Supreme Court of India
Urban Improvement Trust Bikaner vs Gordhan Dass(D) Through Lrs. on 19 October, 2023
Author: Hrishikesh Roy
Bench: M Misra
2023 INSC 935

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO.8411 OF 2014

URBAN IMPROVEMENT TRUST,
BIKANER

Ver

GORDHAN DASS (D)
THROUGH LRs. & OTHERS

JUDGM

MANOJ MISRA, J.

1. I had the benefit of reading the scholarly judgment of my learned Brother, Hrishikesh Roy, J., dismissing this appeal filed against the judgment and order of the High Court1 dated 12.01.2010 passed in S.B. Civil Regular Second Appeal No. 114 of 2004. However, since I'm of the opinion that plaintiff's suit was not maintainable in respect of the land which was acquired by a notification, the defendant's appeal is entitled to be allowed. Therefore, I'm recording my Signature Not Verified opinion separately. Digitally signed by Jayant Kumar Arora Date: 2023.10.19 16:44:06 IST Reason:

1. High Court of Judicature for Rajasthan at Jodhpur Appeal

2. This is a defendant's appeal against the order of the High Court dismissing his second appeal preferred against the judgment and decree of reversal passed by the first appellate Court2 The first appellate Court had not only set aside the decree of the Trial Court3 to the extent it denied complete relief as sought in the suit,4 but decreed the suit of the first respondent in its entirety.

3. To have a clear understanding of the issues that arise for consideration in this appeal, it would be apposite to advert to the pleadings in the suit out of which the appeal arises.

Suit

4. Gordhan Dass5 instituted the suit on 23.4.1997 against Urban Improvement Trust, Bikaner6, Narayan Das (Respondent no.2), Kanhaiya Lal (Respondent no.3) and Ganesh Ram (Respondent

no. 4) seeking permanent prohibitory injunction to restrain the Trust from entering or acquiring the land in dispute7 without adopting due process of law.

Plaint Case 2 District Judge, Bikaner 3 Additional Civil Judge (Sr. Division/Additional Chief Judicial Magistrate No.1, Bikaner 5 Predecessor-in-interest of respondent nos.1/1 to 1/3 The Trust (Appellant) Khasra Nos. 211/81 and 239/83-New No. 294/83, measuring 3 bighas, adjoining Bikaner Sagar Road

5. The plaint case was that, -- (a) the land in dispute admeasuring 3 bighas was jointly purchased by the plaintiff and defendant nos.2 to 48 vide two separate sale-deeds dated 02.03.1970 and 16.03.1970; (b) out of the total area of the disputed land, 1 bigha, comprising a portion of plot no.294/83, was converted to non-agricultural use for setting up a Petrol Pump and, for that purpose, the District Collector issued NOC9 on 23.07.1971; (c) the Trust had not acquired the land by any lawful manner, yet, it started showing itself as owner in possession of the disputed land, as a result, when, on 23.4.1997, the Trust threatened to acquire the land, the suit had to be instituted. Additionally, it was pleaded that neither the provisions of the 1894 Act10 nor of the 1959 Act11 were followed to acquire the land as neither opportunity of hearing nor compensation was provided to either the plaintiff or defendant nos. 2 to 4.

Appellant's case in the Written Statement

6. The appellant12 in its written statement rebutted the plaint case and pleaded that, -- the land pertaining to Khasra no.239/83 stood in the name of No Objection Certificate The Land Acquisition Act, 1894 The Rajasthan Urban Improvement Trust Act, 1959 Defendant No.1 in the suit Bhanwari Devi, which had already been acquired whereas, the land bearing Khasra no.211/81 is out of Jainarain Vikas Colony Scheme; the land in dispute has been duly acquired and compensation paid to the Khatedars13; the suit of the plaintiff is not maintainable; the land in dispute being agricultural, the Civil Court has no jurisdiction; and the plaintiff has not come to the court with clean hands as the disputed land had already been acquired and compensation paid to the recorded Khatedars.

Amended Pleadings

7. During the suit proceeding, comprehensive amendments in the plaint were sought and allowed, resulting in filing of an amended plaint on 11.11.2002. Therein it was stated that though, pursuant to the order of the High Court dated 26.02.1998 in S.B. Civil Writ Petition No.2243/95 (Bhanwarlal vs. State of Rajasthan), the Trust had taken possession of the land in dispute on 10.06.1998 but the writ court's order related to some other land. Therefore, relief for a mandatory injunction to restore the possession of the plaintiff was sought.

8. In the amended written statement filed by the appellant, it was stated that after plaintiff had Person whose name is recorded as tenure holder in the record of rights instituted the suit, report from Tehsildar was obtained. Then it was discovered that the plaintiff along with others had purchased the land in dispute vide sale deeds dated 02.03.1970 and 16.03.1970 and had also given

an application for conversion of 1 bigha of that land for non-agricultural use, which was allowed, and, on payment of conversion fee, NOC was issued for setting up a Petrol Pump. It was, however, clarified that the appellant had, in all, acquired 24 bighas and 12 biswas of land comprising Khasra No.294/83 after following due procedure and compensation thereof was paid to the recorded owners. It was also stated that the plaintiff had never raised any objection to the acquisition. In respect of 1 bigha of that land, for which NOC was issued to set up a petrol pump, it was stated that the State vide order dated 7.8.2002 had taken a decision to return it to its owner. In paragraph 18 of the amended written statement, it was specifically stated that 2 bighas of the disputed land were acquired and its compensation was paid to the recorded tenure-holders.

Trial Court Findings

9. The trial court found that there is no dispute between the parties that 1 bigha, out of 3 bighas of the land in dispute, was converted to non-agricultural land and that it was not acquired by the State. Therefore, the plaintiff is entitled to get possession of that one bigha. Regarding the remaining 2 bighas of land, in paragraph 15 of the judgment it was held that, though plaintiff had purchased it through separate sale-deeds of the year 1970, in the Jamabandi (i.e., record of rights), the name of the plaintiff was not entered rather it continued to reflect previous Khatedar's name. Moreover, notice under Section 52(2) of the 1959 Act was issued to the recorded Khatedars, award was passed in the year 1985 and compensation was also paid to them. Trial Court also observed that plaintiff raised no objection, despite knowledge, even though the Trust had commenced development work over the land to make it habitable. A passing observation was also made that plaintiff's intention appeared to be to enjoy the land and later stake a claim over it. The trial court thus concluded that plaintiff did not approach the Court with clean hands. Consequently, the suit was decreed only to the extent of that 1 bigha of the disputed land regarding which, the appellant had given up its claim.

Appeal Before the First Appellate Court

10. Aggrieved by dismissal of the suit in part, the plaintiff preferred an appeal14. No appeal was preferred by the Trust. Consequently, the decree of the trial court to the extent of 1 bigha of the disputed land became final as against the Trust.

11. Before the first appellate court, on behalf of the plaintiff, it was argued that acquisition proceedings of the land had commenced in the year 1972 whereas the two sale-deeds in favour of the plaintiff were registered in the year 1970. The sale-deeds were in the knowledge of the officers of the State as conversion of 1 bigha land to non-agricultural land was sought, and the Collector had issued NOC in favour of the plaintiff. Therefore, even if plaintiff's name was not recorded as Khatedar, it could be presumed that the State and its officers were aware about ownership rights of the plaintiff and other co-purchasers (i.e., defendant nos.2 to 4). Yet, no notice of the proposed acquisition was given to the plaintiff. Hence, the acquisition is void. It was also argued that the plaintiff and defendant nos.2 to 4 have been in continuous possession, which was disturbed during pendency of the suit on 10.06.1998.

Appeal Decree No.30 of 2004 First Appellate Court Findings

12. The first appellate court in paragraph 14 of its judgment noted the admitted case of the parties that the land was purchased by the plaintiff vide sale-deeds dated 02.03.1970 and 16.03.1970 whereas notification, commencing proceedings for acquisition, was issued on 09.06.1972. Yet, the plaintiff was not served notice of proposed acquisition. In paragraph 18 of the judgment, the first appellate court observed that admittedly prior to the acquisition, NOC was issued to the plaintiff for conversion of agricultural land to non- agricultural land, therefore it is to be assumed that the State was aware of the ownership right of the plaintiff. Yet, notice of acquisition was not served on the plaintiff. In these circumstances, non-mutation of plaintiff's name in the revenue records would not defeat plaintiff's claim that acquisition notification was bad for non-service of notice on him. With these observations, and finding upon that possession of the land was taken on 10.6.1998, the first appellate court decreed plaintiff's suit in its entirety.

Second Appeal Before the High Court

13. Aggrieved by decision of the first appellate court, the appellant preferred second appeal before the High Court contending, inter alia, (a) mere suit for injunction is not maintainable unless a relief for declaration of title is sought; (b) the civil court has no jurisdiction to decide the suit when the land in dispute is subject matter of acquisition and, under Section 52 of the 1959 Act, on publication of the notification in the gazette, the land stood vested in the State free from all encumbrances; and (c) the plaintiff had failed to implead the State as a defendant even though it was a necessary party.

14. In rebuttal, on behalf of the plaintiff, it was argued that since the notification for acquisition was not preceded by service of notice on the owner of the land, as contemplated by sub-section (2) of section 52 of the 1959 Act, the acquisition was void and, therefore, the Civil Court held jurisdiction to grant the relief sought.

High Court's decision

15. The High Court opined that purchase of land by the plaintiff in the year 1970, prior to the acquisition was not disputed; the acquisition notification was issued without serving notice on the plaintiff, therefore, the acquisition was void and suit as instituted was maintainable. Moreover, the plaintiff was in possession up to the date of institution of the suit. It thus upheld the decree of the first appellate court and dismissed the second appeal.

16. Aggrieved by dismissal of its second appeal, the Trust is in appeal before us.

17. We have heard Sri Aruneshwar Gupta, learned senior counsel, assisted by Sri Rajeev Singh, Advocate-on-Record for the defendant-appellant; and Sri Manoj Swaroop, learned senior counsel, for the respondents.

Submissions on Behalf of the Appellant

18. Learned counsel for the appellant contended that Chapter VII of the 1959 Act deals with acquisition and disposal of land by the Trust. Section 52 of the 1959 Act provides for compulsory

acquisition of land. Sub-section (1) of Section 52 empowers the State Government to acquire land by publishing in the Official Gazette a notice specifying the special purpose for which the land is required and stating therein that the State Government has decided to acquire the land in pursuance thereof. Sub-section (4) of section 52 provides that 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. Sub-section (5) of Section 52 provides that 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 30 days of the service of the notice. Sub-section (7) of Section 52 provides that 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, 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.

19. Learned counsel submitted that the mechanism for determination of compensation, the mode of its payment, and resolution of disputes in respect thereof are provided for by Sections 53, 54, 55, 56, 57, 58 and 59 of the 1959 Act. Thus, the 1959 Act is a complete Code insofar as acquisition of the land, payment of compensation for its acquisition and settlement of disputes regarding the compensation payable therefor are concerned. As a result, by necessary implication, the Civil Court's jurisdiction is barred from entertaining any claim in respect of that land. Moreover, once the land vests in the State free from all encumbrances, in absence of seeking a declaration qua the validity of the acquisition notification, mere suit for injunction would not be maintainable. According to him, the trial court was justified in dismissing the suit to the extent the land was covered by the notification whereas the first appellate court and the High Court committed manifest error of law in holding the suit maintainable. In addition to the above, it was submitted that admittedly 2 bighas out of 3 bighas of the land in dispute was agricultural land, therefore, by virtue of Section 207 of the Rajasthan Tenancy Act, 1955 (in short, "the 1955 Act"), the suit was barred before a Civil Court and could only be filed in a Revenue Court.

20. Regarding non-service of notice upon the owners of the land prior to the notification under Section 52(1) of the 1959 Act, the learned counsel for the appellant submitted that as the original Khatedars, who stood recorded in the record of rights, were served with notice of the proposed acquisition, there was substantial compliance of the provisions of sub-section (2) of Section 52 of the 1959 Act. Hence, the notification under sub-section (1) of Section 52 cannot be treated as void.

21. In support of his submissions, the learned counsel for the appellant placed reliance on the following decisions:

(i) Ahuja Industries Ltd. v. State of Karnataka & Others15;

(ii) Bhola Shanker v. The District Land Acquisition Officer, Aligarh and Ors16;

(iii) Commissioner, Bangalore Development Authority and another v. Brijesh Reddy and another17;

(iv) Kiran Singh v. Chaman Paswan18; and

(v) Munshi Ram v. Municipal Committee, Chheharta19.

