# M/S. Royal Orchid Hotels Ltd & Anr vs G. Jayarama Reddy & Ors on 29 September, 2011

## Equivalent citations: 2011 AIR SCW 6081, 2012 (1) AIR KAR R 461, (2012) 1 CIVILCOURTC 8, (2011) 3 GUJ LH 425, (2011) 4 ICC 824, (2012) 1 ALL WC 916, (2012) 1 LANDLR 621, 2011 (10) SCC 608, (2011) 4 RECCIVR 613, (2011) 11 SCALE 239, (2011) 9 ADJ 505 (SC), (2012) 1 CALLT 66, 2011 (4) KLT SN 74 (SC), 2012 (4) KCCR SN 280 (SC)

## Author: G.S. Singhvi

## Bench: Sudhansu Jyoti Mukhopadhaya, G.S. Singhvi

RE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.7588 OF 2005

M/s. Royal Orchid Hotels Limited and another ... Appellants

Versus

G. Jayarama Reddy and others ... Respondents

With

CIVIL APPEAL NO.7589 OF 2005

Karnataka State Tourism Development Corporation ... Appellant

Versus

G. Jayarama Reddy and others ... Respondents

J U D G M E N T

G.S. Singhvi, J.

1. Whether land acquired by the State Government at the instance of the Karnataka State Tourism Development Corporation (for short, `the Corporation') for the specified purpose i.e. Golf-cum-Hotel Resort near Bangalore Airport, Bangalore could be transferred by the Corporation to a private individual and corporate entities is the question which arises for determination in these appeals filed against the judgment of the Karnataka High Court whereby the acquisition of land measuring 1 acre 3 guntas comprised in Survey No.122 of Kodihalli village, Bangalore South Taluk was quashed.

The facts relating to the acquisition of land and details of the 3 cases decided by the High Court in 1991:

2. On a requisition sent by the Corporation, the State Government issued notification dated 29.12.1981 under Section 4(1) of the Land Acquisition Act, 1894 (for short, `the Act') for the acquisition of 39 acres 27 guntas land comprised in various survey numbers including Survey No.122 of Kodihalli and Challaghatta villages, Bangalore South Taluk. After considering the reports submitted by the Special Deputy Commissioner, Bangalore under Section 5A(2) and Section 6(1A) (added by the Karnataka Act No.17 of 1961), the State Government issued declaration under Section 6 in respect of 37 acres 4 guntas land. A combined reading of the two notifications makes it clear that the public purpose for which land was sought to be acquired was to establish Golf-cum- Hotel Resort near Bangalore Airport, Bangalore by the Corporation. The Special Land Acquisition Officer passed award dated 7.4.1986. However, as will be seen hereinafter, instead of utilizing the acquired land for the purpose specified in the notifications or for any other public purpose, the Corporation transferred the same to private parties.

3. One Dayananda Pai, a real estate developer, who is said to have entered into agreements with the landowners for purchase of land comprised in Survey Nos.160/1, 160/2, 160/3, 160/4, 163/1, 163/2, 164/1, 164/2, 165/1, 165/2, 165/3, 165/4, 165/6, 166/1, 166/2, 166/3, 166/4, 153, 159, 167 for putting up a group housing scheme and obtained approval from the Bangalore Development Authority appears to be the person behind the move made by the Corporation for the acquisition of land for execution of tourism related projects including Golf- cum-Hotel Resort. This is the reason why his role prominently figured in the meeting of senior officers of the Bangalore Development Authority and the Corporation held on 13.1.1987 to discuss the steps to be taken for securing possession of the

acquired land. In that meeting, Managing Director of the Corporation gave out that the Corporation does not have necessary finances for deposit of cost of the acquisition and Dayananda Pai had agreed to provide funds subject to the furnishing of bank guarantee by the Deputy Commissioner on behalf of the Corporation and release of 12 acres 34 guntas in his favour for the purpose of implementing the group housing scheme. In furtherance of the decision taken in that meeting, an agreement dated 8.5.1987 was executed by the Corporation in favour of Dayananda Pai conveying him 12 acres 34 guntas of the acquired land. Likewise, 6 acres 8 guntas land was transferred to Bangalore International Centre and 5 acres including 2 acres 30 guntas land belonging to respondent No.1 and his brothers, G. Ramaiah Reddy and G. Nagaraja Reddy, was leased out to M/s. Universal Resorts Limited (predecessor of appellant No.1 in Civil Appeal No.7588 of 2005).

4. Mrs. Behroze Ramyar Batha and others, who owned different parcels of land which were transferred by the Corporation to Dayananda Pai filed writ petitions questioning the acquisition proceedings. The learned Single Judge dismissed the writ petitions on the ground of delay. The Division Bench of the High Court reversed the order of the learned Single Judge and quashed the acquisition proceedings qua land of the appellants in those cases. The Division Bench referred to the minutes of the meeting held on 13.1.1987, resolution dated 10.9.1987 passed by the Corporation and observed:

> ".....We have made our comments then and there. Nevertheless we cannot refrain our feelings in commenting upon the same once over again. We cannot think of anything more despicable than the candid admission by the Tourism Development Corporation that they did not have the necessary funds required to meet the cost of acquisition. If really there was no amount available, how the acquisition was embarked upon, we are left to the realm of guess. Not only that, this particular resolution makes it appear that respondent-5 Dayanand Pai was the only saviour of the Karnataka State Tourism Development Corporation from the difficult situation. For our part we do not know what exactly was the difficulty then, Land acquisition proceedings were complete in all material respects. All that required was possession to be taken. Merely because there are Writ Petitions or some cases pending, does it mean that the Tourism Development Corporation must plead helplessness? Does not it have the wherewithal to contest these litigations? Is it not a part of the Government although it be a Corporation? What is it that it wants to do? In consideration of the withdrawal of the cases which were thorns in the flesh of the Tourist Development Corporation, he is given of a silver salver an extent of 12 acres 31 guntas of land. To say the least, it appears right from the beginning respondent-5 Dayananda Pai had an eye on these lands. That would be evident because though he entered into an agreement on 30-9-1981 with the land-owners it never occurred to him to put forth any objection during Section 5A Enquiry, nor again at any point of time did he take any interest. He was patiently waiting for somebody to take chestnut out of the fire so that he could have the fruits thereof. That is also evident from the Resolution dated 13-1-1987 wherein it is stated as under:

> "Sri Dayananda Pai was very particular that the block of land comprising of 12 acres 34 guntas comprising the following Sy.Nos. 160/1, 160/2, 160/3, 160/4, 163/1, 163/2, 164/1, 164/2, 165/1, 165/2, 165/3, 165/4, 165/6, 166/1, 166/2, 166/3, 166/4, 153, 159, 167 should be released to him as he has got a firm commitment for putting up a Group Housing Scheme on this land."

