in any circumstances, the landowners cannot refuse to hand over the possession of the land being acquired.
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> t) As regards the delay in payment of compensation, it was submitted that the same was caused due to the parallel proceedings pending before the Revenue Authorities which were deliberately suppressed by the respondents. The appellant had issued a notice dated 06.11.1997 asking the respondents to collect the compensation amount but the respondents for the reasons best known to them did not collect it. u) In such circumstances, the appellant had to make a reference before the District Judge, Alwar to disburse the compensation amount to the respondents. Accordingly, an amount of Rs. 2,72,212.32/- that is, compensation amount of Rs. 90,000/- along with 12% interest from 15.01.1981 to 15.12.1997 was deposited with the court.

v) A notice was sent to the respondents to appear before the Land Acquisition officer, Urban Improvement Trust, Alwar in order to receive compensation. The cheque deposited in the court of the District Judge, Alwar has not been collected by the respondents till date, which shows the mala fide of the respondents to back out from a concluded acquisition and/or to receive more compensation than was initially agreed upon.

w) Upon receipt of notice from the reference court, the respondents challenged the acquisition proceedings before the High Court on the ground that since no award was passed within a period of two years, the acquisition proceedings stood lapsed. A single judge of the High Court dismissed the writ petition on the ground that the addition of Section 60A(4) specifically barred the respondents from challenging the validity of the acquisition proceedings on the ground that no amount of compensation was tendered and paid in accordance with Section 17(3A) of the Land Acquisition Act.

x) The respondents filed an appeal before the division bench of the High Court and the same was allowed vide the impugned judgment dated 29.10.2009. The acquisition proceedings and the notification dated 16.06.1997 issued under Section 52(1) of the RUI Act came to be quashed.

43. As regards the Moongaska land, Ms. Dave submitted as follows:

> a) The Urban Development Department, Jaipur had issued a notice dated 01.07.1976 under Section 52(2) of the RUI Act duly published in the gazette for the purpose of acquiring the Moongaska land and in response to the said notice, the respondents had appeared before the OSD and had prayed for time to place on record the proof of their ownership and also the representations in respect of the acquisition proceedings. Thereafter, the OSD sent a letter to the State Government for issuance of notification under Section 52(1) of the RUI Act for acquisition of the Moongaska land. The State Government issued a notification under Section 52(1) on 16.06.1977 which was published in the official gazette on 23.06.1977 and showed names of all the owners of the Moongaska land as per the provisions of the RUI Act.

b) In terms of sub-sections (1) and (4) of Section 52 of the RUI Act, the land vested absolutely in the State Government free from all encumbrances. The appellant relied on this Court's judgment in Pratap v. State of Rajasthan, (1996) 3 SCC 1 to substantiate this assertion.

c) Further, the respondents used to regularly appear before the OSD in the acquisition proceedings and were adequately heard. The appellant submitted that it gave the respondents adequate opportunity of hearing which is evident from the various representations submitted by the respondents to the OSD.

d) The learned senior counsel relied on this Court's judgment in Special Deputy Collector, Land Acquisition CMDA (supra) to submit that it was not necessary for the acquiring authority to prove actual service of notice of the proposed acquisition on the owners of the land or persons interested therein. The objective of giving notice is to make the owners or interested persons aware about the proposed acquisition and the awareness or knowledge can be inferred by way of implied or constructive notice. Therefore, the purpose of issuing notice under Section 52(2) notice was achieved when all the interested parties appeared before the OSD. The appellant submitted that the reasoning assigned by the High Court that the notice under Section 52(2) of the RUI Act was not properly issued as the respondents were not served individually and no notice was affixed at a conspicuous place in the locality where the property was situated, could be said to be hyper technical and based on an incorrect interpretation of the scope and object of the RUI Act.

e) Further, the respondents at no point of time had raised a plea that no notice at all was issued to and served on any of the persons recorded as owners in the revenue records. Once the respondents participated regularly in the acquisition proceedings before the OSD, there can be no question of non-compliance of the provisions of the RUI Act.

f) It was also submitted that the respondents should not have been allowed to challenge the acquisition proceedings after an inordinate delay of 21 years. Such belated challenge before the High Court by way of a writ petition was improper and unjustified.

g) As the parties were unable to arrive at a consensus as regards the compensation amount, the case was referred to the Additional Collector, Alwar under Section 53(4) on 26.08.1982. The Additional Collector vide order dated 17.01.1988 decided the compensation amount for the Moongaska land to be Rs. 27,600/- and directed the appellant to pay the compensation to the extent of 80% of the said amount as per the provisions of Section 60A(4) of the RUI Act as amended in 1987.

h) The Additional Collector had also issued notice to the respondents dated 27.01.1988 to collect the compensation amount from the office of the Collector. It was sought to be explained that there was a delay in determination of compensation due to a pending litigation before the revenue authorities regarding the ownership of the lands being acquired.

i) On 28.01.1988, a messenger from the appellant Trust also visited the residence of the respondents to hand over the compensation amount, however, the respondents refused to accept the same. A notice to this effect was pasted outside the respondents' residence in the presence of a witness.

j) The Land Acquisition Officer, Urban improvement Trust once again wrote a letter to the respondents dated 11.08.1999 asking them to collect the compensation amount for the Moongaska land otherwise the same would be deposited in the court through reference.

k) In 1999, the Moongaska land was mutated in favour of the appellant Trust. At the same time, a division bench of the High Court passed an order for the maintenance of status quo in respect of the Moongaska land.

l) On 29.10.2009, a division bench of the High Court by way of the impugned order, allowed the appeal of the respondents and quashed the notification dated 16.06.1977 issued under Section 52(1) of the RUI Act in respect of the Moongaska land.