Submissions on behalf of the Respondents

22. Per contra, learned counsel for the respondents submitted that under sub-section (2) of Section 52 of the 1959 Act, the State Government is under an obligation to 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. The requirement of issuing such notice, before publishing the notification (2003) 5 SCC 365 (1973) 2 SCC 59 (2013) 3 SCC 66 AIR 1954 SC 340 (1979) 3 SCC 83 under sub-section (1) of Section 52, is mandatory. In absence thereof, the notification under sub-section (1) of Section 52 is void. Hence, there could be no deemed vesting under sub-section (4) of Section 52. Thus, the suit was maintainable, notwithstanding no relief was sought to annul the notification. In support of his submissions, the learned counsel for the respondents placed reliance on a Constitution Bench decision of this Court in Dhulabhai vs. State of Madhya Pradesh20 and a three-judge Bench decision in Firm Seth Radha Kishan vs. Municipal Committee21.

Questions that arise for Our Consideration

23. On consideration of the rival submissions, in my view, the following questions arise for determination:

(i) Whether for failure to serve notice under sub-section (2) of Section 52 of the 1959 Act on the plaintiff, the notification acquiring the land under sub-section (1) of Section 52 of the 1959 Act could be treated as void by the Civil Court?

(ii) Whether in respect of the land covered by the acquisition notification, the suit of (1968) 3 SCR 662 (1964) 2 SCR 273 the plaintiff for injunction simpliciter, without seeking a declaratory relief and, that too, without impleading the State as defendant, maintainable?

(iii) Whether the civil suit of the plaintiff was also barred by section 207 (2) of the 1955 Act?

Discussion and Analysis

24. Though the aforesaid issues are interrelated but, for clarity, I propose to deal with them separately.

Issue No.(i) — Whether the notification under Section 52(1) of the 1959 Act could have been treated as void by the Civil Court?

25. Before proceeding further on issue no.(i), it is apposite to observe that when an act is void, it is a nullity and can be disregarded and impeached in any proceeding before any court or tribunal whenever it is relied upon. In other words, it is subject to a "collateral attack". But, in Nawabkhan Abbaskhan vs. State of Gujarat22, followed in Bharati Reddy vs. State of Karnataka23, this Court held that if illegal acts of authorities are defied on self-determined voidness, startling consequences will follow. In the light of (1974) 2 SCC 121 (2018) 6 SCC 162 settled legal position, the question which falls for consideration is, whether for want of service of notice of proposed acquisition under sub-section (2) of Section 52 of the 1959 Act, the acquisition notification, under section 52 (1) of the 1959 Act, could be treated as void and, therefore, vulnerable to a collateral attack.

26. To appropriately address the aforesaid issue, it would be useful to first examine the provisions of the 1959 Act which deals with compulsory acquisition of land. Chapter VII of the 1959 Act deals with acquisition and disposal of land. Section 52 deals with compulsory acquisition of land. For convenience, the same 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.

(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."

27. Section 53 of the 1959 Act is regarding payment of compensation for compulsory acquisition of land. Sub-section (3) of Section 53 provides that where the amount of compensation can be determined by agreement between the State Government and the person to be compensated, it shall be determined in accordance with such agreement. Sub section (4) of Section 53 provides that where no such agreement is reached, the State Government shall refer the case to the Collector for determination of the person to whom the amount of compensation is to be paid and the amount of compensation to be paid for such acquisition.

28. Section 54 of the 1959 Act provides that any party aggrieved by the decision of the Collector determining the amount of compensation may, within sixty days from the date of such decision, appeal to the court of the District Judge having jurisdiction.

29. Section 55 of the 1959 Act provides for reference of disputes regarding apportionment of compensation to the Court of the District Judge. It reads:

> "55. Disputes as to apportionment of compensation. - If any dispute arises as to the apportionment of compensation among persons claiming to be entitled thereto the State Government shall refer such dispute for the decision of the Court of the District Judge having jurisdiction."

30. Section 56 confers on a person, aggrieved by the decision of the District Judge under Section 55 of the Act, a right to file an appeal to the High Court

31. Section 57 provides for the mode of payment of compensation, or deposit of the same in Court.

32. Section 58 empowers the Court to invest the amount of compensation deposited in court.

33. Section 59 provides that if any question or dispute arises as to the sufficiency of the compensation paid or proposed to be paid under any provision of the Act, otherwise than under the foregoing provisions of that Chapter, the matter shall be determined by the District Judge having jurisdiction upon a reference made to him either by the Trust or by the claimant within a specified period.

34. Section 60 provides for the disposal of the land by the Trust.

35. A conspectus of the provisions of Chapter VII of the 1959 Act makes it clear that once the acquisition notification is published in the Official Gazette under sub-section (1) of Section 52 of the 1959 Act, by virtue of sub section (4) of Section 52, the land shall, on and from the date of such publication, vest absolutely in the State Government free from all encumbrances and, thereafter, the owner or person interested in the land is entitled to receive compensation. Further, as to whom the compensation is payable and the quantum payable are all issues for which a mechanism is in place under the provisions of the 1959 Act.

36. Now, the question that falls for consideration is whether the notification under sub-section (1) of Section 52 of the 1959 Act could be treated as void for non-service of notice, under sub-section (2) of Section 52, on the plaintiff and other co-owners of the land who had purchased the same from the erstwhile owners, or their predecessors, entered in the record of rights.

37. According to the learned counsel for the respondents, where the mandatory provisions of sub-section (2) of Section 52 of 1959 Act are not followed, the notification issued thereunder would be a nullity and, therefore, the Civil Court's jurisdiction to grant appropriate relief shall not be ousted. Taking the proposition further, it was submitted that ouster of a Civil Court's jurisdiction cannot be a matter of course even where finality to the orders of the Special Tribunals is provided for, particularly, where the provisions of the concerned Act have not been complied with or the statutory Tribunal has not acted in conformity with the fundamental principles of judicial procedure.

38. In support of the above submission, the learned counsel for the respondent relied on the decisions of this Court in Dhulabhai (supra) and Firm Seth Radha Kishan (supra).

39. In Dhulabhai (supra) the appellant before this Court had instituted a suit to recover sales tax alleged to have been realized illegally by the State of Madhya Pradesh. The State contested the suit by claiming that it was barred by Section 17 of the Madhya Bharat Sales Tax Act. The court of the District Judge decreed the suit. On appeal by the State, the High Court reversed the decision holding that the suit was barred even though it was conceded by the Revenue that the tax could not have been imposed in view of the bar of Article 301 of the Constitution of India. In that context, the question that arose for this Court to decide was whether the suit was barred expressly by Section 17 of that Act or by any implication arising from the Act. The contention on behalf of the appellant therein was that if it was a question of the correctness of the imposition within the valid framework of the statute, rules or notification, Section 17 might have operated but not when the imposition was under a void law. After considering several decisions, the Constitution Bench summarized the legal position as under:

"35. ... The result of this inquiry into the diverse views expressed in this Court may be stated as follows:

(1) Where the statute gives a finality to the orders of the special Tribunals the civil courts' jurisdiction must be held to be excluded if there is adequate remedy to do what the civil courts would normally do in a suit. Such provision, however, does not exclude those cases where the provisions of the particular Act have not been complied with or the statutory Tribunal has not acted

in conformity with the fundamental principles of judicial procedure.

(2) Where there is an express bar of the jurisdiction of the court, an examination of the scheme of the particular Act to find the adequacy or the sufficiency of the remedies provided may be relevant but is not decisive to sustain the jurisdiction of the civil court.

Where there is no express exclusion the examination of the remedies and the scheme of the particular Act to find out the intendment becomes necessary and the result of the inquiry may be decisive. In the latter case it is necessary to see if the statute creates a special right or a liability and provides for the determination of the right or liability and further lays down that all questions about the said right and liability shall be determined by the Tribunals so constituted, and whether remedies normally associated with actions in civil courts are prescribed by the said statute or not.

(3) Challenge to the provisions of the particular Act as ultra vires cannot be brought before Tribunals constituted under that Act. Even the High Court cannot go into that question on a revision or reference from the decision of the Tribunals.

(4) When a provision is already declared unconstitutional or the constitutionality of any provision is to be challenged, a suit is open. A writ of certiorari may include a direction for refund if the claim is clearly within the time prescribed by the Limitation Act but it is not a compulsory remedy to replace a suit.

(5) Where the particular Act contains no machinery for refund of tax collected in excess of constitutional limits or illegally collected, a suit lies.

(6) Questions of the correctness of the assessment apart from its constitutionality are for the decision of the authorities and a civil suit does not lie if the orders of the authorities are declared to be final or there is an express prohibition in the particular Act. In either case the scheme of the particular Act must be examined because it is a relevant enquiry.

(7) An exclusion of the jurisdiction of the civil court is not readily to be inferred unless the conditions above set down apply." (Emphasis Supplied)

40. In Firm Seth Radha Kishan (supra), the question that fell for determination was whether a suit would lie in a civil court claiming refund of the terminal tax collected by a municipality under the provisions of the Punjab Municipal Act, 1911. The trial court decreed the suit on finding that imposition/collection of tax was illegal. On appeal, the High Court of Punjab held that even though the imposition of tax might not be authorized but the civil court had no jurisdiction to entertain the suit as the Act provided for a remedy by way of appeal against the wrong orders of the authorities thereunder. In that context, this Court, after considering a plethora of decisions, held:

> "7. Under Section 9 of the Code of Civil Procedure the court shall have jurisdiction to try all suits of civil nature excepting suits of which cognizance is either expressly or impliedly barred. A statute, therefore, expressly or by necessary implication, can bar

> the jurisdiction of civil courts in respect of a particular matter. The mere conferment of special jurisdiction on a tribunal in respect of the said matter does not in itself exclude the jurisdiction of civil courts. The statute may specifically provide for ousting the jurisdiction of civil courts; even if there was no such specific exclusion, if it creates a liability not existing before and gives a special and particular remedy for the aggrieved party, the remedy provided by it must be followed. The same principle would apply if the statute had provided for the particular forum in which the remedy could be had. Even in such cases, the civil court's jurisdiction is not completely ousted. A suit in a civil court will always lie to question the order of a tribunal created by a statute, even if its order is, expressly or by necessary implication, made final, if the said tribunal abuses its power or does not act under the Act but in violation of its provisions." (Emphasis supplied)

41. The decisions of this Court in Dhulabhai (supra) and Firm Seth Radha Kishan (supra) reiterate the settled legal position that if the act impugned is not under the statute but in violation of its provisions, the jurisdiction of a civil court is not completely ousted even though the statute may have created the liability and provided for a specific remedy to the person aggrieved.

42. In the light of aforesaid legal principle, the argument on behalf of the plaintiff-respondent is that, as notice contemplated under sub-section (2) of Section 52 of the 1959 Act was not given to the owner of the land prior to the acquisition notification, the notification would be void and, therefore, the Civil Court would have jurisdiction to grant appropriate relief by treating the same as void notwithstanding that there is no specific challenge to it.

43. In my view, the aforesaid submission is not acceptable for the following reasons:

> (a) there is no challenge to the jurisdictional power of the acquiring body to issue notification under Section 52(1) of the 1959 Act, therefore the notification is under the 1959 Act and not beyond the scope of the 1959 Act;
>
> (b) it is not the case of the plaintiff that pursuant to the sale-deeds qua the land in dispute, prior to the date of acquisition notification, plaintiff's name was entered in the record of rights, yet no notice under Section 52(2) was served on him prior to the acquisition;

(c) it is also not the case of the plaintiff that landowners/ Khatedars already recorded in the record of rights qua the land in dispute, were not served with notice as contemplated by sub-section (2) of Section 52 of the 1959 Act; and

(d) there is a presumption that official acts have been regularly performed (see: Section 114 Illustration (e) of the Indian Evidence Act, 1872), therefore, once a notification under sub- section (1) of Section 52 was issued, by virtue of sub-section (4) of Section 52, in my view, a legal fiction with regard to the vesting of land in the State free from all encumbrances from the date of publication of the notification in the Official Gazette would come into play and it cannot be treated as void.