Yes. He might have had a commitment. What then is the purpose of eminent domain? Eminent domain, as we consider and as it is settled law as was said by Nichols, is an attribute of sovereignty. Where the Deputy Commissioner is convinced that the lands are to be acquired for a public purpose notwithstanding the fact that the rights of the private parties might be interfered with, the acquisition will have to be gone through. In other words, the private purpose must be subservient to public purpose. Forget all that. In order to enable Dayananda Pai to fulfil his commitment if valuable portion of the lands acquired viz., 12 acres 31 guntas is transferred in his favour we cannot find a more vivid case of fraud on power than this. We hold so because the apparent object as evidenced by Section 4(1) Notification is a public purpose. If really as was sought to be made out by the Resolution dated 13-1-1987 the Tourism Development Corporation was anxious to have these lands and the delay was telling upon it, certainly selling away the lands is not the solution as we could see. Therefore, there has been a clear diversification of purpose. Not only an extent of 12 acres 31 guntas have been sold away in favour of respondent-5 Dayanand Pai as has been noted in the narration of facts, 8 acres had come to be leased for Bangalore International Centre and another 5 acres had come to be leased for the amusement park. Why all these if the Tourism Development Corporation does not have funds to meet the cost of acquisition? Therefore it appears to us this is nothing more than a conspiracy to deprive the owners of the lands by use of the power of the eminent domain which is to be used for an avowedly public purpose and for strong compelling reasons and not whimsically or to satisfy the private needs of an individual."

(emphasis supplied) The Division Bench then referred to some judicial precedents including the judgment in Industrial Development & Investment Company Private Limited v. State of Maharashtra AIR 1989 Bombay 156 and observed:

> ".....But, in the case on hand what is most striking is negotiations took place even before taking possession of lands. On 8-5-1987 agreement was entered into and in the wake of taking possession on 12-11-1987, transfers are made on 23-3-1988 and 24-3-1988. This is where we consider that with the motive of securing lands to respondent-5 Dayanand Pai, acquisition had come to be embarked upon. This was the reason why we conclude that this is a case of fraudulent exercise of power. It is no consolation to say that the owners of lands have accepted the compensation because in Industrial Development & Investment Co. Pvt. Ltd. v. State of Maharashtra it is stated thus:
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> "...The State itself which has acted illegally and without jurisdiction cannot plead that it should be allowed to retain the sum awarded in its favour by the Land Acquisition Officer. Respondent 5 who is described as the owner of the land has conveyed to us that it would submit to the order of the Court. We also record the submission of Mr.

> Dhanuka, learned Counsel for the appellants, that in the event the other awardees who were awarded paltry sums by the award under Section 11 Land Acquisition Act, do not refund sums withdrawn, the appellants are prepared to refund and/or deposit the said sums. Therefore, we conclude that on the ground of delay the appellants could not be deprived of the relief to which they were otherwise entitled."

The ratio of this case squarely applies here. Nor again, in our considered opinion, the previous Decisions upholding the validity of the acquisitions would be of any value because as we have observed earlier the causes of action arose only on 23-3-1988 and 24-3-1988 when the transfers came to be effected, or on subsequent days when- leases had come to be effected. Therefore, where in ignorance of these transactions if compensation had come to be accepted we should not put that against such of those land owners. But that question does not arise in this case. Therefore, we shall relegate the same to the other cases.

Lastly, what remains to be seen is what is the effect of fraud. Does it render the entire acquisition bad or is it to be held to be bad only in so far as these appellants are concerned? We are of the view that if fraud unravels everything, it cannot be valid in part and invalid in other parts. But, we need not go to that extent because there are other Writ Petitions including a Writ Appeal in which this question may arise direct. We do not want to prejudice those petitioners/appellants. Therefore, this question we relegate to those cases."

(emphasis supplied)

5. Annaiah and others, who owned land comprised in Survey Nos.146/1, 156/1, 147/1, 147/2 and 156, filed Writ Petition Nos.9032 to 9041 of 1988 questioning the acquisition of their land. The same were dismissed by the learned Single Judge on the ground of delay. Thereafter, they filed Writ Petition Nos.19812 to 19816 of 1990 for issue of a mandamus to the State Government and the Corporation to return the land by asserting that the same had been illegally transferred to private persons. They pleaded that the acquisition proceedings were vitiated due to mala fides and misuse of power for oblique and collateral purpose. Those petitions were allowed by the Division Bench of the High Court vide order dated 18.9.1991, the relevant portions of which are extracted below:

> "In our considered view, it is one thing to say that acquisition is actuated by legal malafides, but it is totally different thing to say that acquisition for all intents and purposes is embarked on an apparent public purpose and ultimately that purpose is not served. In other words, what we mean is their where the lands have been acquired, undoubtedly for public purpose for the benefit of the Karnataka State Tourism Development Corporation and after acquisition, even before taking possession, if agreements were entered into on the ground that the Karnataka State Tourism Development Corporation did not have enough money to meet the cost of acquisition and that it would be better to get rid of the litigation by selling away the same or leasing away the properties and thereby give it to private individuals. We are of the view that it is a clear case of diversification of purpose. It requires to be carefully noted that it is not for any public purpose. But it is a diversification to a

private purpose. Therefore, to the extent the acquisition proceeded with even up to the stage of declaration under Section 6 or to certain point beyond that, it could not be validly challenged on the ground that it is not for public purpose. But where under the cover of public purpose, the owners are dispossessed and there is diversifications, we hold that it is fraudulent exercise of the power of eminent domain. This is exactly the view we have taken in W.A. Nos.1094 to 1097 of 1987. This aspect of the matter was not before our learned brother Justice Bopanna. All that was stated was the acquisition, namely, Notification under Section 4(1) culminating in Declaration under Section 6 of the Act was not actuated by legal malafides. That is far different from diversification for public purpose. It might be that agreements dated 23.03.1988 and 24.03.1988 might have been buttressed in respect of legal malafides. On that score we cannot conclude that the issue as dealt with by us in W.A. Nos. 1094 to 1097 of 1987 was ever before Justice Bopanna. Therefore, we are unable to agree with Mr. Datar that the earlier ruling of Justice Bopanna in W.P. Nos.9032 to 9041 of 1988 dated 8 th July 1988 would constitute res judicata so as to deprive the Petitioners of the benefit of the Judgment.