C. WRITTEN SUBMISSIONS OF THE RESPONDENTS

44. Ms. Namita Choudhary, the learned counsel for the respondents made the following common submissions:

a) The learned counsel addressed herself on the following broad questions:

• Whether the requirement to tender and pay the amount of compensation within a period of six months from the date of commencement of the Amending Act, 1987 (i.e. 01.08.1987) in terms of the provisions of sub-section (4) of Section 60A of the RUI Act, as amended in 1990, is mandatory to ensure absolute vesting of the land in question?

• Whether the requirement to pass the award within the stipulated time frame of one year or as the case maybe, two years from the date of commencement (i.e. 01.08.1987) of the Amending Act, 1987 as contemplated by sub-section (3) of Section 60A of the RUI Act, as amended in 1990, is applicable to the compulsory acquisition made under Section 52(1) and (2) of RUI Act, after the extension of Land Acquisition Act, 1894 to the State of Rajasthan and the subsequent existing and repeal of RUI Act and provisions of Section 11A of the Central Act coming into play? • Whether the issuance of notification under Section 52(1) of the RUI Act is illegal and has been rightly quashed in the absence of non-compliance of mandatory requirements of Section 52(2) of the said Act?

b) As regards the Nangli Kota lands, the learned counsel submitted that:

• The compensation was supposed to be paid in terms of Section 60A(3) of the RUI Act, as amended. The State Government and the appellant neither determined the amount of compensation in terms of Section 52(7) of the RUI Act nor did they pass an award in terms of Section 60A(3). Further, the deposit of 80% of the estimated amount of compensation was supposed to be within a period of six months as per Section 60A(4) but deposition of compensation in the reference court was done only in 1997. • The appellant relied on an undated and unsigned draft agreement which, even though was offered by the respondents themselves for fixing compensation at Rs. 90,000/- for all of the Nangli Kota lands under acquisition, was never acted upon by the appellant. Therefore, the same cannot be taken advantage of for fixing compensation in the year 1997.

• Further, the State Government and the appellant Trust had no intention to pay compensation for the parcels of the Nangli Kota lands, the nature and ownership of which was under challenge before the revenue authorities. It was contended that the draft agreement was not accepted by the Government because of the parallel proceedings initiated by it before the revenue authorities claiming it to be Government land. This led to lapsing of the time- period provided in the new law for the payment of compensation. • Therefore, a fresh notification under Section 4 of the Land Acquisition Act, 1894 was issued in 1990 and published in the official gazette in 1992, however, no notification under Section 6 thereof was ever made. The respondents submitted that the counsels for the appellant Trust stated that acquisition proceedings begun in 1977 for the Nangli Kota land had lapsed as it was superseded by the notification issued later in 1990 which also ultimately lapsed as it was not taken to its logical conclusion. This position has been recorded by the

division bench of the High Court in the impugned order.

c) As regards the Moongaska land, the learned counsel submitted that:

• The compensation was supposed to be paid in terms of Section 60A(3) of the RUI Act, as amended. The State Government and the appellant neither determined the amount of compensation in terms of Section 52(7) of the RUI Act nor did they pass an award in terms of Section 60A(3). Further, the deposit of 80% of the estimated amount of compensation was supposed to be within a period of six months as per Section 60A(4), however, deposition of compensation in the reference court was done on 05.11.2009 after the acquisition notification stood quashed by the impugned order.

• Further, the Additional District Collector vide order dated 03.12.1985 held that the respondents were not competent to receive compensation as the transfer of land in their favour was void ab initio. Even after the setting aside of the Additional Collector's order, no steps were taken by the Government to decide the compensation until after the acquisition proceedings itself were quashed by the High Court vide the impugned order.