44. Elaborating upon the above reasons, it may be noted that assuming the plaintiff and defendant nos. 2 to 4 had purchased a portion of the disputed land, but if they do not get their names mutated in the record of rights, how would the State come to know of their ownership. Therefore, if the land is acquired after serving notice on the recorded owners, as is the case of the appellant, the State's action in issuing notification under Section 52 (1), in my view, cannot be treated as void. More so, because the State had the power to acquire the land.

45. It may also be noted that from the submissions made before us, it appears that proceedings for acquisition were initiated under Section 52(2) of the 1959 Act in the year 1972 and, thereafter, in the year 1974, notification under sub-section (1) of Section 52 was published. The plaintiff and defendant nos.2 to 4 neither claim that they were recorded in the record of rights prior to that, nor do they claim that none of the recorded owners was served with notice. Importantly, the plaintiff does not dispute publication of notification under sub-section (1) of Section 52 of the 1959 Act. In fact, plaintiff's claim is that he along with defendant nos. 2 to 4 were owners of the land, pursuant to sale-deeds of the year 1970, yet they were not served notice, under sub-section (2) of Section 52, prior to the notification under sub-section (1) of Section 52 and, therefore, the notification, under sub- section (1) of Section 52, is illegal and void.

46. In Ahuja Industries (supra), a somewhat similar claim under another land acquisition law was rejected. In that case, the appellant who filed the appeal before this Court had purchased a piece of land on 10.02.1993. However, the said land was not mutated in his name in the record of rights which continued to show the name of the person who had sold the land to the vendor of the appellant. Subsequently, the said land and surrounding lands were acquired vide notification dated 30.10.1997. The appellant questioned the acquisition, by claiming, inter alia, that no notice under Section 28(2) and 28(6) of the Karnataka Industrial Areas Development Act, 1966 was served on him and that such violation of principle of natural justice vitiated the acquisition proceedings. It was also argued that Sections 127, 128 and 129 of the Karnataka Land Revenue Act, 1964 cast an obligation on the Registering Officer to make a report to the revenue authority to enter his name in the record of rights and its failure to do so resulting in non-service of the notice on the appellant, depriving him of the opportunity to file his objections, should not act to his detriment or disadvantage.

47. Dealing with the above submissions, in Ahuja Industries (supra), upon finding that notices were issued to/served on the owners/occupants, or their representatives, as shown in the record of rights, and the appellant had not got his name mutated in the record of rights, this Court, after taking notice of earlier decisions, held:

> "12. This Court in Winky Dilawari v. Amritsar Improvement Trust [(1996) 11 SCC 644] has taken the view that failure to serve personal notices on the persons whose names have not been mutated in the official record-of-rights in pursuance of any sale in their favour does not vitiate the proceedings for acquisition. Similar view was taken in W.B. Housing Board v. Brijendra Prasad Gupta [(1997) 6 SCC 207] wherein this Court observed: (SCC p. 214, para 8):

> "It is no part of the duty of the Collector to make a roving inquiry into ownership of the persons. We are of the opinion that the requirements of the law were met when notices were served upon the recorded owners as per the record- of-rights. Again we do not think in a case like the present one, it is for the Collector to make enquiries from the registration office to find out if the land had since been sold by the recorded owners. In Winky Dilawari v. Amritsar Improvement Trust [(1996) 11 SCC 644], this Court observed that the public authorities were not expected to go on making enquiries in the Sub-Registrar's office as to who would be the owner of the property. The Collector in the present case was thus justified in relying on the official record being the record-of-rights as to who were the owners of the land sought to be requisitioned and prudence did not require any further enquiry to be made. We are therefore of the view that notices were properly served under Section 3(2) of the Act on the owners of the land."
>
> 13. It could be seen from the above order that service of notice on a person shown as owner or occupier in the record-of-rights is sufficient even though the said person had already sold the land prior to the said notification unless it is substantiated otherwise that the authorities concerned had knowledge of the rights or interest of any person other than those found recorded as owner/occupier in the revenue records. It is further held that the Collector is not obliged to make a roving enquiry about the ownership of the land. If the name of the purchaser is not yet entered in the record-of-

rights then non-service on such a person does not vitiate the acquisition proceedings. Admittedly, the appellant had not got his name entered in the revenue records as owner or occupant of the said land and therefore he could not complain about non-service of notice on him nor about the failure to grant a hearing to him. Contention that as per provision of the Land Revenue Act there was no obligation on his part to either inform the Revenue Authorities about the sale in his favour or to request them to transfer the katha in his name cannot stand as it has not been brought on record with reference to any pleadings with supporting documents that in fact the appellant had made payment for making the necessary entries in the record-of- rights and the register in his name at the time of registration of the sale deed in his favour. This apart, failure to make entries on the part of the Revenue Authorities by itself would not cast any obligation on the authorities under the Act to make a roving enquiry and try to locate an owner who may have subsequently purchased the land from the previous owner. Failure on the part of the Revenue Authority to make entry in the register of mutation in favour of the subsequent owner would not render the acquisition proceedings bad in law on account of non-

issuance of notice inviting objections to the acquisition proceedings or service thereof." (Emphasis supplied)

48. Having noticed the decision in Ahuja Industries (supra), in my view, the legal position that emerges is, that if the name of the owner is not entered in the record of rights pertaining to the land proposed to be acquired, there is no legal obligation on the state authorities to make a roving

enquiry to find out as to who its actual owner is for effecting service of notice upon him prior to issuance of the acquisition notification. In such circumstances, there would be sufficient compliance of the statutory obligation of serving notice on the owner if the notice is served on the owners entered in the record of rights, unless it is specifically proved that the real owners, other than owners entered in the record of rights, were known to the revenue authorities.

49. In the instant case, the plaintiff's case is not that his name was mutated in the record of rights, rather his case is that the district administration was aware of his title to the land because they had issued NOC for conversion of that agricultural land to non- agricultural land. To test the correctness of the aforesaid claim, I have perused the amended plaint. The relevant averments to that effect are in paragraph 1 (b) of the amended plaint. A careful reading of the same would indicate that the plea of the plaintiff was that he sought conversion of one bigha, out of three bighas of the disputed land, for non-agricultural use and, in connection therewith, a favorable report was given by the Patwari resulting in issuance of an NOC by the District Magistrate for non-agricultural use of one bigha land. However, there is no averment in the plaint that sale-deeds of the entire disputed land were produced by the plaintiff before the officers of the State /administration at the time of seeking NOC. In these circumstances, in my view, a constructive notice of the sale-deeds cannot be imputed on the State. I, therefore, reject the argument that by issuing NOC for non-agricultural use of one bigha of the disputed land, the State acquired knowledge regarding plaintiff's title in respect of the entire land comprising 3 bighas.

50. Even assuming that by issuing NOC the State got knowledge about plaintiff's title, it could at best be in respect of that one bigha land which was converted for non-agricultural use. But that would not be material for deciding this appeal because the appellant has already given up its claim qua that portion of land in the amended written statement. In fact, the trial court has already passed a decree in favour of the plaintiff in respect of that portion which has attained finality. Thus, that one bigha of land is not the subject matter of the current appeal.

51. In light of the discussion above, in my view, once there is no dispute that a notification regarding acquisition of the land was issued and duly published under sub-section (1) of section 52 of the 1959 Act, a presumption would arise under illustration (e) of Section 114 of the Indian Evidence Act, 1872 that the notification was in conformity with the provisions of the 1959 Act. This presumption, in my view, has not been dislodged by the plaintiff, as there is no specific plea in respect of: (a) lack of power/authority of the person issuing the notification; and (b) the procedure prescribed being not followed in its entirety. No doubt, there is a plea that notice as contemplated under sub- section (2) of Section 52 of the 1959 Act was not served upon the plaintiff prior to the notification but there is no plea that no notice at all was issued to and served on any of the persons recorded as owners in the record of rights. Therefore, once it is established that the plaintiff was not recorded as the owner in the record of rights on the date of issuance of the notification for acquisition of the land, taking into account the law laid down in Ahuja Industries (supra), I'm of the view 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. Thus, the Civil Court could not have treated the notification under Section 52 (1) of the 1959 Act as void. Issue no.(i) is decided accordingly.

Issue No.(ii) – Whether in respect of the land covered by acquisition notification, the suit of the plaintiff for injunction simpliciter, without seeking a declaration and, that too, without impleading the State as defendant, maintainable?

52. As I have held that the acquisition notification could not have been disregarded as void, the question that would now arise for consideration is whether the suit of the plaintiff for injunction simpliciter, without seeking a declaratory relief, would be maintainable in a Civil Court.

53. At this stage, at the cost of repetition, it may be observed that initially the suit was instituted for injunction to restrain the Trust (i.e., the defendant no.1- appellant) from taking possession of the land without following due process of law. When, in the written statement, the appellant took a specific plea that the land had already been acquired and compensation was paid, the plaint was amended stating therein that during pendency of the suit possession was taken and, therefore, a direction be issued upon the Trust to restore possession. Despite knowledge of appellant's case that land has been acquired, no declaratory relief, either to declare the notification invalid or to declare plaintiff as the owner, was sought, despite the legal position that under sub- section (4) of Section 52 of the 1959 from the date of publication of notification under sub-section (1) of Section 52 of the 1959 Act the land would vest in the State free from all encumbrances.

54. In Anathula Sudhakar v. P. Buchi Reddy24, this Court had the occasion to lay down general principles as to when a mere suit for permanent injunction will lie, and when it is necessary to file a suit for declaration and/or possession with injunction as a consequential relief. The relevant portion of that judgment is extracted below:

> "13. The general principles as to when a mere suit for permanent injunction will lie, and when it is necessary to file a suit for declaration and/or possession with injunction as a consequential relief, are well settled. We may refer to them briefly.
>
> 13.1. Where a plaintiff is in lawful or peaceful possession of a property and such possession is interfered or threatened by the defendant, a suit for an injunction simpliciter will lie. A person has a right to protect his possession against any person who does not prove a better title by seeking a prohibitory injunction. But a person in wrongful possession is not entitled to an injunction against the rightful owner.
>
> 13.2. Where the title of the plaintiff is not disputed, but he is not in possession, his remedy is to file a suit for possession and seek in addition, if necessary, an injunction. A person out of possession, cannot seek the relief of injunction simpliciter, without claiming the relief of possession.

13.3. Where the plaintiff is in possession, but his title to the property is in dispute, or under a cloud, or where the defendant asserts title thereto and there is also a threat of dispossession from the defendant, the plaintiff will have to sue for declaration of title and the (2008) 4 SCC 594 consequential relief of injunction. Where the title of the plaintiff is under a cloud or in dispute and he is not in possession or not able to establish possession, necessarily the plaintiff will have to file a

suit for declaration, possession and injunction.

14. We may, however, clarify that a prayer for declaration will be necessary only if the denial of title by the defendant or challenge to the plaintiff's title raises a cloud on the title of the plaintiff to the property. A cloud is said to raise over a person's title, when some apparent defect in his title to a property, or when some prima facie right of a third party over it, is made out or shown. An action for declaration, is the remedy to remove the cloud on the title to the property. On the other hand, where the plaintiff has clear title supported by documents, if a trespasser without any claim to title or an interloper without any apparent title, merely denies the plaintiff's title, it does not amount to raising a cloud over the title of the plaintiff and it will not be necessary for the plaintiff to sue for declaration and a suit for injunction may be sufficient. Where the plaintiff, believing that the defendant is only a trespasser or a wrongful claimant without title, files a mere suit for injunction, and in such a suit, the defendant discloses in his defence the details of the right or title claimed by him, which raise a serious dispute or cloud over the plaintiff's title, then there is a need for the plaintiff, to amend the plaint and convert the suit into one for declaration. Alternatively, he may withdraw the suit for bare injunction, with permission of the court to file a comprehensive suit for declaration and injunction. He may file the suit for declaration with consequential relief, even after the suit for injunction is dismissed, where the suit raised only the issue of possession and not any issue of title." (Emphasis supplied)

55. In the instant case, the stand of defendant no.1 (i.e., the appellant herein) was categorical that the land in dispute had already been acquired. Therefore, in light of the provisions of Section 52(4) of the 1959 Act, a cloud existed over the title of the plaintiff. Further, during pendency of the suit, plaintiff admitted that possession was also taken. In these circumstances, in the light of the law laid down by this Court in Anathula Sudhakar (supra), without seeking a declaratory relief qua the validity of the acquisition notification, mere suit for injunction, in my view, was not maintainable.