The cause of action challenging the validity of acquisition arose not after issue of final notification under section 6 but after the alienation of lands in favour of third parties and thus the Corporation in whose favour the lands have been acquired have been deviated. In my opinion the decision rendered in Mrs. Behroze Ramyar Batha is fully applicable to the facts of this case. It is true that acquisition is challenged after quite a long time to final notification. But challenge is not made to the legality of the acquisition. The challenge is to deviation of the purpose for which the land was acquired. That then is the eminent domain was the question posed by the Division Bench and answered in the words of Nichols as an attribute of sovereignty. Acquisition in this case is actuated by malafides. Though lands were acquired for public purpose as declared in 6(1) notification and possession was taken for the said public purpose, agreements were entered into even before possession was taken to part with substantial portion of the land. Where object of providing lands to a private individuals, if acquisition proceedings are reported to or power of eminent domain comes to be exercised, it would nothing more than fraud on power. There it is a case of fraud it would unreveal everything. It cannot be valid in part and invalid in other parts (See Lazarus Estates Ltd. VS. Gurdial Singh - AIR 1980 SC 319: Pratap Singh v. State of Punjab - AIR 1964 SC 73: Narayana Reddy v. State of Karnataka - ILR 1991 KAR. 2248.) Therefore the question of limitation does not arise in such cases. Where the actions are found to be mala fide, courts have not failed to strive down those actions as laid down by the Supreme Court in Pratap Singh v. State of Punjab's case cited supra."

(emphasis supplied) The operative portion of the order passed in that case is extracted below:

"In the result, we allow these writ petitions quash the notification issued under Section 4(1) and the declaration under Section 6 of the Act and all subsequent

proceedings."

6. Smt. H.N. Lakshmamma and others also questioned the acquisition of their land comprised in Survey Nos.165/3 and 166/4 of Kodihalli village. The writ petition filed by them was dismissed. On appeal, the Division Bench of the High Court framed the following question:

> "Whether in view of the judgment cited above, namely, W.A. Nos.1094 & 1095/87 and W.P. 19812 to 19816/90 wherein we have held that the land acquisition proceedings concerning the very same notification and declaration are liable to be set aside on the ground of fraudulent exercise of power, could be extended in favour of the appellants?"

The Division Bench relied upon the passages from Administrative Law by W.H.R. Wade and De Smith and Ker on Fraud and rejected the plea of the respondents (appellants herein) that by having accepted the amount of compensation, the writ petitioners will be deemed to have acquiesced in the acquisition proceedings. The Division Bench then referred to the judgment of the Bombay High Court in Industrial Development & Investment Company Private Limited v. State of Maharashtra (supra) and the order passed in Writ Petition Nos. 19812 - 19816 of 1990 and held that the appellants are entitled to return of land subject to the condition of deposit of the amount of compensation together with interest at the rate of 12% per annum.

Facts relating to transfer of land owned by respondent No.1 and his brothers and details of the cases filed by them:

7. After receiving compensation in respect of 2 acres 30 guntas land comprised in Survey No.122 of Kodihalli village, respondent No.1 and his brothers filed applications under Section 18 of the Act for making reference to the Court for determination of the compensation. During the pendency of reference, the Corporation invited bids for allotment of 5 acres land including 2 acres 30 guntas belonging to respondent No.1 and his brothers for putting up a tourist resort. M/s. Universal Resorts Limited gave the highest bid, which was accepted by the Corporation and lease agreement dated 21.4.1989 was executed in favour of the bidder. Thereafter, the Corporation approached the State Government for grant of permission under Section 20 of the Urban Land (Ceiling and Regulation) Act, 1976 for leasing out a portion of the acquired land to M/s. Universal Resorts Limited. The State Government granted the required permission vide order dated 17.6.1991. After 6 months, registered lease deed dated 9.1.1992 was executed by the Corporation in favour of M/s. Universal Resorts Limited through its Managing Director, Sri C.K. Baljee purporting to lease out 5 acres land for a period of 30 years on an annual rent of Rs.1,11,111/- per acre for the first 10 years.

8. In the meanwhile, Shri C.K. Baljee, Managing Director of M/s. Universal Resorts Limited filed suit for injunction against respondent No.1 and his brothers by alleging that they were trying to forcibly encroach upon the acquired land. He also filed an application for temporary injunction. By an ex parte order dated 29.10.1991, the trial Court restrained respondent No.1 and his brothers from interfering with the plaintiff's peaceful possession and enjoyment of the suit schedule property. After about two years, the brothers of respondent No.1 filed Writ Petition Nos.2379 and 2380 of

1993 for quashing the acquisition of land measuring 0.29 guntas and 0.38 guntas respectively, which came to their share in the family partition effected in 1968. They relied upon the judgments of the Division Bench in Mrs. Behroze Ramyar Batha and others v. Special Land Acquisition Officer (supra) and Writ Appeal No.2605 of 1991 - Smt. H.N. Lakshmamma and others v. State of Karnataka and others decided on 3.10.1991 and pleaded that once the acquisition has been quashed at the instance of other landowners, the acquisition of their land is also liable to be annulled. The appellants, who were respondents in those cases, pleaded that the writ petitions should be dismissed because 5 acres land had been leased out by adopting a transparent method and there was no justification to nullify the acquisition after long lapse of time. The learned Single Judge did notice the judgments of the Division Bench on which reliance was placed by the writ petitioners but distinguished the same by making the following observations:

> "The dictum therein cannot be applied to the instant case. The land of the petitioners were acquired for the public purpose of Golf-cum- Hotel Resort near the Airport. The statement of objection filed by respondents 4 and 5 clearly shows that the land was transferred to them for the need of tourist industry namely construction of Hotel/Tourist Complex. The order passed by the Government exempting the 3rd Respondent from the purview of the Urban Land (Ceiling & Regulation) Act 1976 also shows the intended transfer being made by the 3rd respondent is for the establishing of Hotel/Tourist Complex. This is also borne out from the lease deeds executed by respondents 4 and 5. These materials are sufficient to hold that the land is being put by the 3rd respondent for the purpose for which it was acquired. These materials are sufficient for this court for the present and indeed from conducting any further rowing enquiry on the basis of the allegation made by the petitioners in this writ petition. Without anything more it can be held that the dictum of the decision of this Court referred to supra is inapplicable to the facts of the present case. Hence, the petitioners cannot take shelter under the said decision viz. ILR 1991 Karnataka 3556 and successfully challenge the land acquisition proceedings."