• The respondents submitted that the Government's letter dated 17.01.1988 to the appellant Trust highlighted that the provisions of Section 60A(4) mandatorily required the payment of 80% amount latest by 31.01.1988 that is, within 6 months from 01.08.1987 (the commencement date of the Amending Act, 1987). The letter further mentioned that in the event the appellant Trust did not submit the compensation amount by way of a cheque to the District Magistrate's office latest by 21.01.1988, the same would be construed to be that the appellant Trust was no longer interested in the acquisition of the said land. This was never complied by the appellant as is evident from the belated deposit of the compensation amount in the reference court after the impugned order was passed by the High Court.

d) Since the respondents did not hear anything about the status of the acquisition proceedings for almost 17 years, they were of the view that the Government was not pursuing the acquisition proceedings. However, in 1997, the respondents were suddenly put to notice regarding the deposit of compensation in the reference court. Thereafter, the respondents filed writ petitions before the High Court for Nangli Kota and Moongaska lands.

e) In response to the appellant's contention that Section 60A(4) barred the respondents from challenging the acquisition proceedings on the ground of non-payment of compensation, the learned counsel for the respondents referred to this Court's decision in Delhi Airtech Services (P) Ltd. v. State of U.P. reported in 2022 SCC OnLine SC 1408 wherein it was held that "...even if possession is taken, such possession cannot be considered as legal so as to vest the land absolutely if the prerequisite condition for payment of 80% before taking possession is not complied. In such circumstance, by legal fiction it looses its character as an acquisition under Section 17 and since the absolute vesting does not take place, it will lapse if the further process is not complied and the award

is not passed within two years from the date of declaration…" Therefore, even though Section 11A is applicable to the cases of acquisition initiated under Section 17(1) of the Land Acquisition Act, 1894, the consequence of it will not affect the case where the land has absolutely vested on compliance of subsection (3A) to Section 17 of the Act, 1894 and 80% of estimated compensation is tendered and paid.

f) As regards the averment of the appellant that the filing of the writ petition was delayed, the respondents submitted that the High Court in the impugned order factually recorded that there was no delay of 17 years and that the delay was at most of 5 to 6 years.

g) The learned counsel relied on this Court's decision in Kolkata Municipal Corporation & Anr. v. Bimal Kumar Shah & Ors. reported in 2024 SCC OnLine SC 968 and submitted that compulsory acquisition would also be considered unconstitutional if proper procedure was not followed by the Government.

D. ISSUES FOR DETERMINATION

45. Having heard the learned counsels appearing for the parties and having gone through the materials on record, the following questions fall for our consideration:

> (i) Whether the High Court committed any error in taking the view that the respondents herein should be non-suited on the ground of delay and laches?
>
> (ii) Whether the High Court committed any error in holding that non-

compliance of the mandatory requirements of Section 52 of the RUI Act had rendered the notification issued under Section 52(1) dated 16.06.1977 invalid?

(iii) Whether the amount towards compensation of Rs 90,000/- in respect of the Nangli Kota lands was lawfully determined?

(iv) Whether the requirement to pass the award within the stipulated time frame of one year or as the case maybe, two years from the date of commencement (i.e. 01.08.1987) of the Amending Act, 1987 as contemplated by sub-section (3) of Section 60A of the RUI Act is applicable to the compulsory acquisition made under sub-sections (1) and (2) of Section 52 of the RUI Act, after the extension of Land Acquisition Act, 1894 to the State of Rajasthan?

(v) Whether the requirement to tender and pay the amount of compensation within a period of six months from the date of commencement of the Amending Act, 1987 (i.e. 01.08.1987) in terms of the provisions of sub- section (4) of Section 60A of the RUI Act, as amended in 1990, is mandatory to ensure absolute vesting of the land in question?

E. ANALYSIS

(i) On the question of delay in filing the writ petitions before the High Court

46. As regards the appellant's challenge to the inordinate delay of 21 years in filing of the writ petitions by the respondents, we are of the view that the same needs to be considered in the facts and circumstances of the case. While it is true that the courts have consistently held that undue delay in approaching the court can be a ground for refusing relief, the courts have also recognized that in exceptional cases, where the impugned action is patently illegal or affects fundamental rights, the delay must be condoned.

47. It is pertinent for us to consider the judgment of this Court in Vidya Devi v.

State of Himachal Pradesh reported in (2020) 2 SCC 569, wherein it was held, inter alia, as follows:

> "12.12. The contention advanced by the state of delay and laches of the appellant in moving the court is also liable to be rejected. Delay and laches cannot be raised in a case of a continuing cause of action, or if the circumstances shock the judicial conscience of the court. Condonation of delay is a matter of judicial discretion, which must be exercised judiciously and reasonably in the facts and circumstances of a case. It will depend upon the breach of fundamental rights, and the remedy claimed, and when and how the delay arose. There is no period of limitation prescribed for the courts to exercise their constitutional jurisdiction to do substantial justice.
>
> 12.13. In a case where the demand for justice is so compelling, a constitutional court would exercise its jurisdiction with a view to promote justice, and not defeat it. [P.S. Sadasivaswamy v. State of T.N., (1975) 1 SCC 152 : 1975 SCC (L&S) 22]" [Emphasis supplied]

48. The aforesaid view has also been reiterated by this Court in Sukh Dutt Ratra v. State of Himachal Pradesh reported in (2022) 7 SCC 508 wherein the court opined that there cannot be a 'limitation' to doing justice. The relevant observations are reproduced below:

> "16. Given the important protection extended to an individual vis-a-vis their private property (embodied earlier in Article 31, and now as a constitutional right in Article 300-A), and the high threshold the State must meet while acquiring land, the question remains – can the State, merely on the ground of delay and laches, evade its legal responsibility towards those from whom private property has been expropriated? In these facts and circumstances, we find this conclusion to be unacceptable, and warranting intervention on the grounds of equity and fairness." [Emphasis supplied]