56. In addition to what has been discussed above, there are multiple decisions to the effect that the validity of an acquisition notification, acquiring land under compulsory land acquisition laws for public purpose, cannot ordinarily be questioned in a Civil Court, though its validity may be questioned before a superior court by invoking its powers under the Constitution of India. In State of Bihar v. Dhirendra Kumar and others25, a notification under Section 4(1) of the 1894 Act was published on 13.02.1957 acquiring the disputed land along with other lands for public purpose. The declaration under Section 6 was (1995) 4 SCC 229 published on 27.03.1957 and possession of the land was taken on 22.03.1957. Several encroachments were made on that land. When steps were taken to have the encroachers evicted, a suit came to be instituted. In that suit, an application seeking temporary injunction under Order 39 Rule 1 of C.P.C. was filed. The trial court found that there existed a triable issue and thereby granted injunction restraining the defendants from dispossessing the plaintiff till the disposal of the suit. Against the order of the trial court, the matter went to the High Court. The High Court modified the temporary injunction and directed status quo. Thereafter, the matter travelled to this Court. The question that arose for consideration by this Court was whether a civil suit would be maintainable and whether ad-interim injunction could be issued where proceedings under the 1894 Act were taken pursuant to a notice issued under Section 9 of the 1894 Act. Dealing with the said question, it was held:

> "3. ... The provisions of the Act are designed to acquire the land by the State exercising the power of eminent domain to serve the public purpose. The state is enjoined to comply with statutory requirements contained in s.4 and s.6 of the Act by proper publication of notification and declaration within limitation and procedural steps of publication in papers and the local publications envisaged under the Act as amended by Act 68 of 1984. In publication of the notifications and declaration under s.6, the public purpose gets crystalised and becomes conclusive. Thereafter, the State is entitled to authorise the Land Acquisition Officer to proceed with the acquisition of the land and to make the award. Section 11A now prescribes limitation to make the award within 2 years from the last of date of publication envisaged under s.6 of the Act. In an appropriate case, where the Govt. needs possession of the land urgently, it would exercise the power under s.17(4) of the Act and dispense with the enquiry under s.5-A. Thereon, the State is entitled to issue notice to the parties under s.9 and on expiry of 15 days, the State is entitled to take immediate possession even before the award could be made. Otherwise, it would take possession after the award under s.12. Thus, it could be seen that the Act is a complete code in itself and is meant to serve public purpose. We are, therefore, inclined to think, as presently advised, that by necessary implication the power of the civil court to take cognizance of the case under s.9 of CPC stands excluded, and a civil court has no jurisdiction to go into the question of the validity or legality of the notification under s.4 and declaration under s.6, except by the High Court in a proceeding under Article 226 of the Constitution. So, the civil suit itself was not maintainable. When such is the situation, the finding of the trial court that there is a prima facie triable issue is unsustainable. Moreover, possession was already taken and handed over to Housing Board. So, the order of injunction was without jurisdiction." (Emphasis supplied)

57. In Laxmi Chand v. Gram Panchayat, Kararia26, validity of the acquisition and of the award was challenged by instituting a civil suit for a (1996) 7 SCC 218 declaration that the land could not be acquired. In that suit, a preliminary issue was framed regarding maintainability of the suit. The trial court held that the suit was not maintainable. The judgment of the trial court was affirmed. The matter came before this Court. The contention raised on behalf of the petitioner before this Court was that once the acquisition proceedings were dropped by the Land Acquisition Officer, he had no jurisdiction or power to reopen the same and to make the award under Section 11 of the 1894 Act. It was argued that the award is squarely illegal for want of jurisdiction. After noticing the facts, this Court held:

> "2. ... It is seen that Section 9 of the Civil Procedure Code, 1908 gives jurisdiction to the civil court to try all civil suits, unless barred. The cognizance of a suit of civil nature may either expressly or impliedly be barred. The procedure contemplated under the Act is a special procedure envisaged to effectuate public purpose, compulsorily acquiring the land for use of public purpose. The notification under Section 4 and declaration under Section 6 of the Act are required to be published in the manner contemplated thereunder. The inference gives conclusiveness to the public purpose and the extent of the land mentioned therein. The award should be

> made under Section 11 as envisaged thereunder. The dissatisfied claimant is provided with the remedy of reference under Section 18 and a further appeal under Section 54 of the Act.

If the Government intends to withdraw from the acquisition before taking possession of the land, procedure contemplated under Section 48 requires to be adhered to. If possession is taken, it stands vested under Section 16 in the State with absolute title free from all encumbrances and the Government has no power to withdraw from acquisition.

3. It would thus be clear that the scheme of the Act is complete in itself and thereby the jurisdiction of the civil court to take cognizance of the cases arising under the Act, by necessary implication, stood barred. The civil court thereby is devoid of jurisdiction to give declaration on the invalidity of the procedure contemplated under the Act. The only right an aggrieved person has is to approach the constitutional courts, viz., the High Court and the Supreme Court under their plenary power under Articles 226 and 136 respectively with self-imposed restrictions on their exercise of extraordinary power. Barring thereof, there is no power to the civil court." (Emphasis supplied)

58. Following the above two decisions (i.e., State of Bihar v Dhirendra Kumar and Laxmi Chand v. Gram Panchayat), in Commissioner, Bangalore Development Authority and another v. Brijesh Reddy and another (supra), it was held:

> "18. It is clear that the Land Acquisition Act is a complete code in itself and is meant to serve public purpose. By necessary implication, the power of the civil court to take cognizance of the case under Section 9 CPC stands excluded and a civil court has no jurisdiction to go into the question of the validity or legality of the notification under Section 4, declaration under Section 6 and subsequent proceedings except by the High Court in a proceeding under Article 226 of the Constitution. It is thus clear that the civil court is devoid of jurisdiction to give declaration or even bare injunction being granted on the invalidity of the procedure contemplated under the Act. The only right available for the aggrieved person is to approach the High Court under Article 226 and this Court under Article 136 with self-imposed restrictions on their exercise of extraordinary power."

59. Reverting to the present case, the acquisition is for a public purpose, namely, development of land for residential colony and, by virtue of sub-section (4) of Section 52 of the 1959 Act, the land stood vested in the State free from all encumbrances with effect from the date of publication of the notification. Once that is the position, in the light of discussion above, and applying the law laid down by this Court in State of Bihar v. Dhirendra Kumar (supra); Laxmi Chand v. Gram Panchayat (supra); and Commissioner, Bangalore Development Authority and another v. Brijesh Reddy and another (supra), I am of the considered view that in respect of land covered by the acquisition notification, the suit as framed was not maintainable.

60. Otherwise also, there was another patent defect in the plaint as the State was not impleaded as defendant in the suit. The State was a necessary party because all the steps taken for acquisition of

land under sub-section (1) of Section 52 of the 1959 Act were taken by it. And, by virtue of sub-section (4) of Section 52 of the 1959 Act, the land vested in the State. Therefore, when a collateral attack to the validity of the acquisition was launched by the plaintiff, by alleging that necessary steps for a lawful acquisition were not taken, it was the State which could have effectively disclosed whether all the necessary steps required for a valid acquisition of the land were taken or not. In this view of the matter, in my opinion, the suit was also bad for non-joinder of necessary party.

61. In my view, the suit in question is a classic example of clever drafting where to avoid crucial issues, such as the bar of limitation and response from the State, firstly, no declaration in respect of the acquisition notification was sought and, secondly, the State, which issued the acquisition notification and in whom the title of the land vested by a deeming fiction, was not impleaded as a party. Such clever drafting to avoid critical issues have been deprecated time and again by this Court as it amounts to an unfair practice.

62. In T. Arivandandam v. T.V. Satpal and another27 cautioning the Courts to be mindful of the craft of creating an illusion of a cause of action for instituting the suit, it was observed:

> "5.....The learned Munsif must remember that if on a meaningful -not formal- reading of plaint it is manifestly vexatious, and meritless, in the sense of not disclosing a right to sue, he (1977) 4 SCC 467 should exercise his power under Order 7, Rule 11 CPC taking care to see that the ground mentioned therein is fulfilled. And, if clever drafting has created an illusion of a cause of action, nip it in the bud at the first hearing ....." (Emphasis supplied)

63. The necessity to implead the State in a suit where an issue is raised qua vesting of surplus land in the State, under the ceiling laws, for failure to take possession before enforcement of the Repeal Act of 1999, has been highlighted by this Court in Shri Saurav Jain & Another Vs. M/s A.B.P. Design & Another (Civil Appeal No.4448 of 2021, arising out of SLP (C) No.29868 of 2018, decided on 05.08.2021)28 by observing:

> "36.....The High Court held that no material was forthcoming on whether actual and physical possession was taken by the Competent Authority from the land owner and it held that in the absence thereof, the first respondent, as the purchaser from Zahid Hussain, would continue to have a valid title. The High Court has entered these findings despite the fact that by a process of engineered drafting, the first respondent sought no reliefs in regard to the proceedings under the ULCRA (to obviate bar to the maintainability of the suit) and did not implead either the State or the Competent authority who would have been in a position to answer the challenge." (Emphasis supplied) LL 2021 SC 354

64. No doubt, in the instant case, the land was transferred by the State to the Trust after acquisition, and the Trust was a party in the suit. But it was the State which had acquired the land for the benefit of the Trust and by virtue of Section 52 (4) of the 1959 Act the land vested in the State pursuant to

the notification issued by it under Section 52(1). Therefore, in my view, when the relief of injunction was dependent on validity of the acquisition notification, the State was a necessary party as it alone could have appropriately produced all the records about the steps taken for acquisition of the land. Institution of the suit without challenging the acquisition notification and without impleading the State is a clever ploy to avoid crucial questions. Such an exercise is akin to approaching the Court with unclean hands. This alone, in my view, as also observed by the trial court, disentitles the plaintiff to obtain discretionary relief of injunction. Thus, in my considered view, in respect of the land covered by the acquisition notification, the Suit as framed was not maintainable, not only for not seeking a declaratory relief but also for not impleading the State as a party. The issue no. (ii) is decided accordingly.

Issue no.(iii)-- Whether the civil suit of the plaintiff was barred by section 207 (2) of the Rajasthan Tenancy Act?

65. To appropriately address the issue as to whether the suit in the Civil Court was barred by Section 207 (2) of the 1955 Act, it would be useful to examine the scheme of the 1955 Act as also whether the reliefs claimed in the suit were within the scope of the reliefs which could be sought for under the 1955 Act.

66. The preamble of the 1955 Act provides that it is an Act to consolidate and amend the law relating to tenancies of agricultural lands, and to provide for certain measures of land reforms and matters connected therewith.

67. Section 5(24) of the 1955 Act defines “land” as “land” shall mean land which is let or held for agricultural purposes or for purposes subservient thereto or as grove land or for pasturage including land occupied by houses or enclosures situated on a holding, or land covered with water which may be used for the purpose of irrigation or growing Singhara or other similar produce but excluding abadi land; it shall include benefits to arise out of land and things attached to the earth or permanently fastened to anything attached to the earth.

68. In the instant case, there exists no dispute between the parties that for conversion of one bigha, out of 3 bighas of the land in dispute, from agricultural to non-agricultural use, application was given, and conversion was made after charging conversion fee, etc. This fact clearly demonstrates that the land in dispute was agricultural land and was recorded as such in the Jamabandi (i.e., record of rights). In so far as that one bigha of land, which was converted to non- agricultural use, is concerned, no dispute survives as the appellant gave up its claim to it and the trial court passed a decree in respect thereof, which has attained finality. The dispute which survives is confined to that 2 bighas of the disputed land, which remained agricultural land.

69. Section 207 of the 1955 Act provides:

> “207. Suits and applications cognizable by revenue court only— (1) All suits and application of the nature specified in the Third Schedule shall be heard and determined by a revenue court.

> (2) No court other than a revenue court shall take cognizance of any such suit or application or of any suit or application based on a cause of action in respect of which any relief could be obtained by means of any such suit or application.

Explanation — If the cause of action is one in respect of which relief might be granted by the revenue court, it is immaterial that the relief asked for from the civil court is greater than, or additional to, or is not identical with, that which the revenue court could have granted."

70. Section 256 of the 1955 Act reads:

> "S.256. Bar to jurisdiction of civil courts. – (1) Save as otherwise provided specifically by or under this Act, no suit or proceeding shall lie in any civil court with respect to any matter arising under this Act or the rules made thereunder, for which a remedy by way of suit, application, appeal or otherwise is provided therein.
>
> (2) Save as aforesaid no order by the State Government or by any revenue court or officer in exercise of the powers conferred by this Act or the rules made thereunder shall be liable to be questioned in any civil court."