The learned Single Judge finally dismissed the writ petitions by observing that even though the writ petitioners were aware of the order of injunction passed by the Civil Court in the suit filed by the Managing Director, M/s. Universal Resorts Limited - C.K. Baljee, they did not question the acquisition for a period of almost two years and approached the Court after long lapse of time counted from the date of acquisition. Writ Appeal Nos.4536 and 4541 of 1995 filed by G. Ramaiah Reddy and G. Nagaraja Reddy were dismissed by the Division Bench of the High Court on 1.1.1996 by a one word order and the special leave petitions filed by them were summarily dismissed by this Court vide order dated 26.2.1996.

9. In a separate petition filed by him, which came to be registered as Writ Petition No.34891 of 1995, respondent No.1 prayed for quashing notifications dated 29.12.1981 and 16.4.1983 insofar as the same related to 1 acre 3 guntas land comprised in Survey No.122/1 of Kodihalli village and for issue of a mandamus to respondent Nos.3 to 5 (the appellants herein) to redeliver possession of the said land. He pleaded that in the garb of acquiring land for a public purpose, the official respondents have misused the provisions of the Act with the sole object of favouring private persons. In the

counter affidavits filed on behalf of the appellants, it was pleaded that the writ petition was highly belated and that by having accepted the compensation determined by the Special Land Acquisition Officer, respondent No.1 will be deemed to have waived his right to challenge the acquisition proceedings.

10. The writ petition filed by respondent No.1 was decided in two rounds. In the first round, the learned Single Judge rejected the objection of delay raised by the appellants. He referred to the judgments of the High Court in Mrs. Behroze Ramyar Batha and others v. Special Land Acquisition Officer (supra) and Writ Appeal No.2605 of 1991 - Smt. H.N. Lakshmamma and others v. State of Karnataka and others (supra) declined to follow the course adopted by the coordinate Bench, which had dismissed the writ petitions filed by the brothers of respondent No.1 and observed:

> ".....The cause of action challenging the validity of acquisition arose not after issue of final notification under section 6 but after the alienation of lands in favour of third parties and thus the Corporation in whose favour the lands have been acquired have been deviated. In my opinion the decision rendered in Mrs. Behroze Ramyar Batha is fully applicable to the facts of this case. It is true that acquisition is challenged after quite a long time to final notification. But challenge is not made to the legality of the acquisition. The challenge is to deviation of the purpose for which the land was acquired. That then is the eminent domain was the question posed by the Division Bench and answered in the words of Nichols as an attribute of sovereignty. Acquisition in this case is actuated by malafides. Though lands were acquired for public purpose as declared in 6(1) notification and possession was taken for the said public purpose, agreements were entered into even before possession was taken to part with substantial portion of the land. Where object of providing lands to a private individuals, if acquisition proceedings are reported to or power of eminent domain comes to be exercised, it would nothing more than fraud on power. There it is a case of fraud it would unreveal everything. It cannot be valid in part and invalid in other parts (See Lazarus Estates Ltd. v. Gurdial Singh - AIR 1980 SC 319: Pratap Singh v. State of Punjab - AIR 1964 SC 73: Narayana Reddy v. State of Karnataka - ILR 1991 Kar. 2248). Therefore the question of limitation does not arise in such cases. Where the actions are found to be mala fide, courts have not failed to strive down those actions as laid down by the Supreme Court in Pratap Singh v. State of Punjab's case cited supra."

11. The writ appeals filed by the appellants were allowed by the Division Bench on the ground that the learned Single Judge was not justified in ignoring the order passed by the coordinate Bench. The Division Bench observed that merits of the case could have been considered only if he was convinced that the writ petitioner had given cogent explanation for the delay and, accordingly, remitted the matter for fresh disposal of the writ petition.

12. In the second round, the learned Single Judge dismissed the writ petition by observing that even though fraud vitiates all actions, the Court is not bound to give relief to the petitioner ignoring that he had approached the Court after long lapse of time. Writ Appeal No.7772 of 1999 filed by

respondent No.1 was allowed by the Division Bench of the High Court. While dealing with the question whether the learned Single Judge was justified in non suiting respondent No.1 on the ground of delay, the Division Bench referred to the explanation given by him, took cognizance of the fact that even after lapse of more than a decade and half land had not been put to any use and observed:

> ".....It is the definite case of the appellant that he came to know of the fraud committed by the 3rd respondent in diverting the acquired land clandestinely in favour of Respondents 4 and 5 and certain others, that too, for the purpose other than the purpose for which the land was acquired, only in the year 1993. It is his further case that even then, he did not approach this Court for legal remedies immediately after he came to know of the fraud committed by the 3rd respondent and also the judgment of this Court in the case of Batha (supra), because, under a wrong legal advice, he filed I.A.I. in L.A.C. No. 37 of 1988. In other words, even after the appellant came to know of the fraud committed by the 3rd respondent, under a wrong advice, he was prosecuting his case before a wrong forum. The question for consideration is whether that circumstance can be taken into account for condoning the delay. A three Judge Bench of the Supreme Court in the case of Badlu and another. v. Shiv Charan and others., (1980) 4 SCC 401 where a party under a wrong advice given to them by their lawyer was pursuing an appeal bonafide and in good faith in wrong Court, held that the time taken for such prosecution should be condoned and took exception to the order of the High Court in dismissing the second appeal. Further, the Supreme Court in M/s Concord of India Insurance Company Limited v. Smt. Nirmala Devi and Others., [1979] 11 8 ITR 507 (SC) has held that the delay caused on account of the mistake of counsel can be sufficient cause to condone the delay and the relief should not be refused on the ground that the manager of company is not an illiterate or so ignorant person who could not calculate period of limitation.