49. Similarly, this Court in its decision in Maharashtra State Road Transport Corporation v. Balwant Regular Motor Service reported in 1969 (1) SCR 808 held that:

"Now the doctrine of laches in Courts of Equity is not an arbitrary or a technical doctrine. Where it would be practically unjust to give a remedy, either because the party has, by his conduct, done that which might fairly be regarded as equivalent to a waiver of it, or where by his conduct and neglect he has, though perhaps not waiving that remedy, yet put the other party in a situation in which it would not be reasonable to place him if the remedy were afterwards to be asserted in either of these cases, lapse of time and delay are most material. But in every case, if an argument against relief, which otherwise would be just, is founded upon mere delay, that delay of course not amounting to a bar by any statute of limitations, the validity of that defence must be tried upon principles substantially equitable. Two circumstances, always important in such cases, are, the length of the delay and the nature of the acts done during the interval, which might affect either party and cause a balance of justice or injustice in taking the one course or the other, so far as relates to the remedy." [Emphasis supplied]

50. This Court in its decision in Ramchandra Shankar Deodhar v. State of Maharashtra, reported in (1974) 1 SCC 317 held that:

"10. ... There was a delay of more than ten or twelve years in filing the petition since the accrual of the cause of complaint, and this delay, contended the respondents, was sufficient to disentitle the petitioners to any relief in a petition under Article 32 of the Constitution. We do not think this contention should prevail with us. In the first place, it must be remembered that the rule which says that the Court may not inquire into belated and stale claims is not a rule of law, but a rule of practice based on sound and proper exercise of discretion, and there is no inviolable rule that whenever there is delay, the Court must necessarily refuse to entertain the petition. Each case must depend on its own facts. The question, as pointed out by Hidayatullah, C.J., in Tilokchand Motichand v. H.B. Munshi [(1969) 1 SCC 110, 116 : (1969) 2 SCR 824] "is one of discretion for this Court to follow from case to case. There is no lower limit and there is no upper limit .... It will all depend on what the breach of the fundamental right and the remedy claimed are and how the delay arose". ...[SCC para 11] ..." (Emphasis supplied)

51. The decisions of this Court have consistently held that the right to property is enshrined in the Constitution and requires that procedural safeguards be followed to ensure fairness and non-arbitrariness in decision-making especially in cases of acquisition by the State. Therefore, the delay in approaching the court, while a significant factor, cannot override the necessity to address illegalities and protect right to property enshrined in Article 300A. The court must balance the need for finality in legal proceedings with the need to rectify injustice. The right of an individual to vindicate and protect private property cannot be brushed away merely on the grounds of delay and laches.

> 52. In the present case, we find that there are three instances of procedural irregularity that may prejudice the rights of the respondents herein: (1) the notice under Section 52(2) was not served individually to the landowners and the same was not pasted at a conspicuous area of the locality where the property was situated; (2) the possession was allegedly taken by the State Government and handed over to the appellant Trust prior to the deposit of compensation in contravention to Section 52(7) of the RUI Act; and (3) the compensation in respect of the Nangli Kota lands was not paid in terms of the timelines stipulated in sub-sections (3) and (4) of Section 60A.
>
> 53. These procedural anomalies are glaring and necessitate discussion regarding the propriety of the acquisition proceedings so as to ensure that the landowners are not dispossessed of their property without following due procedure.
>
> 54. Therefore, we are of the considered view that the writ petition filed before the High Court, despite the significant delay, raised substantial questions regarding the legality of the land acquisition proceedings. The alleged patent illegality in the acquisition process justify the condonation of delay in this exceptional case.

(ii) On the validity of the notification for acquisition under Section 52(1)

55. It is the case of the respondents that the appellant and the State Government failed to meet the mandatory requirements of notice laid down in Section 52(2) of the RUI Act. Section 52 of the RUI Act is reproduced below:

> "52. Compulsory acquisition of land- (1) Where on a representation from the Trust it appears to the State Government that any land is required for the purpose of improvement or for any other purpose under this Act, the State Government may acquire such land by publishing in the official Gazette a notice specifying the particular purpose for which such land is required and stating that the State Government has decided to acquire the land in pursuance of this section.
>
> (2) Before publishing a notice under sub-section (1), the State Government shall by another notice call upon the owner of the land and any other person who in the opinion of the State Government may be interested therein to show cause, within such time as may be specified in the notice, why the land should not be acquired.

[Such notice shall be individually served upon the owner of the land and any other person who in the opinion of the State Government may be interested therein. It shall also be published in the Official Gazette at least 30 days in advance and shall be pasted on some conspicuous place in the locality, where the land to be acquired is situate. Such publication and pasting of notice shall be deemed as sufficient and proper service of notice upon the owner of the land and upon all other persons who may be interested therein,] (3) After considering the cause, if any, shown by the owner of the land and by any other person interested therein and after giving such owner and person an

opportunity of being heard, the State Government may pass such orders as it deems fit.