71. In Pyarelal v. Shubhendra Pilania29 this Court, by relying on earlier decision of this Court in Bank of Baroda v. Moti Bai30, held that Section 207 read with Section 256 of the 1955 Act bars the jurisdiction of the civil courts in respect of suits and applications of the nature specified in the Third Schedule of the 1955 Act.

72. The Third Schedule of the 1955 Act, gives a list of suits, applications and appeals which could be maintained under the Act. Entry 8A provides that a suit for injunction could be filed before the Court of Assistant Collector within a period of three years from (2019) 3 SCC 692 (1985) 1 SCC 475 the date the cause of action arises. Entry 23-C provides that a suit for perpetual injunction can be filed before the Court of Assistant Collector within a period of three years from the date the cause of action arises. Entry 5 provides that a suit for declaration of the plaintiff's right as a tenant, or as a tenant of Khudkasht, or as a sub-tenant, or for a share in a joint tenancy are also to be filed in the Court of Assistant Collector. Similarly, suit for declaration of tenancy rights or for recovery of possession or for ejectment of trespassers can be filed under Sections 89, 187 and 183 respectively, vide entries 6, 23 and 23-A respectively in the Third Schedule.

73. Once it is established that two bighas out of three bighas of the land in dispute was agricultural land and as such fell within the purview of the 1955 Act, in my view, though the revenue court may not have had the jurisdiction to annul the notification acquiring the land, which, in any case, was not sought for by the plaintiff, the suit for injunction was maintainable before the Revenue Court by virtue of Entries 8A and 23-C read with Entries 5, 6, 23 and 23A of the Third Schedule of the 1955 Act. Thus, the Suit before the Civil Court was barred by Section 207 read with Section 256 of the 1955 Act. Issue no.(iii) is decided accordingly.

Conclusion

74. As I have found the suit not maintainable insofar as it related to the land covered by the acquisition notification and also barred by Section 207 read with Section 256 of the Rajasthan Tenancy Act, 1955, the defendant's appeal is entitled to be allowed and is hereby allowed. The judgment and decree of the High Court as well as of the First Appellate Court are set aside and the decree passed by the Trial Court is restored.

.....J. (MANOJ MISRA) New Delhi;

October 19, 2023 REPORTABLE IN THE SUPREME COURT OF INDIA CIVIL APPELLATE JURISDICTION CIVIL APPEAL NO. 8411 OF 2014 URBAN IMPROVEMENT TRUST BIKANER APPELLANT(S) VERSUS GORDHAN DASS (D) THR. LRS. & ORS. RESPONDENT(S) JUDGMENT Hrishikesh Roy, J.

A. Factual Backdrop

1. The challenge here is to the judgment dated 12.1.2010 by the High Court of Judicature for Rajasthan at Jodhpur in SB Civil Regular Second Appeal No.114 of 2004 whereby the High Court upheld the verdict of the first Appellate Court and opined that the acquisition proceeding is null and void since notice was not given to the owners who were in possession but was given to original khatedaars whose names were existing in the revenue record.

2. The respondent Gordhan Dass filed Regular Civil Suit No. 03/04 projecting the case that the plaintiff and the defendant nos.2 to 4 jointly purchased 3 bighas of land in Bikaner town in two tranches. Under the registered sale deed dated 2.3.1970, two and a half bigha land was first purchased and under the second registered sale deed dated 16.3.1970, another half bigha land was purchased from one Lal Khan. The plaintiff and the defendant nos.

2 to 4 thereby became joint khatedars of the said three bighas of purchased land. While the purchasers were in peaceful possession of the land bearing Khasra no.211/81 and 239/83, the defendant no.1 i.e. the Urban Improvement Trust, Bikaner started making claim over this land projecting that they had acquired the said land. Initially, the suit was filed seeking permanent injunction to restrain the defendant no.1 from trespassing into the land and initiating any acquisition process but later when the defendant no.1 was trying to obtain forceful possession of the land during the pendency of the suit, the plaintiff amended the suit on 11.11.2002 to secure restoration of possession through mandatory injunction.

It was also pleaded that on the basis of a judgment dated 26.2.1998(WP 2243/95) in Bhanwarlal v State of Rajasthan, concerning some other land, the defendant no. 1 had taken possession of the plaintiff's land and that the plaintiff was enjoying possession till 9.6.1998 during the pendency of civil suit. In the written statement, the Urban Improvement Trust admitted that the plaintiff together with the defendant nos.2 to 4 purchased total 3 bighas of land through 2 sale deeds dated 2.3.1970 and 16.3.1970, and those sale deeds are registered in the office of Sub-Registrar, Bikaner. The defendant no.1 also admitted that the plaintiff submitted an application before District Magistrate to convert one bigha land to non-agricultural category on which the District Magistrate

issued NOC since the said land was needed to set up a petrol pump. Projecting their right over the concerned land, the defendant no.1 in the written statement claimed that they had acquired 24 Bigha 12 Biswa land comprising Khasra No.294/82 and requisite compensation was paid to the original khatedar.

Therefore, no compensation is payable to either the plaintiff or the defendant nos.2 to 4 who had purchased the 3 Bigha land.

3. The Trial Court on the basis of the rival contentions framed the following issues:

> "(i) Whether properties mentioned in paras 1, 1 (a), 1
>
> (b) of the plaint are under the ownership of plaintiff and defendant no.2 to 4?
>
> (ii) Whether out of the above-stated lands, two bigha land has been wrongly acquired by the defendant no.1?
>
> (iii) Whether defendant no.1 has wrongly got possession over suit land according to para no.9 of the plaint, plaintiff is entitled to get the same restored?

(iv) Whether compensation has already been paid to the concerning people having acquired 24 Bigha 12 Biswa suit land comprising Khasra No.294/83 adopting lawful process according to para No.115 of written statement?

(v) Relief (s) ?"

4. The learned Additional Civil Judge (Sr. Division) Bikaner partially decreed the suit against the defendant no.1 by holding that the plaintiff is entitled to get possession of 1 Bigha land meant for petrol pump in Khasra No.284/83. However, for the balance suit land, it was held that the defendant no.1 had acquired the said land and accordingly the suit of the plaintiff for the 2 Bighas land, was dismissed. While granting relief for the 1 Bigha land, the learned Trial Judge noted that possession of the same was restored to the plaintiff after due permission from the State Government and therefore his ownership remained undisturbed. For the balance 2 Bighas land, relief was refused and it was held that even though the said land was purchased in 1970 through registered sale deeds, the names of the new owners were not mutated in the revenue records which continued to reflect the name of the previous owner (seller), to whom compensation was paid. It was further held that the onus was on the plaintiff to prove ownership, claim compensation, and get his name recorded in jamabandi.

5. The plaintiff then filed an appeal before the District Judge, Bikaner and the learned Appellate Court by its judgment dated 16.4.2004 decreed the entire suit land in favour of the plaintiff and against the defendant no.1 and the defendant was restrained from interfering with the plaintiff's peaceful possession, use and occupation of the suit land. The Appellate Court concluded in favour of the plaintiff after noting that no opportunity of hearing was provided to the plaintiff for acquisition

of the land and furthermore, the plaintiff, Gordhan Dass was enjoying undisturbed possession of the land until 10.6.1988. Notwithstanding the mutation correction not being carried out in the revenue records by the purchasers, the Appellate Court noted that the plaintiff had already applied before the District Magistrate for conversion of 1 Bigha land for establishing petrol pump and NOC for the said purpose was issued in favour of the plaintiff with the active cooperation by the defendants and it was thus concluded that despite knowledge of the plaintiff's ownership and possession, the defendant no.1 did not discharge its duty to issue notice to the land owner/plaintiff and accordingly the land acquisition proceedings were held to be invalid. Moreover, since during the pendency of the suit the plaintiff was forcefully evicted from the land on 10.6.1988 under cover of some other judgment of the High Court, the Court opined that without proper acquisition proceedings with notice to the owner, the possession of the plaintiff (who was enjoying uninterrupted possession till 10.6.1988), could not have been disturbed. It was further noted that neither was any acquisition notice issued to the plaintiff nor they were paid any acquisition compensation although they were the actual owners of the land.

On the claim that the compensation was paid, the Court opined that it was a vague contention in the written statement and it was not categorically mentioned to whom compensation was paid nor any evidence on such payment was produced by the defendant No.

1. It was also found that the defendant no.1 had forcibly evicted the plaintiff from his property during the pendency of the suit without due legal process i.e. without service of notice, without providing the opportunity of hearing and without payment of compensation to the plaintiff, and thus, the proceedings of the defendant no.1 were declared to be invalid. The decree of the Trial Court dated 23.2.2004 was thus set aside allowing the plaintiff's appeal. The decree of permanent injunction was accordingly granted favouring the plaintiff against the defendant no.1 and it was further ordered that defendant no.1 is to restore the suit land mentioned in para no.1 (a) & 1 (b) of the plaint and they were restrained from interfering with the use and occupation of the said land by the plaintiff.

6. The defendant no.1 i.e. Urban Improvement Trust, Bikaner assailed the judgment and decree dated 16.4.2004 in Appeal Decree No.30/04. The High Court in the second appeal noted that the defendant no.1 in the written statement had admitted that the plaintiff together with the defendant nos.2 to 4 are the owners of the suit land. Therefore, it was held that suit for injunction without seeking relief of title declaration is maintainable as even the defendant no.1 does not claim any title over land purchased by the plaintiff and the defendant nos.2 to 4, by way of two registered sale deeds in the year 1970. Since the plaintiff together with the defendant nos.2 to 4 had obtained valid title by purchase in the year 1970 and were in peaceful possession, they were not required to seek relief of declaration of title, particularly when the title has not been disputed by the defendant no.1.

7. The High Court adverted to the provisions of The Rajasthan Urban Improvement Act, 1959 (hereinafter referred to as the "1959 Act") and observed that for compulsory acquisition of land under Section 52, the procedure to be followed is prescribed in the sub-

Sections under Section 52 such as giving notice and providing opportunity of hearing to the owner and/or any other interested person and compensation must also be paid to the owner under Section 53. However, since the defendant no.1 failed to comply with the mandatory provisions under Section 52 and 53 of the 1959 Act and that acquisition process was initiated much after the purchase of the land by the plaintiff, the acquisition proceeding in the absence of notice and compensation was declared to be void and a nullity. It was specifically noted that the defendant no. 1 admitted the possession and title of the plaintiff in their written statement and thus it was opined that the plaintiff is entitled to protect their property. As the defendant no.1 had also raised an issue questioning the jurisdiction of the Civil Court, it was held that a suit in a civil Court will always lie to question the order of the tribunal created by a statute even if its order is expressly or by necessary implication made final, if the said tribunal abuses its power or acts in violation of its provisions. Consequently, the second appeal filed by the defendant no.1 was dismissed upholding the decree passed in favour of the plaintiff by the first Appellate Court.

B. Submissions

8. Challenging the above judgment of the High Court, Mr. Aruneshwar Gupta, Learned Senior Counsel on behalf of the appellant argued that pursuant to the notification dated 22.8.1974, public notice and personal notices were duly issued to the original Khatedars whose names were in the revenue records. The amount of compensation was also duly paid. Service of notice to the original khatedars in the record of rights was sufficient notice as State Government is not liable to make a roving or fishing inquiry about the ownership of land. Secondly, the purchaser of acquired land is 'any other person interested' and could have raised objections under Section 52(3) of the 1959 Act. There is no right to challenge the acquisition of land after expiry of 23 years as the suit for permanent injunction was filed on 21.4.1997. (Ahuja Industries Ltd. v State of Karnataka 1; Bhola Shanker v The Disst. Land Acquisition Officer2). Thirdly, it was argued that the Land Acquisition Act, 1894 is a complete code in itself and thus, by necessary implication Civil Court has no jurisdiction to pass injunction for a land which is already acquired. Finally, it was argued that the nature of land acquired under the 1959 Act was 'agricultural land' as the same was not converted for 'non-

1 2003 5 SCC 365 2 (1973) 2 SCC 59 agricultural use' u/s 90-A of Land Revenue Act,1956. Owing to Section 207 of the Rajasthan Tenancy Act, 1955 (hereinafter "Tenancy Act,1955")read with entry 8A and entry 23C of third Schedule, matter relating to temporary and permanent injunction in respect of agricultural land could be heard and determined only by a revenue Court. No civil suit is maintainable for permanent injunction w.r.t agricultural land.