It is the further case of the appellant that only in the month of September, 1995 he was advised by another counsel that the appellant was wrongly prosecuting his case before the Civil Court by filing I.A.I. in L.A.C. No. 37 of 1988 and that the civil court has no jurisdiction to quash the notification issued under Section 4(1) and declaration under Section 6(1) of the Act and for that relief, he should necessarily file writ petition in this Court. The appellant on receiving such advice from the counsel, without any further loss of time, filed the present Writ Petition No. 34891 of 1995 in this Court on 18-9- 1995. It further needs to be noticed that the pleading of the appellant would clearly demonstrate that but for the fraud committed by the 3rd respondent in diverting the acquired land in favour of respondents 4 and 5 and others clandestinely for the purposes other than the purpose for which it was acquired, perhaps, the appellant would not have challenged the land acquisition proceedings at all. It is his definite case that he was approaching this Court under Article 226 for quashing the impugned notifications only because the acquired land was sought to be diverted by the 3rd respondent-beneficiary in favour of third parties, that too, for the purposes other than the one for which it was acquired and the acquisition of the entire extent of land under the same notification in its entirety is already quashed by this Court as fraud on power and tainted by

malafide. Therefore, the Court has necessarily to consider the question of delay and laches in the premise of the specific case of the appellant and it will be totally unfair and unjust to take into account only the dates of Section 4(1) notification and Section 6(1) declaration. It is also necessary to take into account the fact that well before the appellant approached this Court, the Division Bench of this Court in Writ Appeal No. 2605 of 1991 and Writ Petition Nos. 19812 to 19816 of 1990 preferred by certain other owners of the acquired land vide its orders dated 18-9-1991 and 3-10-1991 had already quashed Section 4(1) Notification and Section 6(1) declaration in their entirety and directed the State Government and the LAO to handover the acquired land to the owners concerned on red positing of the compensation money received by the owners with 12% interest p.a. In that view of the matter, it is trite, the acquisition of the schedule land belonging to the appellant also stood quashed by virtue of the above judgments of the Division Bench. Strictly speaking, the State Government and the LAO even in the absence of a separate challenge by the appellant to the land acquisition proceedings, in terms of the orders made in the above writ appeal and writ petitions, ought to have handed over the schedule land to the appellant by collecting the amount of money received by him as compensation with interest at 12% p.a. Be that as it may, the appellant as an abundant caution separately filed writ petition for quashing of the notifications issued under Sections 4(1) and 6(1) of the Act with regard to the schedule land. The relief cannot be refused to the appellant, because, the appellant herein and the appellants in Writ Appeal Nos. 1094-1097 of 1987 and W.A. No. 2065 of 1991 and the petitioners in Writ petition Nos. 19812 to 19816 of 1990 are all owners of the acquired land under the same notifications and all of them belong to a 'well-defined class' for the purpose of Article 14 of the Constitution. There is absolutely no warrant or justification to extend different treatment to the appellant herein simply, because, he did not join the other owners at an earlier point of time. It is not that all the owners of the acquired land except the appellant instituted the writ petitions jointly and the appellant alone sat on fence awaiting the decision in the writ petitions filed by the other owners. Some writ petitions were filed in the year 1987 and other writ petitions in the year 1990 as noted above. Since the appellant came to know of the fraud committed by the 3rd respondent only in the year 1993 after this Court delivered the judgment in Batha's case (supra) and since he was prosecuting his case before a wrong forum under a wrong legal advice and therefore, the time so consumed has to be condoned in view of the judgment of the Supreme Court already referred to above, we are of the considered opinion that the learned single Judge is not justified in dismissing the writ petition on the ground of delay and laches. It needs to be noticed further that admittedly, no developments have taken place in the schedule land despite considerable passage of time. Further more, admittedly, no rights of third parties are created in the schedule land. The schedule land being a meagre extent of land compared to the total extent of land acquired for the public purpose, cannot be put to use for which it was originally acquired. Looking from any angle, we do not find any circumstance on the basis of which we would be justified in refusing the relief on the ground of delay and laches even assuming that there was some delay on the part of the appellant before approaching this Court by way of writ petition in the year 1995."

The Division Bench then referred to orders dated 18.9.1991 and 3.10.1991 passed in Writ Petition Nos.19812 to 19816 of 1990 - Annaiah and others v. State of Karnataka and others and Writ Appeal No.2605 of 1991 - Smt. H.N. Lakshmamma and others v. State of Karnataka and others (supra) respectively and held:

> ".....Since the appellant herein and the appellants and writ petitioners in W.A.No. 2605 of 1991 and W.P. Nos. 19812 to 19816 of 1990 are the owners of the acquired land under the same notification and similarly circumstanced in every material aspect, they should be regarded as the persons belonging to a 'well-defined class' for the purpose of Article 14 of the Constitution. In other words, the appellant herein is also entitled to the same relief which this Court granted in Writ Appeal No. 2605 of 1991 and W.P. Nos. 19812 to 19816 of 1990 to the owners therein. Apart from that, as already pointed out, the schedule land is a very meagre land compared to the total extent of land acquired and except the schedule land the acquisition of the remaining land has been set at naught and the possession of the land has been handed over to the owners. The schedule land being a meagre in extent, cannot be used for the purpose for which it was acquired. That is precisely the reason why the schedule land is kept in the same position as it was on the date of Section 4(1) notification without any improvement or development."

The arguments:

13. Shri Basava Prabhu S. Patil and Shri S.S. Naganand, learned senior counsel appearing for the appellants criticized the impugned judgment and argued that the Division Bench of the High Court committed serious error by entertaining and allowing the writ appeal filed by respondent No.1 despite the fact that the writ petitions, the writ appeals and the special leave petitions filed by his brothers had been dismissed by the High Court and this Court. Learned counsel submitted that even though judgments and order passed by the Division Bench in other cases had become final, relief could not have been given to respondent No.1 by overlooking the unexplained delay of 12 years. They further submitted that the cause of action for challenging the transfer of land in favour of M/s. Universal Resorts Limited accrued to respondent No.1 in 1992 when registered lease deed was executed by the Corporation and the Division Bench of the High Court was not at all justified in entertaining the prayer of respondent No.1 after lapse of more than three years. Shri Naganand relied upon the judgment of this Court in Om Parkash v. Union of India (2010) 4 SCC 17 and argued that quashing of notifications by the High Court in three other cases would enure to the benefit of only those who approached the Court within reasonable time and respondent No.1, who had kept quiet for 12 years cannot take advantage of the same. Shri Naganand lamented that even though his clients had given highest bid in May, 1987 and lease deed was executed in January, 1992, they have not been able to utilize the land on account of pendency of litigation for last more than 16 years and have suffered huge financial loss.

14. Shri Mahendra Anand, learned senior counsel appearing for respondent No.1 supported the impugned judgment and argued that the Division Bench of the High Court did not commit any error by directing return of land to respondent No.1 because acquisition thereof was vitiated by fraud. Learned senior counsel emphasised that in view of the unequivocal finding recorded in Mrs. Behroze Ramyar Batha and others v. Special Land Acquisition Officer (supra) and other cases that land acquired for the specified public purpose, i.e. Golf-cum-Hotel Resort could not have been transferred to private persons and that there was conspiracy to deprive the owners of their land by use of the power of eminent domain, the Division Bench rightly annulled the action of the

Corporation.