(4) When a notice under sub-section (1) is published in the official Gazette, the land shall, on and from the date of such publication, vest absolutely in the State Government free from all encumbrances.

(5) Where any land is vested in the State Government under sub-section (4), the State Government may, by notice in writing, order any person who may be in possession of the land to surrender or deliver possession thereof to the State Government or any person duly authorized by it in this behalf within thirty days of the service of the notice.

(6) If any person refuses or fails to comply with an order made under sub-section (5), the State Government may take possession of the land and may for that purpose use such force as may be necessary.

(7) Where the land has been acquired for the Trust, the State Government shall, after it has taken possession of the land and on payment by the Trust of the amount of compensation determined under Section 53, on the amount of interest thereon, and of the other charges incurred by the State Government in connection with the acquisition, transfer the land to the Trust for the purpose for which the land has been acquired." [Emphasis supplied]

56. The provisions of the Section 52(2) are akin to Section 4 of the Land Acquisition Act, 1894. To initiate the acquisition proceedings, the State must publish a notice under Section 52(2) of the RUI Act for the owners or any other interested parties to show cause as to why their land should not be acquired.

57. As regards the validity of the notification under Section 52(1) for the acquisition of the Nangli Kota lands and procedural deviation as alleged by the respondents, we observe the following:

> a) It is an admitted fact by both the parties that there were no individual notices served upon the owners as required under Section 52(2) nor was the notice of the proposed acquisition pasted on some conspicuous space in the locality where the property was situated. The State Government had only published the notice under Section 52(2) in the official gazette.
>
> b) The object of issuing a notice under Section 52(2) prior to a notification under Section 52(1) is to allow the owners and interested parties to put forth their case as to why a land proposed to be acquired should not be acquired or to make representations regarding the amount of compensation. A deviation from the process prescribed runs the risk of prejudicing the rights of the landowners and should be discouraged.
>
> c) A plain reading of Section 52(2) shows that the legislature considered publication of notice in the official gazette and pasting of the same in conspicuous areas of the

locality is considered to be sufficient notice.

These requirements are akin to the ones under Section 4 of the Land Acquisition Act. The requirement of individual notices to be served upon the owners is an additional measure taken by the legislature to safeguard the rights of the landowners. While the State Government ought to have complied with this measure, we cannot say that non- compliance therewith can make the whole acquisition proceedings infructuous.

d) However, a reading of Section 52(2) shows that the conditions of publication of notice in the official gazette and pasting the same at a conspicuous area of the locality are together considered to be sufficient notice and fulfilment of just one requirement out of the two risked causing prejudice to the respondents herein.

e) What remains to be seen is whether the improper service of notice did in fact deprive the respondents from making their representations and objections to the acquisition proceedings. The documents placed on record show that the seven sons of late Ram Narain participated in the proceedings before the OSD and were aware that the Nangli Kota lands were proposed to be acquired.

f) This Court has held in the case of Special Deputy Collector, Land Acquisition CMDA (supra) that:

> "The acquiring authority need not prove actual notice of the proposal to acquire under section 4(1) of the Act to the person challenging the acquisition. As the purpose of publication of public notice provided in section 4(10) of the Act is to give notice of the proposal of acquisition to the persons concerned, such notice can also be by way of implied notice or constructive notice. For this purpose, we may refer to the difference between actual, implied and constructive notice:
>
> 1. When notice is directly served upon a party in a formal manner or when it is received personally by him, there is actual notice.
>
> 2. If from the facts it can be inferred that a party knew about the subject matter of the notice, knowledge is to be imputed by implied notice.

For example, if the purpose of the notice is to require a party to appear before an authority on a particular date, even though such a notice is not personally served on him, if the person appears before the authority on that date or participates in the subsequent proceedings, then the person can be said to have implied notice.

3. Notice arising by presumption of law from the existence of certain specified facts and circumstances is constructive or deemed notice, for example, any person purchasing or obtaining a transfer of an immovable property is deemed to have notice of all transactions relating to such property affected by registered instruments till the date of his acquisition. Or where the statute provides for publication of the notification relating to a proposed acquisition of lands in the gazette

and newspapers and by causing public notice of the substance of the notification at convenient places in the locality, but does not provide for actual direct notice, then such provision provides for constructive notice and on fulfillment of those requirements, all persons interested in the lands proposed for acquisition are deemed to have notice of the proposal regarding acquisition." [Emphasis supplied] Therefore, the participation in the proceedings by the landowners themselves is sufficient evidence that the object of the publication of the notice under Section 52(2) was met and we are of the view that the acquiring authority that is, the State was not required to prove actual notice of the proposal to acquire in this case and the knowledge of the appellants about the acquisition proceedings is equivalent to implied notice to the appellants.

g) Therefore, the non-service of individual notices upon the owners under Section 52(2) cannot be a ground to invalidate the acquisition proceedings. We find that the reasoning of the High Court to this extent is liable to be set aside.