9. Projecting the contrary view, Mr. Manoj Swarup, learned Senior Counsel for the Respondents argued that revenue authorities i.e. Patwari, Tehsildar and Collector had knowledge of the rights and interests of the plaintiffs. As per the requirements under Section 52(2) of the 1959 Act, notice should be given not only to the owner of the land but also any other person who in the opinion of State Government would be interested therein. The Learned Counsel has placed on record letters from Tehsildar, Bikaner acknowledging the sale deeds, thereby indicating that they had knowledge of plaintiffs being in possession of the land.

Reliance was also placed on the decision of this Court in Ahuja Industries Limited v State of Karnataka 3. On the aspect of maintainability, it was canvassed that the civil suit was not barred in law to adjudicate on the dispute. To substantiate the same, Mr. 3 (2003)5 SCC 365 Swarup cites the Constitution Bench decision of this Court in Dhulabai and others v State of Madhya Pradesh 4(hereinafter referred to as "Dhulabai") and Firm Seth Radha Kishan v The Administrator5.

C. Issues

10. Having summarised the contentions of the respective parties, the following questions fall for our consideration:

a) Whether land acquisition proceedings can be declared null and void for failure to give notice to the owners who had purchased the land two years earlier through registered sale deeds, before the initiation of the land acquisition proceedings, even though the name of original khatedaar was reflected in the Revenue records?

b) Whether Civil Court has jurisdiction to grant injunction as Section 207 of the Tenancy Act,1955 bars jurisdiction of Civil Court in respect of agricultural land?

c) Whether plaintiff's suit for injunction is maintainable without seeking Declaration in a Civil Court?

D. Notice requirements in land acquisition proceedings

i) Constitutional right to property and procedural justice

11. This is a case of compulsory acquisition of land where the land owner has no choice in the matter. The respondent purchased 4 (1968) 3 SCR 3 662 5 (1964) 2 SCR 2 273 the concerned land for valuable consideration and was in peaceful possession of the land. At that stage, the appellant attempted to dispossess the respondent. Acquisition of land for public purpose is permitted by law, but the acquiring authority is required to ensure adherence to the statutory regime for compulsory acquisition. Only by strict adherence to the procedure, a measure of protection is afforded to the landowners and the interested persons, and implicit therein is fairness in the procedure. After all, one is concerned with protection of constitutional rights under Article 300A of the Constitution.

12. In the context, the recent observations of this Court in Sukh Dutt Ratra v. State of H.P6., would bear consideration where the Court traced the recognition of the right to property since the 1700s and reiterated the high threshold of legality that ought to be satisfied, to dispossess an individual of their property:

> "13. While the right to property is no longer a fundamental right ["Constitution (Forty-fourth Amendment) Act, 1978"], it is pertinent to note that at the time of dispossession of the subject land, this right was still included in Part III of the Constitution. The right against deprivation of property unless in accordance with

procedure established by law, continues to be a constitutional right under Article 300-A.

6 (2022) 7 SCC 508

14. It is the cardinal principle of the rule of law, that nobody can be deprived of liberty or property without due process, or authorisation of law. The recognition of this dates back to the 1700s to the decision of the King's Bench in Entick v. Carrington [Entick v. Carrington, 1765 EWHC (KB) J98 : 95 ER 807] and by this Court in Wazir Chand v. State of H.P. [Wazir Chand v. State of H.P., (1955) 1 SCR 408 : AIR 1954 SC 415] Further, in several judgments, this Court has repeatedly held that rather than enjoying a wider bandwidth of lenience, the State often has a higher responsibility in demonstrating that it has acted within the confines of legality, and therefore, not tarnished the basic principle of the rule of law.

15. When it comes to the subject of private property, this Court has upheld the high threshold of legality that must be met, to dispossess an individual of their property, and even more so when done by the State."

13. The Land acquisition laws in India have their origins in British colonial law. Compulsory acquisition of land is based on the principle of eminent domain which can be understood as the State's power to acquire private property without the owner's consent for a 'public purpose' 7. Thus, when the State acquires property while exercising its eminent domain powers, the economic loss suffered by the owner is followed by a corresponding economic gain to the State. The State deals with the property as if it is the owner of the property8. Scholarly writings on the principle of 7 Julius L. Sackman, Russell D Van Brunt, 'Nichols on Eminent Domain' vol 1 (3rd edn, Mathew Bender & co, 1959). § 1.11 8 Namita Wahi, 'Property' in Sujit Choudhry, Madhav Khosla, Pratap Bhanu Mehta (eds), The Oxford Handbook of the Indian Constitution (Oxford University Press 2016) eminent domain have shed light on this subject 9. In an article titled, "History of Eminent Domain in Colonial Thought and Legal Practice" published in the Economic and Political Weekly 10, the author, while critiquing the principle of eminent domain reflects on the need to rethink compulsory acquisition from the lens of ethics and justice. Referring to the opening paragraph in the Tenth Report of the Law Commission of India: Law of Acquisition and Requisitioning of Land (1958)11 dealing with land acquisition as per which "critical examination of the various stages of evolution of this(compulsory land acquisition) power and its ethical basis will serve no useful purpose as the power has been established in all civilised countries", the author questions the precedence given to customary practices over ethics. There ought to be substantive limits on the power of eminent domain in order to avoid arbitrary action. Strict adherence to procedure is an essential safeguard towards achieving fairness and transparency in the land acquisition process. Such procedures provide land owners and interested persons a fair opportunity to say why their land should 9 Tom Allen, The Right to Property in Commonwealth Constitutions (Cambridge University Press 2000) 172; Preeti Sampat, 'Limits to Absolute Power: Eminent Domain and Right to Land in India' (2013) 48 Economic and Political Weekly 40; Usha Ramanathan, 'A Word of Eminent Domain' in Lyla Mehta(ed), Displaced by Development: Confronting Marginalisation and Gender Injustice. (SAGE 2009) 10 Debjani Bhattacharyya, 'History of Eminent Domain in Colonial Thought and Legal

Practice' (2015) 50 Economic and Political Weekly 45. 11 Law Commission, 'Law of Acquisition and Requisitioning of Land' (Law Com No. 10, 1977).

not be acquired and also whether the compensation assessed for their lands is adequate. To deny procedural safeguards to the land loser would mean that the doors of justice are shut for him. Such an interpretation, in my view, should be avoided.

ii) International Legal Framework on Compulsory Land Acquisition

14. Before proceeding to deal with the issue of the legitimacy of the land acquisition proceeding, it would be appropriate to set out the international legal framework on compulsory land acquisition.

The right to self-determination is enshrined within the Charter of the United Nations, the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR), amongst other instruments which is defined as the right of all people to freely dispose of their natural wealth and resources, and that no person may be deprived of its own means of subsistence. Article 17 of the Universal Declaration of Human Rights provides that, "Everyone has the right to own property alone as well as in association with others. No one shall be arbitrarily deprived of his property." Self-

determination also includes obligation for states to refrain from any forcible actions that deprive people of enjoying such rights. The concept of Free, Prior and Informed Consent(FPIC) within international development law is most clearly stated in the United Nations Declaration on the Rights of Indigenous Peoples in Articles 10, 11, 19, 28 and 29 which prescribes situations in which FPIC must be obtained before granting compensation, taking of indigenous property etc. Development experts have recognized that FPIC is not only important for Indigenous people but can also be used as a positive approach to involve local communities in decision-making about any proposed development. Engaging them in such processes fosters a greater sense of ownership and engagement and, moreover, helps safeguard their right to development as a basic human rights principle 12. These principles are not to be found under the Land Acquisition Act, 1984 but the concept of acquiring land through consent and Social Impact Assessment (SIA) on whether a project serves "public purpose" has been added in the 2013 avatar of the Land Acquisition Act.

Therefore, The Right To Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 is found to be more attuned to the notion of fairness and is progressive to this extent.

12 Sambhav Shrivastava et al., 'Subversion of Due Process for Seeking the Consent of Communities in Land Acquisition and Resultant Land Conflicts' (Oxfam 2020) <https://policy-practice.oxfam.org/resources/subversion-of-due-process-for-seeking-the-consent-of-communities-in-land-acquis-621109/> accessed 19 September 2023.

15. While there are many instances of authorities failing to adhere to the acquisition regime, this Court has the benefit of a study conducted by the Lands Rights Initiative of the Centre for Policy

Research13. The outcome of the extensive study of around 1269 judgments of the Supreme Court of India between 1950 to 2016 on the legal trajectory of land acquisition cases in India lead to the following comments:

> "The process of land acquisition in India has been the source of increasing political and legal contestation for almost two hundred years. This stems from the inherently coercive nature of the process, which creates a severe imbalance in power between the state and land losers. Our review of Supreme Court litigation since the time India became a constitutional republic in 1950 shows that while much of this imbalance was created within the very text of the Land Acquisition Act, a considerable part of it could also be attributed to executive non-compliance with the rule of law. The result was a situation of great inequity for the land losers" [emphasis supplied]

16. The Supreme Court in a recent judgment had the occasion to look at the process of compulsory land acquisition where the landowners had practically no means to oppose the proposed acquisition. A two judge bench in Vidya Devi v. State of H.P14 13 Namita Wahi, Ankit Bhatia et al, 'Land Acquisition in India: A Review of Supreme Court Cases 1950-2016'(Centre for Policy Research 2017) 14 (2020) 2 SCC 569 speaking through Indu Malhotra J. made the following significant observation:

> "12.2. The right to property ceased to be a fundamental right by the Constitution (Forty-fourth Amendment) Act, 1978, however, it continued to be a human right (Tukaram Kana Joshi v. Maharashtra Industrial Development Corpn. [Tukaram Kana Joshi v. Maharashtra Industrial Development Corpn., (2013) 1 SCC 353 : (2013) 1 SCC (Civ) 491]) in a welfare State, and a constitutional right under Article 300-A of the Constitution. Article 300-A provides that no person shall be deprived of his property save by authority of law. The State cannot dispossess a citizen of his property except in accordance with the procedure established by law. The obligation to pay compensation, though not expressly included in Article 300-A, can be inferred in that Article [K.T. Plantation (P) Ltd. v. State of Karnataka [K.T. Plantation (P) Ltd. v. State of Karnataka, (2011) 9 SCC 1 : (2011) 4 SCC (Civ) 414]].
>
> 12.3. To forcibly dispossess a person of his private property, without following due process of law, would be violative of a human right, as also the constitutional right under Article 300-A of the Constitution."

17. The significance of complying with procedural requirements cannot, therefore, be overstated.

iii) Burden is on the Authority to fulfil procedural requirements under Section 52 of the 1959 Act

18. Returning to the facts of the present case, let us now consider the implication of Section 52 of the 1959 Act. The provision having a bearing in this discussion, is extracted 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 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.

(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 encumberances.

(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 authorised by it in this behalf within thirty days of the service of notice.

**** **** **** **** ****"

19. The implication of Section 52 of the 1959 Act, is that notice is required to be served not only to the owner but also to "any other person interested" thereby covering everyone interested in the concerned land. To avoid the rigour of this Section, the appellant-

Trust have given their version by saying that the plaintiff, Gordhan Dass intentionally did not receive compensation so as to make it a ground thereafter and that the onus would lie on the plaintiff as found by the trial Court. Gordhan Dass was indisputably the actual owner and hence, as per the mandate of the law, it was the responsibility of the concerned Authority 15 to adhere to the due statutory process before depriving the landowner or interested persons, of their property. The burden is on the defendant No. 1 i.e. the Urban Improvement Trust to satisfy the high procedural threshold before acquiring any private property. Moreover, the defendant no. 1 was also unable to produce any evidence to indicate whether compensation was ever paid to the original khatedaars as was vaguely claimed by them. This fact was also noted by the First Appellate Court in para 20 of the decision that, despite a vague contention, there is no proof of payment of compensation even to the original khatedars. On the other hand, the plaintiffs have produced a letter wherein the original khatedaar is seeking compensation as on 10.1.1990. Be that as it may, neither was notice issued to the actual owners nor any compensation was paid to them by defendant no. 1. As already noted, Section 52 of the 1959 Act requires the Government to issue 15 D.B. Basnett v Collector, East

District, Gangtok, Sikkim (2020) 4 SCC 572; Jagan Singh & Co. v Ludhiana Improvement Trust 2022 SCCOnLine 1144 notice to the owner of the land and to any other person, who may be interested therein to seek protection of their land from acquisition. Only after consideration of the response to the notice, the concerned land is to vest on the State Government. The land owner or interested persons are also required to be given the opportunity of being heard. In the present case, neither any notice was issued nor any compensation was paid to the land owner.