15. Before dealing with the arguments of the learned counsel, we may mention that the Committee of the Karnataka Legislature on Public Undertakings had in its Fifty-Second Report severely criticized the exercise undertaken by the Corporation in the matter of acquisition of 39 acres 27 guntas land. This is evident from paragraph 2.24 of the Report, which is extracted below:

> "2.24. After full examination, the Committee makes the following observations and recommendations.:
>
> (i) Most of the projects envisaged to be taken up in 1981 and subsequently by the Company were farfetched and grandiose ones lacking in the basic sense of realism as regards details and specifies assured modes of financing, benefits and income to be derived and viability. By no stretch of imagination, could they be deemed to meet the main objectives of the Company to promote and maximise tourism by offering catering, lodging, recreational, picnic and other facilities to as broad a spectrum of tourists as possible. In fact, they were designed mainly to cater to the requirements of a small number of elitist and affluent tourists and could never have boosted tourism in the State. For these grave dereliction of duties, the Committee holds the then Managing Directors and the then Government nominees on the Board of Directors, as responsible.
>
> (ii) The proper and sound objections raised by Government in August, 1984 went unheeded by successive Boards of Directors of the Company who pursued with reckless abandon their fanciful schemes and led the Company on a wild goose chase. As a result, ultimately, the Company has been left virtually holding the sack with none of these schemes materialising and the Company having been put to an infructuous expenditure of Rs.18.97 lakhs towards interest on the bank borrowings to finance land acquisition, not to speak of the wasted precious time and effort of the whole Management and organi-

sation of the Company for nearly 10 years. The then Managing Director of the Company, Sri K. Sreenivasan and the Boards of Directors of the Company at the relevant periods have to bear responsibility in this regard.

(iii) In the opinion of the Committee, the Company had an opportunity to reconsider and give up these unnecessary schemes when it encountered difficulties in acquiring the required land of 39 acres in 1986-87 as a result of the land owners/power of attorney holders moving the Courts for stay of the acquisition proceedings. Instead, the Company opted to pursue the acquisition of land even at the cost of surrendering 14 acres and 8 guntas of land (out of 23 acres 36 guntas acquired) to Sri Dayananda Pai, a power of attorney holder, for a group housing scheme for employees of public/private sector undertakings, which was a purpose/scheme not contemplated by the Company and in no way connected with the Company's objectives. The so-called compromise Agreement of March 1987 with Sri Dayananda Pai had the effect of only compromising the Company's interests in

that it contained no provisions regarding commitment and penalties on Sri Dayananda Pai to assist the Company to acquire the entire lands of 39 acres 27 guntas while he was presented with 14 acres 8 guntas of land on a platter as it were for executing the group housing scheme for his purpose and pecuniary benefits.

Whether Sri Dayananda Pai has really implemented the Group Housing Scheme in Challaghatta for the employees of Public and Private Undertakings is not clear. The Committee wants Government to find out the true position in this regard and intimate the Committee. In the end, with all this compromise, the Company could acquire and take possession of only 23 acres and 36 guntas (as against 39 acres and 27 guntas envisaged) of which 14 acres and 8 guntas were parted to Sri Dayananda Pai, and the Company was left with only 9 acres 28 guntas for its schemes. Further, to go through with the acquisition, the Company has to borrow Rs. 43.54 lakhs from the Canara Bank for depositing with the land acquisition authorities and had to incur interest charges of Rs.18.97 lakhs, which have become infructuous. There were highly injudicious acts leading to avoidable loss of Rs.18.97 lakhs.

(iv) The Committee notes that out of more than seven projects envisaged in 1981, the Company, is a result of the tortuous and adverse developments, omissions, commissions and irregularities described in the preceding paragraphs, could manage to initiate only two schemes, viz., International Centre and Tourist Complex and, that too only to the extent of handing over land to the concerned parties, viz. Bangalore International Centre and M/s. Universal Resorts Limited. Even these two schemes have remained non-starters because in the first case the Board of Directors of the Company did not approve the leasing of land and in the second case the initial formalities like registration of sale deed, urban land clearance etc. have dragged on.

In this connection, the Committee takes serious note of the fact that possession of lands was given by the Company to Bangalore International Centre and M/s. Universal Resorts Ltd., prematurely without obtaining approval of the Board of Directors or completing even the initial formalities etc., as the case may be."

16. The first question which needs consideration is whether the High Court committed an error by granting relief to respondent No.1 despite the fact that he filed writ petition after long lapse of time and the explanation given by him was found unsatisfactory by the learned Single Judge, who decided the writ petition after remand by the Division Bench.

17. Although, framers of the Constitution have not prescribed any period of limitation for filing a petition under Article 226 of the Constitution of India and the power conferred upon the High Court to issue to any person or authority including any Government, directions, orders or writs including writs in the nature of habeas corpus, mandamus, prohibition, quo-warranto and certiorari is not hedged with any condition or constraint, in last 61 years the superior Courts have evolved several rules of self-imposed restraint including the one that the High Court may not enquire into belated or stale claim and deny relief to the petitioner if he is found guilty of laches. The principle underlying this rule is that the one who is not vigilant and does not seek intervention of the Court within reasonable time from the date of accrual of cause of action or alleged violation of constitutional,

legal or other right is not entitled to relief under Article 226 of the Constitution. Another reason for the High Court's refusal to entertain belated claim is that during the intervening period rights of third parties may have crystallized and it will be inequitable to disturb those rights at the instance of a person who has approached the Court after long lapse of time and there is no cogent explanation for the delay. We may hasten to add that no hard and fast rule can be laid down and no straightjacket formula can be evolved for deciding the question of delay/laches and each case has to be decided on its own facts.