58. As regards the validity of the notification under Section 52(1) for the acquisition of the Moongaska lands and procedural deviation as alleged by the respondents, we observe the following:

> a) In case of this parcel of land as well, the State did not serve individual notices upon the owners. The notice under Section 52(2) was also not pasted at a conspicuous area of the locality in which the property is situated. The State Government only published the notice in the official gazette.
>
> b) This Court in the case of Kolkata Municipal Corporation (supra) has held that the "right to be heard" forms an integral part of the seven sub-

rights that have been synchronously incorporated in laws concerning compulsory acquisition. Improper service of notice under Section 52(2) runs the risk of contravening the "right to be heard". Whether the objective of making the respondents aware was achieved or not has to be tested on the basis of concrete evidence placed on record by the parties.

c) For the reasons stated hereinabove, we move directly to ascertain whether the improper service of notice prejudiced the rights of the landowners. From the documents placed on record before us, we find that the representations made by the landowners dated 30.10.1976, 01.11.1976, 30.12.1976, 17.01.1977, 07.02.1977, 24.02.1977 and 10.03.1977 were only from legal heirs of two of the original landowners, that is the late Mr. Ram Narain and Mr. Yogesh Chand Goyal. We find that there is no evidence of the participation by the other two original landowners that is, Mr. Radhey Shyam and Mr. Manohar Lal or their legal heirs. The appellant Trust or the State Government has also not adduced any evidence whether written or oral that these two landowners and their legal heirs actively participated in the acquisition proceedings and made their objections heard.

d) The appellant's contention that there is a presumption as per illustration

(e) of Section 114 of the Evidence Act, 1872 that the notification under Section 52(1) was in conformity with the provisions of the RUI Act unless dislodged by the respondents, is of no avail to

them. Such presumption is available to the State in cases where the owner or interested party had not gotten their names recorded in the revenue records thereby disabling the State from identifying who the interested parties are. This has been the position adopted by this Court in Ahuja Industries Ltd. v. State of Karnataka & Others reported in (2003) 5 SCC 365 and the split verdict by Manoj Misra J. in the case of Urban Improvement Trust, Bikaner v. Gordhan Dass (D.) through LRs. & others reported in (2024) 3 SCC 250 wherein it was held that "mere non-service of notice, under Section 52(2) of the 1959 Act, upon non- recorded owner, such as the plaintiff, would not render the acquisition notification under Section 52(1) void..." However, in the present case, there was no question of the landowners' names not being present in the revenue records, therefore, the presumption under Section 114(e) of the Evidence Act, 1872 is of no help to the appellant's case.

e) We find from the records placed before us that improper service of notice under Section 52(2) did in fact prejudice the rights of the two original landowners and their legal heirs and they were not provided with an opportunity to be heard. Such factum is sufficient to declare the notification under Section 52(1) for the Moongaska land, invalid. Thus, we uphold the findings of the High Court to this extent.

59. This Court in the case of D.B. Basnett (D) through LRs v. Collector, East District, Gangtok, Sikkim and another, reported in (2020) 4 SCC 572 has held that:

> "14. ... even though rights in land are no more a fundamental right, still it remains a constitutional right under Article 300A of the Constitution of India, and the provisions of any Act seeking to divest any person from the rights in property have to be strictly followed.
>
> 15. It is also settled law that following the procedure of Section 4(1) of the Land Acquisition Act, 18942 (akin to Section 5(1) of the said Act) is mandatory, and unless that notice is given in accordance with the provisions contained therein, the entire acquisition proceeding would be vitiated. An entry into the premises based on such non-compliance would result in the entry being unlawful3 . The law being ex-propriatory in character, the same is required to be strictly followed. The purpose of the notice is to intimate the interested persons about the intent to acquire the land. These provisions, as they read, of the said Act, thus, are also required to be so followed." [Emphasis supplied] Therefore, we are of the view that in cases of compulsory acquisition by the State, it is all the more important that proper service of notice be made to the owners.

(iii) On the question of whether the compensation was determined and paid lawfully to the respondents

60. Since we are of the view that the improper service of notice under Section 52(2) invalidates the notification issued under Section 52(1) of the RUI Act for the Moongaksa land, we restrict the discussion regarding compensation to the acquisition proceedings for the Nangli Kota lands.

61. According to the respondent, the Nangli Kota lands came to be vested absolutely and free from all encumbrances on 16.06.1977 that is, when the notification under Section 52(1) was issued and published in the official gazette. Even though the acquisition proceedings for the Nangli Kota lands were initiated in 1976, the acquisition proceedings remained pending till 1997 when the appellant Trust finally deposited the compensation amount in the reference court.

62. It is clear from the facts that the possession of the Nangli Kota lands was taken by the State Government on 23.10.1980. Thereafter, the Government handed over the possession of the said lands to the appellant Trust on 15.01.1981 under Section 52(7). The lands were also mutated in the name of the appellant Trust on 15.06.1981.