Moreover, it has been alleged that even after initiation of land acquisition proceedings in 1972, the plaintiff continued to enjoy possession till 10.6.1998 during the pendency of the civil suit. The plaintiff was forcefully dispossessed under the cover of a judgment concerning some other land. The said judgment has nothing to do with the land of respondents. This further points towards glaring procedural irregularities in the entire land acquisition process.

20. The observations in M.P. Housing Board v Mohd. Shafi 16 are relevant in this context where the significance of giving proper notice was noted as under:

> "8.....The object of issuing a notification under Section 4 of the Act is two- fold. First, it is a public announcement by the Government and a public notice by the Collector to the effect that the land, as specified therein, is needed or is likely to be needed by the Government for the "public purpose" mentioned therein; and secondly, it authorises the departmental officers or officers of the local authority, 16 (1992)2 SCC 168 as the case may be to do all such acts as are mentioned in Section 4(2) of the Act. The notification has to be published in the locality and particularly persons likely to be affected by the proposal have to be put on notice that such an activity is afoot. The notification is, thus, required to give with sufficient clarity not only the "public purpose" for which the acquisition proceedings are being commenced but also the "locality" where the land is situate with as full a description as possible of the land proposed to be acquired to enable the "interested" persons to know as to which land is being acquired and for what purpose and to take further steps under the Act by filing objections etc., since it is open to such persons to canvass the non- suitability of the land for the alleged "public purpose" also. If a notification under Section 4(1) of the Act is defective and does not comply with the requirements of the Act, it not only vitiates the notification, but also renders all subsequent proceedings connected with the acquisition, bad." [emphasis supplied]

21. It logically follows from above that dispossession without following prescribed statutory process such as giving proper notice, is not only highly prejudicial but it is also a violation of constitutional rights and would thereby vitiate the entire process of land acquisition. Law is well-settled that strict adherence to the mandatory procedural requirements outlined in the legislation is sine-qua-non for the compulsory acquisition of land. Legally conducted acquisition procedures minimize the potential for arbitrary action by the concerned Authority. The findings to this effect by the Appellate Court and the High Court would therefore merit our approval. In other words, land acquisition proceedings for the entire 3 bighas of land is held to be void-ab-initio.

22. As far as the judgment of this Court in Bhola Shankar v Dist.

Land Acquisition Officer17relied upon by Mr. Aruneshwar Gupta, learned Counsel for the Appellant is concerned, it is distinguishable from the facts of this case. In Bhola Shankar(supra), the factual matrix was such that the concerned plot was purchased subsequent to the publication of notification under Section 4 of the Land Acquisition Act,1894. However, in the present case, the plaintiff together with defendant no. 2 to 4 had bought the land well before commencement of the land acquisition proceedings. Therefore issue(i) is answered accordingly.

E. Maintainability

i) Expansive jurisdiction of Civil Courts under Section 9, Civil Procedure Code

23. Adverting next to the appellant's argument on maintainability of a suit, it is no more res-integra that ouster of jurisdiction of civil Courts cannot be a matter of course. Section 9 of the Code of Civil Procedure empowers the Courts to try all civil suits, unless barred.

The contour of the jurisdiction of the Civil Court has been succinctly enunciated by a five-judge Constitution Bench in 17 (1973) 2 SCC 59 Dhulabai(supra). Chief Justice M Hidayatullah writing for the Bench laid down the tests on the bar of jurisdiction of the civil courts. The relevant principles are extracted below:

> "(1) Where the statute gives a finality to the orders of the special Tribunals the civil courts' jurisdiction must be held to be excluded if there is adequate remedy to do what the civil courts would normally do in a suit. Such provision, however, does not exclude those cases where the provisions of the particular Act have not been complied with or the statutory Tribunal has not acted in conformity with the fundamental principles of judicial procedure. (2) Where there is an express bar of the jurisdiction of the court, an examination of the scheme of the particular Act to find the adequacy or the sufficiency of the remedies provided may be relevant but is not decisive to sustain the jurisdiction of the civil court.
>
> Where there is no express exclusion the examination of the remedies and the scheme of the particular Act to find out the intendment becomes necessary and the result of the inquiry may be decisive. In the latter case it is necessary to see if the statute creates a special right or a liability and provides for the determination of the right or liability and further lays down that all questions about the said right and liability shall be determined by the Tribunals so constituted, and whether remedies normally associated with actions in civil courts are prescribed by the said statute or not.
>
> (7) An exclusion of the jurisdiction of the civil court is not readily to be inferred unless the conditions above set down apply." [emphasis supplied]

24. In Ramesh Gobindram v. Sugra Humayun Mirza 18, a two-Judge Bench of this Court observed that the jurisdiction of the civil courts to try suits of a civil nature is expansive and the onus to prove the ouster of the jurisdiction is on the party that asserts it.

The court observed that even in cases where the jurisdiction of the 18 (2010) 8 SCC 726 civil court is barred by a statute, the test is to determine if the authority or tribunal constituted under the statute has the power to grant reliefs that the civil courts would normally grant in suits filed before them. The relevant observations are extracted below:

> "12. The well-settled rule in this regard is that the civil courts have the jurisdiction to try all suits of civil nature except those entertainment whereof is expressly or impliedly barred. The jurisdiction of the civil courts to try suits of civil nature is very expansive. Any statute which excludes such jurisdiction is, therefore, an exception to the general rule that all disputes shall be triable by a civil court. Any such exception cannot be readily inferred by the courts. The court would lean in favour of a construction that would uphold the retention of jurisdiction of the civil courts and shift the onus of proof to the party that asserts that the civil court's jurisdiction is ousted."

25. In this case, applying the test laid down in Dhulabai (supra), it has to be determined whether the Act provides an adequate final remedy of the kind the civil Court would normally grant in a suit, such that the jurisdiction of the civil court must necessarily be inferred to have been ousted. For that purpose, the statutory scheme of the Tenancy Act, 1955 is to be carefully examined.

Additionally, as per the test laid down by Dhulabai (supra), jurisdiction of civil Court would not be ousted in cases where the fundamental principles of judicial procedure and the provisions of the particular Act are not complied with.

26. Proceeding with the above understanding of the law as laid down by this Court in Dhulabai (supra), let us now examine the scheme of the Tenancy Act, 1955 to determine whether the reliefs claimed in the suit, were within or outside the scope of the 1955 Act. The Preamble to the Tenancy Act, 1955 provides that it's an Act to "consolidate and amend the law relating to tenancies of agricultural lands, and to provide for certain measures of land reforms and matters connected therewith". The statutory scheme of the Act provides for tenancies of agricultural lands. Section 1 contained in Part I of the Act deals with short title and commencement. Section 5 deals with definitions. Importantly, Section 5(35) provides the definition of Revenue Court "as a court or an officer having jurisdiction to entertain suits or other proceedings relating to agricultural tenancies, profits and other matters connected with land or any other right or interest in land, wherein such court or officer is required to act judicially." Section 5(43) provides for the definition of tenant. Chapter III deals with classes of tenant while Chapter IV is about Devolution, Transfer, Exchange, and Division of Tenancies. Chapter V is concerned with Surrender, Abandonment, and Extinction of Tenancies. A cursory look at the other chapters would also show that they relate to agricultural tenancies which has nothing to do with the relief of permanent injunction claimed in the suit. The title, as noted earlier, is not disputed. Section 207 and 208 of the Tenancy Act,1955 which is central

to the present issue, reads as under:

> "207. Suits and applications cognizable by revenue court only— (1) All suits and application of the nature specified in the Third Schedule shall be heard and determined by a revenue court.
>
> (2) No court other than a revenue court shall take cognizance of any such suit or application or of any suit or application based on a cause of action in respect of which any relief could be obtained by means of any such suitor application.
>
> Explanation— If the cause of action is one in respect of which relief might be granted by the revenue court, it is immaterial that the relief asked for from the civil court is greater than, or additional to, or is not identical with, that which the revenue court could have granted.
>
> 208. Application of Civil Procedure Code— The provisions of the Code of Civil Procedure, 1908 (Central Act V of 1908), except:
>
> (a) provisions inconsistent with anything in this Act, so far as the inconsistency extends.
>
> (b) provisions applicable only to special suits or proceedings outside the scope of this Act, and
>
> (c) provisions contained in List I of the Fourth Schedule, shall apply to all suit and proceedings under this Act, subject to the modifications contained in List II of the Fourth Schedule."

27. Let us now look at the relief claimed in the suit in the context of the overall scheme of the Tenancy Act,1955. In the suit, the plaintiff, inter alia, sought permanent injunction from disturbing the ownership and possession w.r.t 3 bighas of land purchased through two registered sale deeds. Such a relief could not possibly be granted by the forums empowered under the Tenancy Act,1955 which primarily deals with tenancy rights and their protection.

Therefore, the jurisdiction of the civil Court is not ousted by Section 207 or Section 208 of the Tenancy Act,1955 and the contrary submission made by the appellant has to be rejected.

Therefore, evaluation of the scheme of the Act would lead us to the conclusion that jurisdiction of the revenue Court would be barred under Tenancy Act,1955, in view of the reliefs claimed by plaintiff.

28. Moreover, even where a statute gives finality to the process, it does not exclude cases where the provisions of the particular statute have not been complied with or the Tribunal has failed to decide in conformity with the fundamental principles of judicial procedure19. In the present case, in the

absence of notice to the actual owner under Section 52 of the 1959 Act, the acquisition proceedings are legally vitiated and therefore the affected owner should be entitled to seek relief from the civil Court. As noticed, the defendant no. 1 i.e., the Urban Improvement Trust failed to adhere to the essential requirements under Section 52 of the 1959 Act.

When the fundamental judicial procedure is disregarded, the 19 Dewaji v. Ganpatlal, AIR 1969 SC 560; Sree Kandregula Srinivasa Jagannath Rao Pantulu Bahadur Garu v. State of A.P., (1969) 3 SCC 71 action rendered is legally void and should be seen as being "outside the Act". The observations in Firm Seth Radha Kishan v.

Administrator, Municipal Committee20 would therefore be applicable in this context:

> "7. Under Section 9 of the Code of Civil Procedure the court shall have jurisdiction to try all suits of civil nature excepting suits of which cognizance is either expressly or impliedly barred. A statute, therefore, expressly or by necessary implication, can bar the jurisdiction of civil courts in respect of a particular matter. The mere conferment of special jurisdiction on a tribunal in respect of the said matter does not in itself exclude the jurisdiction of civil courts. The statute may specifically provide for ousting the jurisdiction of civil courts; even if there was no such specific exclusion, if it creates a liability not existing before and gives a special and particular remedy for the aggrieved party, the remedy provided by it must be followed. The same principle would apply if the statute had provided for the particular forum in which the remedy could be had. Even in such cases, the civil court's jurisdiction is not completely ousted. A suit in a civil court will always lie to question the order of a tribunal created by a statute, even if its order is, expressly or by necessary implication, made final, if the said tribunal abuses its power or does not act under the Act but in violation of its provisions."

29. Applying the principles laid down in Dhulabai (supra) and Firm Seth Radha Krishnan(supra) to the facts of the present case, there can be no difficulty in holding that a suit of this nature would be maintainable before the civil Court particularly considering the nature of relief prayed in the suit.

ii) Plaintiff's title is not under a cloud 20 (1964) 2 SCR 273

30. The next issue is whether a civil suit for permanent injunction can be filed without declaration. On this, it is settled that where the plaintiff's title is not in dispute or under a cloud, a suit for injunction could be decided with reference to the finding on possession. The relevant tests were laid down in Anathula Sudhakar v P. Buchi Reddy21:

> "13.1. Where a plaintiff is in lawful or peaceful possession of a property and such possession is interfered or threatened by the defendant, a suit for an injunction simpliciter will lie. A person has a right to protect his possession against any person who does not prove a better title by seeking a prohibitory injunction. But a person in wrongful possession is not entitled to an injunction against the rightful owner. 13.2.