18. In Dehri Rohtas Light Railway Company Limited v. District Board, Bhojpur (1992) 2 SCC 598, this Court set aside the judgment of the Patna High Court whereby the writ petition filed by the appellant against the demand notice issued for levy of cess for the period 1953-54 to 1966-67 was dismissed only on the ground of delay. The facts of that case show that the writ petition filed by the appellant questioning the demand for 1967-68 to 1971-72 was allowed by the High Court. However, the writ petition questioning the demand of the earlier years was dismissed on the premise that the petitioner was guilty of laches. While dealing with the question of delay, this Court observed:

> "The question thus for consideration is whether the appellant should be deprived of the relief on account of the laches and delay. It is true that the appellant could have even when instituting the suit agitated the question of legality of the demands and claimed relief in respect of the earlier years while challenging the demand for the subsequent years in the writ petition. But the failure to do so by itself in the circumstances of the case, in our opinion, does not disentitle the appellant from the remedies open under the law. The demand is per se not based on the net profits of the immovable property, but on the income of the business and is, therefore, without authority. The appellant has offered explanation for not raising the question of legality in the earlier proceedings. It appears that the authorities proceeded under a mistake of law as to the nature of the claim. The appellant did not include the earlier demand in the writ petition because the suit to enforce the agreement limiting the liability was pending in appeal, but the appellant did attempt to raise the question in the appeal itself. However, the Court declined to entertain the additional ground as it was beyond the scope of the suit. Thereafter, the present writ petition was filed explaining all the circumstances. The High Court considered the delay as inordinate. In our view, the High Court failed to appreciate all material facts particularly the fact that the demand is illegal as already declared by it in the earlier case. The rule which says that the Court may not enquire into belated and stale claim is not a rule of law but a rule of practice based on sound and proper exercise of discretion. Each case must depend upon its own facts. It will all depend on what the breach of the fundamental right and the remedy claimed are and how delay arose. The principle on which the relief to the party on the grounds of laches or delay is denied is that the rights which have accrued to others by reason of the delay in filing the petition should not be allowed to be disturbed unless there is a reasonable explanation for the delay. The real test to determine delay in such cases is that the petitioner should come to the writ court before a parallel right is created and that the lapse of time is not attributable to any laches or negligence. The test is not to physical running of time.

> Where the circumstances justifying the conduct exists, the illegality which is manifest cannot be sustained on the sole ground of laches. The decision in Tilokchand case relied on is distinguishable on the facts of the present case. The levy if based on the net profits of the railway undertaking was beyond the authority and the illegal nature of the same has been questioned though belatedly in the pending proceedings after the pronouncement of the High Court in the matter relating to the subsequent years. That being the case, the claim of the appellant cannot be turned down on the sole ground of delay. We are of the opinion that the High Court was wrong in dismissing the writ petition in limine and refusing to grant the relief sought for."

(emphasis supplied)

19. In Ramchandra Shankar Deodhar v. State of Maharashtra (1974) 1 SCC 317, the Court overruled the objection of delay in filing of a petition involving challenge to the seniority list of Mamlatdars and observed:

> ".....Moreover, it may be noticed that the claim for enforcement of the fundamental right of equal opportunity under Art. 16 is itself a fundamental right guaranteed under Art. 32 and this Court which has been assigned the role of a sentinel on the qui vive for protection of the fundamental rights cannot easily allow itself to be persuaded to refuse relief solely on the jejune ground of laches, delay or the like."

20. In Shankara Cooperative Housing Society Limited v. M. Prabhakar and others (2011) 5 SCC 607, this Court considered the question whether the High Court should entertain petition filed under Article 226 of the Constitution after long delay and laid down the following principles:

> "(1) There is no inviolable rule of law that whenever there is a delay, the Court must necessarily refuse to entertain the petition; it is a rule of practice based on sound and proper exercise of discretion, and each case must be dealt with on its own facts.
>
> (2) The principle on which the Court refuses relief on the ground of laches or delay is that the rights accrued to others by the delay in filing the petition should not be disturbed, unless there is a reasonable explanation for the delay, because Court should not harm innocent parties if their rights had emerged by the delay on the part of the petitioners.
>
> (3) The satisfactory way of explaining delay in making an application under Article 226 is for the petitioner to show that he had been seeking relief elsewhere in a manner provided by law. If he runs after a remedy not provided in the statute or the statutory rules, it is not desirable for the High Court to condone the delay. It is immaterial what the petitioner chooses to believe in regard to the remedy. (4) No hard-and-fast rule, can be laid down in this regard. Every case shall have to be decided on its own facts.

> (5) That representations would not be adequate explanation to take care of the delay."

21. Another principle of law of which cognizance deserves to be taken is that in exercise of power under Article 136 of the Constitution, this Court would be extremely slow to interfere with the discretion exercised by the High Court to entertain a belated petition under Article 226 of the Constitution of India. Interference in such matters would be warranted only if it is found that the exercise of discretion by the High Court was totally arbitrary or was based on irrelevant consideration. In Smt. Narayani Debi Khaitan v. State of Bihar [C.A. No.140 of 1964 decided on 22.9.1964], Chief Justice Gajendragadkar, speaking for the Constitution Bench observed:

> "It is well-settled that under Article 226, the power of the High Court to issue an appropriate writ is discretionary. There can be no doubt that if a citizen moves the High Court under Article 226 and contends that his fundamental rights have been contravened by any executive action, the High Court would naturally like to give relief to him; but even in such a case, if the petitioner has been guilty of laches, and there are other relevant circumstances which indicate that it would be inappropriate for the High Court to exercise its high prerogative jurisdiction in favour of the petitioner, ends of justice may require that the High Court should refuse to issue a writ. There can be little doubt that if it is shown that a party moving the High Court under Article 226 for a writ is, in substance, claiming a relief which under the law of limitation was barred at the time when the writ petition was filed, the High Court would refuse to grant any relief in its writ jurisdiction. No hard and fast rule can be laid down as to when the High Court should refuse to exercise its jurisdiction in favour of a party who moves it after considerable delay and is otherwise guilty of laches. That is a matter which must be left to the discretion of the High Court and like all matters left to the discretion of the Court, in this matter too discretion must be exercised judiciously and reasonably."

(emphasis supplied)

22. In the light of the above, it is to be seen whether the discretion exercised by the Division Bench of the High Court to ignore the delay in filing of writ petition is vitiated by any patent error or the reasons assigned for rejecting the appellants' objection of delay are irrelevant and extraneous. Though it may sound repetitive, we may mention that in the writ petition filed by him, respondent No.1 had not only prayed for quashing of the acquisition proceedings, but also prayed for restoration of the acquired land on the ground that instead of using the same for the public purpose specified in the notifications issued under Sections 4(1) and 6, the Corporation had transferred the same to private persons. Respondent No.1 and other landowners may not be having any serious objection to the acquisition of their land for a public purpose and, therefore, some of them not only accepted the compensation, but also filed applications under Section 18 of the Act for determination of market value by the Court. However, when it was discovered that the acquired land has been transferred to private persons, they sought intervention of the Court and in the three cases, the Division Bench of the High Court nullified the acquisition on the ground of fraud and misuse of the provisions of the

Act.