63. It is the case of the appellant Trust and the State Government that the respondents had sent on stamp paper a duly signed statement of admission that they agreed to receive Rs. 90,000/- in lieu of the Nangli Kota lands and that the said amount was acceptable to the State Government. The OSD passed an order under Section 53(3) of the RUI Act for settlement of compensation at Rs. 90,000/- in lieu of the acquisition of the Nangli Kota lands. However, the payment of compensation was delayed as the Registrar, Board of Revenue informed the appellant Trust of the ongoing litigation in respect of the nature and ownership of the Survey no. 229 which formed part of the Nangli Kota lands.

64. The respondents on the other hand, averred that the agreement to receive Rs.

90,000/- in lieu of the Nangli Kota lands was not signed by the designated official of the Government and therefore, does not constitute a binding agreement for the determination of compensation. However, from the records placed forth by the parties, we are inclined to reject this contention as the order of the OSD settling compensation amount at Rs. 90,000/- was sufficient acceptance of the agreement sent by the respondents, in our view.

65. As regards the delay in payment of compensation, it is apposite to state that the parallel litigation regarding the nature and ownership of land bearing Survey no. 229 concluded after the said land was mutated in the name of the respondents on 20.03.1985 after the Board of Revenue, Ajmer held on 30.12.1983 that the said land was ‘abadi land’ and belonged to the respondents and not the State Government. The appellant Trust has filed a writ petition against the mutation of the lands in the name of the respondents as the land was already previously mutated in its name in 1981. However, it is pertinent to mention that the appellant Trust did not challenge the Board of Revenue’s decision on the nature of the land.

66. We find at least two inconsistencies in the payment of compensation to the respondents and the procedure of acquisition of the Nangli Kota lands:

- As per Section 52(7), the possession of the land being acquired cannot be handed over to the appellant Trust till it deposits the compensation amount determined under Section 53 of the RUI Act. However, in the present case, the possession of the Nangli Kota lands was handed over to the appellant Trust long before it deposited the

compensation amount with the reference court.

• Even though the parallel litigation on the questions of nature and ownership of the land bearing Survey no. 229 was concluded in 1985, the compensation amount was deposited by the appellant Trust in the reference court only on 31.12.1997 that is after 12 years.

67. After the Land Acquisition Act, 1894 was extended to the State of Rajasthan on 24.09.1984, an amendment in the RUI Act was introduced vide the Amending Act, 1987 which provided for the transitory measures for facilitating the application of the Land Acquisition Act to the State of Rajasthan. The legislature enacted Section 60A with a view to address the pending acquisition proceedings which were initiated under the RUI Act. The transitory provision of Rajasthan Urban Improvement Act, 1959 is reproduced hereunder:

"60A. Transitory provisions for pending matters relating to acquisition of land.

(1) Notwithstanding anything otherwise contained in sub-section (1) of section 52, where, in any matter relating to the acquisition of land pending between 24th day of September, 1984 and 31st July, 1987, an action, thing or order has been taken, done or made under and in accordance with the provisions of this Act, as it stood before the 1st day of August, 1987, such action, thing or order shall not be re-opened or reviewed or be liable to be challenged on the ground that such action, thing or order was at variance with that provided in the Land Acquisition Act, 1894 (Central Act 1 of 1984) (hereinafter in this section referred to as the Land Acquisition Act) subject, however, that any further proceeding, action or order in such matter conducted, taken or made on or after the 1st day of August, 1987 shall, subject to the other provisions of this section, be made under and in accordance with the Land Acquisition Act.

(2) The amount of compensation or interest or that payable for any other reason shall, in a matter pending on the 1st day of August , 1987, be payable under and in accordance with the provisions of the Land Acquisition Act and the money paid prior to the 1st day of August, 1987 shall be deducted from or adjusted against the said amount.

(3) Where in a matter pending on the 1st day of August, 1987, a notice under sub-section (2) of section 52 or a notice under subsection (1) thereof has been served or, as the case may be, published, such notice shall be deemed to be the notification or declaration published or made under sub-section (1) of section 4 or, as the case may be, under sub-section (1) of section 6 of the Land Acquisition Act and the declaration or award in such a matter shall be made within a period of one year or, as the case may be, two years from the 1st day of August, 1987.

(4) Where any land has, prior to the 1st day of August, 1987, vested in the State Government or its possession has been taken in accordance with the provisions of this Act as it stood before the 1st day of August, 1987, such vesting or possession of land shall not be liable to be challenged on the ground that no amount of compensation was tendered and paid in accordance with sub-section (3-A) of section 17 of the Land Acquisition Act, subject, however, that such amount shall be tendered and paid within a period of six months from the 1st day of August, 1987.

(5) In determining the amount of compensation to be awarded in a matter pending on the 1st day of August, 1987, the market value of the land at the date on which the notice was published in the Official Gazette under sub-section (2) of section 52, as it stood before the 1st day of August, 1987, shall be taken into consideration. (6) Every transfer of land under this section shall be either on free hold basis or on lease hold basis. (7) Any land sold, allotted, regularized or otherwise transferred on lease hold basis may be converted in free hold basis subject to such terms and conditions, and on payment of such conversion charges, as may be prescribed.