> Where the title of the plaintiff is not disputed, but he is not in possession, his remedy is to file a suit for possession and seek in addition, if necessary, an injunction. A person out of possession, cannot seek the relief of injunction simpliciter, without claiming the relief of possession.
>
> 13.3. Where the plaintiff is in possession, but his title to the property is in dispute, or under a cloud, or where the defendant asserts title thereto and there is also a threat of dispossession from the defendant, the plaintiff will have to sue for declaration of title and the consequential relief of injunction. Where the title of the plaintiff is under a cloud or in dispute and he is not in possession or not able to establish possession, necessarily the plaintiff will have to file a suit for declaration, possession and injunction."

31. At the cost of repetition, it must be noted that in the written statement in the suit, the defendant no.1 admitted that the plaintiff together with the defendant nos.2 to 4 purchased total 3 bighas of 21 2008) 4 SCC 594 land through two sale deeds respectively dated 2.3.1970 and 16.3.1970 and it was also admitted that the plaintiff submitted an application before District Magistrate to convert one bigha land to non-agricultural category on which the District Magistrate issued NOC since the said land was needed to set up a petrol pump. Here, the title for the plaintiff is not disputed by the defendants and the same is not under a cloud. Therefore, the question of title is not an issue in the suit. Moreover, the mandatory requirements under the provisions of the 1959 Act were itself not followed before issuing notification, without which the title cannot be said to be disputed.

Such a suit for injunction in the absence of contest to the title would therefore, be maintainable.

32. In State of Bihar v Dhirendra Kumar22, Laxmi Chand v Gram Panchayat Kararia23, Commissioner, Bangalore Development Authority and another v Brijesh Reddy and another 24, it was held that validity of acquisition notification cannot be questioned in a Civil Court and it can only be challenged in the High Court under its writ jurisdiction. Would these ratios apply to the present case is a question that needs to be addressed. It is the case of the Appellant i.e. the Urban Improvement Trust that the nature of land 22 (1995) 4 SCC 229 23 (1996) 7 SCC 218 24 (2013) 3 SCC 66 acquired under the 1959 Act was 'agricultural land' which got converted for 'non-agricultural use' under Section 90-A of the Land Revenue Act,1956. As per Section 207 of the Tenancy Act,1955 read with entry 8A and entry 23C of Third Schedule, the matter relating to agricultural land could be heard and determined only by a Revenue Court. As the scheme of the Tenancy Act, 1955 was earlier examined, it is quite apparent that the prayers made in the suit are beyond the scope of the 1955 Act. Moreover, the relief for quashing the notification was also not sought in the Suit. That apart, it is not the case of the appellant that writ court is the legal option for relief but they want the land owners to be relegated to the Revenue Court under the 1955 Act. It is already noticed why the Revenue Court is not the appropriate forum for the reliefs claimed by the respondents. The facts here are clearly distinguishable and hence, the ratio laid down in Dhirendra Kumar(supra) can have no application here. Moreover, as per the five-judge bench judgment in Dhulabai (supra), an exception is carved out as per which if there is a violation of fundamental principles of judicial procedure and the provisions of a particular Act are not followed, a Civil suit is maintainable.

iii) Non-impleadment of State cannot be considered fatal for maintainability

33. It was also pleaded by the Appellant that the suit was not maintainable on account of considerable delay and because the State was not impleaded as a party defendant in the suit proceeding. Such a contention upon consideration is only to be rejected. The legal position relating to necessary and proper parties was summarized in Mumbai International Airport Private Limited v.

Regency Convention Centre and Hotels Private Limited25 as under:

> "15. A "necessary party" is a person who ought to have been joined as a party and in whose absence no effective decree could be passed at all by the court. If a "necessary party" is not impleaded, the suit itself is liable to be dismissed. A "proper party" is a party who, though not a necessary party, is a person whose presence would enable the court to completely, effectively and adequately adjudicate upon all matters in dispute in the suit, though he need not be a person in favour of or against whom the decree is to be made. If a person is not found to be a proper or necessary party, the court has no jurisdiction to implead him, against the wishes of the plaintiff. The fact that a person is likely to secure a right/interest in a suit property, after the suit is decided against the plaintiff, will not make such person a necessary party or a proper party to the suit for specific performance."

34. It must be borne in mind that the Urban Improvement Trust, Bikaner is an instrumentality of the State and was a contesting party in the suit as it was the beneficiary of the acquisition process. The observation of the seven-judge bench of this Court in 25 (2010) 7 SCC 417 Nagpur Improvement Trust v. Vithal Rao 26, would be relevant in this context where, it was noted that "the acquisition is for the trust and may be at its instance, but nevertheless the acquisition is by the Government". In the backdrop of differential compensation under different land acquisition Acts, it was held that as far as the owner is concerned, it does not matter whether the land was acquired by Improvement Trust, Municipal Corporation or the Government. In the facts of the present case, non-impleadment of the State cannot be perceived as fatal for the maintainability of the suit as the contesting defendant i.e. Urban Improvement Trust is an instrumentality of the State and the beneficiary of the acquisition process. At this point, we may also usefully refer to the conclusion of the Rajasthan High Court in Urban Improvement Trust v Shri Padmanand27, where after analysing the provisions of the Act 1959, it was noted as under:

> "15.....In our view, a close scrutiny of the provisions of the 1959 Act leave no doubt that the Improvement Trust, created under the aforesaid Act, works as an agent or instrumentality of the State Government and as such the Trust must be considered as a 'State Government department', for the purposes of Section 18 of the Act of 1953."

26 (1973) 1 SCC 500 27 AIR 1980 Raj 176

35. In light of the above observation, can it possibly be said that the Urban Improvement Trust for the present purpose, is a separate entity altogether in relation to the State of Rajasthan, without whose participation, no authoritative pronouncement could possibly be made in the suit? The answer for this has to be in the negative. The ratio in Shri Saurav Jain v M/s ABP Design & Another28 would also not be applicable here. In that case, a suit was instituted by the 1st respondent in the Court of Civil Judge who claimed to be a "transferable owner and cultivator" of a certain piece of land. This Court, in the said case, inter alia, arrived at a finding that invalid transfer of land was made to the Respondent and it was null and void for being in violation of Section 5(3) of Urban Ceiling Act,1976. Significantly, neither the State nor any authority under the Urban Land (Ceiling and Regulation) Act 1976 were impleaded in that suit. The Court specifically noted that the real object of the suit was to affirm plaintiff's title on the basis of an alleged permission for sale in his favour. It was in that context that the Court noted that the 1 st respondent resorted to engineered drafting for declaration of title. However, in the present case, the title is undisputed and the necessary contesting party i.e. the Trust 28 2021 SCC OnLineSC 552 was arrayed as a party. These are the key distinguishing features for that case to be of no relevance in the present matter.

36. At this point, let us now refer to the observations of this Court in Urban Improvement Trust v Mohan Lal 29 which are closer to the facts of the present case. This Court deprecated the tendency of State and its instrumentalities of filing appeals against all orders that came against them on false, frivolous, vexatious and technical grounds. The facts in that case were that the Urban Improvement Trust, Bikaner without notice, acquisition or consent, took over the allotted plot of the landowner and thereafter, when relief was granted to landowners by the National Commission, challenged it on technical grounds for absence of protest and Complaint, within two years of the cause of action. Moreover, it was argued by the Counsel for the Trust that even if it was an illegal encroachment, jurisdiction under Consumer Protection Act,1986 could not be invoked. Rejecting the arguments of the Counsel for the Trust, the Supreme Court made the following pertinent observations:

> "5. It is a matter of concern that such frivolous and unjust litigations by Governments and statutory authorities are on the increase. Statutory authorities exist to discharge statutory functions in public interest. They should be responsible litigants. They cannot raise frivolous and unjust objections, nor act in a callous and high-handed manner. They can not behave like some private litigants with profiteering motives.

29(2010) 1 SCC 512 Nor can they resort to unjust enrichment. They are expected to show remorse or regret when their officers act negligently or in an overbearing manner. When glaring wrong acts by their officers are brought to their notice, for which there is no explanation or excuse, the least that is expected is restitution/restoration to the extent possible with appropriate compensation. Their harsh attitude in regard to genuine grievances of the public and their indulgence in unwarranted litigation requires to be corrected.

6. This Court has repeatedly expressed the view that Governments and statutory authorities should be model or ideal litigants and should not put forth false, frivolous, vexatious, technical (but unjust) contentions to obstruct the path of justice."

37. What we see here are few landowners whose lands were subjected to compulsory acquisition for the benefit of the Urban Improvement Trust, Bikaner. The Trust took possession of their land without serving any notice on the landowners. It is also not clear whether any compensation was actually paid to the recorded khatedars. The respondents then filed suit seeking to injunct the appellant from dispossessing the landowners from their land. This was a situation of a genuine grievance attempted to be canvassed by the landowners before a Court of law. For a litigant who has partially succeeded from the 1 st Court and later at the appellate stage obtained full relief from two courts be told that his suit is not maintainable? In my opinion, justice would be better served if the respondents are not forced to commence another round of litigation before the High Court to secure a redressal for their grievances pertaining to being deprived of their land without getting any notice or just compensation.

38. As can be seen, the landowners had arrayed the Urban Improvement Trust, Bikaner as a defendant in the suit as their grievance was primarily against the appellant who dispossessed the respondents and took over their land. The State Authority which wronged the landowners was a defendant in the suit and also contested the suit by filing written submission and adducing evidence. In this backdrop, to non-suit the landowners would lead to manifest injustice. The issue no. (iii) is therefore answered against the appellant.

F. Conclusion

39. It must now be noted that the litigation in this case has been continuing for 25 years. Empirical Data 30 shows that land disputes clog all levels of courts in India, and according to certain studies, land-related litigations account for the largest set of cases, in terms of both absolute numbers and judicial pendency. For those who are going to lose their land through compulsory acquisition, a key redressal mechanism is to enable them to access courts, at first 30 ‘Access to Justice Survey 2015-16’ (Daksh, May 2016) <https://dakshindia.org/wp-content/uploads/2016/05/Daksh-access-to-justice-survey.pdf > accessed 19 September 2023.

instance. The aggrieved land loser is often unable to access justice from the judicial system. Therefore, having regard to the limited relief that can be obtained from a revenue court under Tenancy Act, 1955, to deny the land losers access to civil court in my opinion, would aggravate the injustice that would otherwise enure, in all cases of compulsory land acquisition.

40. The upshot of the above is that the appellant here failed to establish that they had acquired the land in accordance with the law or paid due compensation to the affected party. The appellant took forceful possession of the respondents’ valuable land by disregarding the legal process and thereby denied the protection of procedural fairness to the respondents. At this moment, I am reminded of the words of former Associate Justice of the US Supreme Court, William O. Douglas who in his concurring opinion in Joint Anti-Fascist Refugee Committee v Mc Grath 31 wrote the following:

> “It is procedure that spells much of the difference between rule by law and rule by whim or caprice.

Steadfast adherence to strict procedural safeguards is our main assurance that there will be equal justice under law." 31 341 US 123 (1951)

41. Noticing the departure from the due process by the authorities, relief was granted to the land owners. No infirmity is thus seen with those verdicts which invalidated the acquisition process. The impugned judgment of the High Court therefore merits this Court's approval.

42. The appellant i.e., the Urban Improvement Trust however claims to have developed the balance 2 bighas for the purpose of the Jai Naryan Vyas Yojana and divided it into plots. Therefore, considering the public interest and balancing the equity, it is clarified that notwithstanding the findings in this judgment, if the authorities wish to, they may even now acquire the land by following the due process of law.

43. The appeal is accordingly dismissed leaving the parties to bear their own cost.

.....J.

[HRISHIKESH ROY] NEW DELHI OCTOBER 19, 2023 CIVIL APPEAL NO. 8411 OF 2014 URBAN IMPROVEMENT TRUST BIKANER APPELLANT(S) VERSUS GORDHAN DASS (D) THR. LRS. & ORS. RESPONDENT(S) ORDER In view of the difference of opinions and the distinguishing judgments (Justice Hrishikesh Roy dismissing the appeal and Justice Manoj Misra allowing the appeal), the Registry is directed to place the matter before Hon'ble the Chief Justice of India for referring the matter to a larger Bench.

.....J.

[HRISHIKESH ROY] .....J.

[MANOJ MISRA] NEW DELHI OCTOBER 19, 2023