23. Insofar as land of respondent No.1 is concerned, the same was advertised in 1987 along with other parcels of land (total measuring 5 acres) and Corporation executed lease in favour of M/s. Universal Resorts Limited in 1992. However, no material has been placed on record to show that the said exercise was undertaken after issuing notice to the landowners. When respondent No.1 discovered that his land has been transferred to private entity, he made grievance and finally approached the High Court. During the intervening period, he pursued his claim for higher compensation. Therefore, it cannot be said that he was sleeping over his right and was guilty of laches.

24. A reading of the impugned judgment, the relevant portions of which have been extracted hereinabove shows that the Division Bench of the High Court adverted to all the facts, which had bearing on the issue of delay including the one that on the advice given by an advocate, respondent No.1 had availed other remedies and opined that the delay had been adequately explained. Thus, it cannot be said that the discretion exercised by the High Court to entertain and decide the writ petition filed by respondent No.1 on merits is vitiated by any patent legal infirmity. It is true that the writ petitions filed by the brothers of respondent No.1 had been dismissed by the learned Single Judge on the ground of delay and the writ appeals and the special leave petitions filed against the order of the learned Single Judge were dismissed by the Division Bench of the High Court and this Court respectively, but that could not be made basis for denying relief to respondent No.1 because his brothers had neither questioned the diversification of land to private persons nor prayed for restoration of their respective shares. That apart, we find it extremely difficult, if not impossible, to approve the approach adopted by the learned Single Judge in dealing with Writ Petition Nos. 2379 and 2380 of 1993 filed by the brothers of respondent No.1. He distinguished the judgments of the Division Bench in Mrs. Behroze Ramyar Batha and others v. Special Land Acquisition Officer (supra) and Smt. H.N. Lakshmamma and others v. State of Karnataka and others, without any real distinction and did not adhere to the basic postulate of judicial discipline that a Single Bench is bound by the judgment of the Division Bench. Not only this, the learned Single Judge omitted to consider order dated 3.10.1991 passed in Writ Petition Nos. 19812 to 19816 of 1990 - Annaiah and others v. State of Karnataka and others in which the same Division Bench had quashed notifications dated 28.12.1981 and 16.4.1983 in their entirety. Unfortunately, the Division Bench of the High Court went a step further and dismissed the writ appeals filed by the brothers of respondent No.1 without even adverting to the factual matrix of the case, the grounds on which the order of the learned Single Judge was challenged and ignored the law laid down by the coordinate Bench in three other cases. The special leave petitions filed by the brothers of respondent No.1 were summarily dismissed by this Court. Such dismissal did not amount to this Court's approval of the view taken by the High Court on the legality of the acquisition and transfer of land to private persons. In this connection, reference can usefully be made to the judgment in Kunhayammed v. State of Kerala (2000) 6 SCC 359.

25. The next question which merits examination is whether the High Court was justified in directing restoration of land to respondent No.1. In Mrs. Behroze Ramyar Batha and others v. Special Land Acquisition Officer (supra), the Division Bench of the High Court categorically held that the exercise

undertaken for the acquisition of land was vitiated due to fraud. The Division Bench was also of the view that the acquisition cannot be valid in part and invalid in other parts, but did not nullify all the transfers on the premise that other writ petitions and a writ appeal involving challenge to the acquisition proceedings were pending. In Annaiah and others v. State of Karnataka and others (supra), the same Division Bench specifically adverted to the issue of diversification of purpose and held that where the landowners are deprived of their land under the cover of public purpose and there is diversification of land for a private purpose, it amounts to fraudulent exercise of the power of eminent domain.

26. The pleadings and documents filed by the parties in these cases clearly show that the Corporation had made a false projection to the State Government that land was needed for execution of tourism related projects. In the meeting of officers held on 13.1.1987, i.e. after almost four years of the issue of declaration under Section 6, the Managing Director of the Corporation candidly admitted that the Corporation did not have the requisite finances to pay for the acquisition of land and that Dayananda Pai, who had already entered into agreements with some of the landowners for purchase of land, was prepared to provide funds subject to certain conditions including transfer of 12 acres 34 guntas land to him for house building project. After 8 months, the Corporation passed resolution for transfer of over 12 acres land to Dayananda Pai. The Corporation also transferred two other parcels of land in favour of Bangalore International Centre and M/s. Universal Resorts Limited. These transactions reveal the true design of the officers of the Corporation, who first succeeded in persuading the State Government to acquire huge chunk of land for a public purpose and then transferred major portion of the acquired land to private individual and corporate entities by citing poor financial health of the Corporation as the cause for doing so. The Courts have repeatedly held that in exercise of its power of eminent domain, the State can compulsorily acquire land of the private persons but this proposition cannot be over-stretched to legitimize a patently illegal and fraudulent exercise undertaken for depriving the landowners of their constitutional right to property with a view to favour private persons. It needs no emphasis that if land is to be acquired for a company, the State Government and the company is bound to comply with the mandate of the provisions contained in Part VII of the Act. Therefore, the Corporation did not have the jurisdiction to transfer the land acquired for a public purpose to the companies and thereby allow them to bypass the provisions of Part VII. The diversification of the purpose for which land was acquired under Section 4(1) read with Section 6 clearly amounted to a fraud on the power of eminent domain. This is precisely what the High Court has held in the judgment under appeal and we do not find any valid ground to interfere with the same more so because in Annaiah and others v. State of Karnataka and others (supra), the High Court had quashed the notifications issued under Sections 4(1) and 6 in their entirety and that judgment has become final.

27. The judgment in Om Parkash v. Union of India (supra) on which reliance has been placed by Shri Naganand is clearly distinguishable. What has been held in that case is that quashing of the acquisition proceedings would enure to the benefit of only those who had approached the Court within reasonable time and not to those who remained silent. In this case, respondent No.1 independently questioned the acquisition proceedings and transfer of the acquired land to M/s. Universal Resorts Ltd. In other words, he approached the High Court for vindication of his right and succeeded in convincing the Division Bench that the action taken by the Corporation to transfer his

land to M/s. Universal Resorts Limited was wholly illegal, arbitrary and unjustified.

28. In the result, the appeals are dismissed. Respondent No.1 shall, if he has already not done so, fulfil his obligation in terms of the impugned judgment within a period of 8 weeks from today. The appellant shall fulfil their obligation, i.e. return of land to respondent No.1 within next 8 weeks.

.....J. [G.S. Singhvi] .....J. [Sudhansu Jyoti Mukhopadhaya] New Delhi September 29, 2011.