Explanation. - For the purposes of tins section, "free hold" means tenure in perpetuity with right of inheritance and alienation.

Validation. - Notwithstanding anything contained in any judgment, decree or order or finding of any court, tribunal or Authority to the contrary, any action, thing or order taken, done or made under and in accordance with the provisions relating to acquisition of land contained in the Rajasthan Urban Improvement Act, 1959, shall be deemed to be valid and effective as if such action, thing or order has been made, taken or done under the said Act as amended by this Act." [Emphasis supplied]

68. The present case is squarely covered by Section 60A(4) as the Nangli Kota lands were already deemed to be vested in the State after the notification under Section 52(1) was published. While sub-section (4) puts an embargo on the challenge to an acquisition on the ground of non-payment of compensation, it is accompanied with a proviso that the compensation must be paid within six months from 01.08.1987. It is worth noting that neither the State Government nor the appellant Trust deposited the amount towards compensation to be paid to the respondents within a period of 6 months. In fact, there was an inordinate delay of almost 10 years in depositing the compensation amount in the reference court. Further, no reason worth the name has been provided by the State Government and the appellant Trust for such delay. We are of the view that the contention of the appellant Trust regarding the delay in the payment of compensation due to parallel proceedings before the revenue authorities, cannot be accepted.

69. This Court in the case of Ultra-Tech Cement Ltd. v. Mast Ram, reported in 2024 SCC OnLine SC 2598 has held that the right to property is to be considered not only a constitutional or statutory right but also a human right and therefore, time is of the essence in determination and payment of compensation by the State, otherwise there would be a breach of Article 300A of the Constitution. The relevant para of the judgment is reproduced below:

> "46. This Court has held in Dharnidhar Mishra (D) and Another v. State of Bihar and Others, 2024 SCC OnLine SC 932 and State of Haryana v. Mukesh Kumar, (2011) 10 SCC 404 that the right to property is now considered to be not only a constitutional or statutory right, but also a human right. This Court held in Tukaram Kana Joshi and Ors. thr. Power of Attorney Holder v. M.I.D.C. and Ors., (2013) 1 SCC 353 that in a welfare State, the statutory authorities are legally bound to pay adequate compensation and rehabilitate the persons whose lands are being acquired. The non-fulfilment of such obligations under the garb of industrial development, is not permissible for any welfare State as that would tantamount to uprooting a person and depriving them of their constitutional/human right.
>
> 47. That time is of the essence in determination and payment of compensation is also evident from this Court's judgment in Kukreja Construction Company & Ors. v. State of Maharashtra & Ors., 2024 SCC OnLine SC 2547 wherein it has been held that once the compensation has been determined, the same is payable immediately without any requirement of a representation or request by the landowners and a duty is cast on the State to pay such compensation to the land losers, otherwise there would be a breach of Article 300-

A of the Constitution.

48. In the present case, the Government of Himachal Pradesh as a welfare State ought to have proactively intervened in the matter with a view to ensure that the requisite amount towards compensation is paid at the earliest. The State cannot abdicate its constitutional and statutory responsibility of payment of compensation by arguing that its role was limited to initiating acquisition proceedings under the MOU signed between the Appellant, JAL and itself. We find that the delay in the payment of compensation to the landowners after taking away ownership of the subject land from them is in contravention to the spirit of the constitutional scheme of Article 300A and the idea of a welfare State.

49. Acquisition of land for public purpose is undertaken under the power of eminent domain of the government much against the wishes of the owners of the land which gets acquired. When such a power is exercised, it is coupled with a bounden duty and obligation on the part of the government body to ensure that the owners whose lands get acquired are paid compensation/awarded amount as declared by the statutory award at the earliest." [Emphasis supplied]

70. This Court has also held in the case of N. Padmamma v. S. Ramakrishna Reddy, reported in (2008) 15 SCC 517 that:

> "21. If a right of property is a human right as also a constitutional right, the same cannot be taken away except in accordance with law. Article 300 A of the Constitution protects such right. The provisions of the Act seeking to divest such right, keeping in view of the provisions of Article 300 A of the Constitution of India, must be strictly construed. (See - Hindustan Petroleum Corpn. Ltd. v. Darius Shapur

Chenai, [(2005) 7 SCC 627]" [Emphasis supplied]

71. Therefore, in our considered view, the notification under Section 52(1) is liable to be declared invalid on the ground that the compensation was not deposited and paid to the respondents within the timeline specified in Section 60A(4) as well as on the ground that the acquisition process was not fair and in accordance with law. The improper procedure being adopted by the State Government and the appellant Trust when it took possession of the Nangli Kota lands before depositing compensation for the same was in contravention of the mandate of Section 52(7) of the RUI Act. F. CONCLUSION

72. For all the foregoing reasons, we have reached the conclusion that no error not to speak of any error of law could be said to have been committed by the High Court in passing the impugned order.

73. As a result, the appeals stand dismissed. Parties shall bear their own cost.

Pending applications, if any shall stand disposed of.

.....J. [J. B. Pardiwala] .....J. [Manoj Misra] New Delhi.

13th December, 2024.