Savitri Devi vs State Of U.P.& Ors on 14 May, 2015

Equivalent citations: 2015 AIR SCW 3447, 2015 (7) SCC 21, AIR 2015 SC (SUPP) 1274, (2015) 152 ALLINDCAS 77 (SC), (2015) 3 RECCIVR 424, (2015) 2 LANDLR 91, (2015) 4 MAD LJ 691, (2015) 2 CLR 433 (SC), (2015) 4 KCCR 410, (2015) 111 ALL LR 736, (2015) 129 REVDEC 71, (2015) 4 ALL WC 4207, (2015) 3 CURCC 75, (2015) 6 SCALE 667

Author: A.K. Sikri

Bench: Arun Mishra, A.K. Sikri, H.L. Dattu

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 4506 OF 2015
(ARISING OUT OF SLP (C) NO. 30969 OF 2011)

SAVITRI DEVI	.....APPELLANT(S)	
VERSUS		
STATE OF UTTAR PRADESH & ORS.	.....RESPONDENT(S)	

W I T H

CIVIL APPEAL NO. 4830 OF 2015
(ARISING OUT OF SLP (C) NO. 27508 OF 2010)

CIVIL APPEAL NOS. 4508-12 OF 2015
(ARISING OUT OF SLP (C) NOS. 33552-33556 OF 2011)

CIVIL APPEAL NOS. 4513-17 OF 2015
(ARISING OUT OF SLP (C) NOS. 33984-33988 OF 2011)

CIVIL APPEAL NOS. 4518-24 OF 2015
(ARISING OUT OF SLP (C) NOS. 36334-36340 OF 2011)

CIVIL APPEAL NO. 4819 OF 2015
(ARISING OUT OF SLP (C) NO. 333 OF 2012)

CIVIL APPEAL NOS. 4525-26 OF 2015
(ARISING OUT OF SLP (C) NOS. 1082-1083 OF 2012)

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(ARISING OUT OF SLP (C) NO. 1104 OF 2012)

CIVIL APPEAL NO. 4529-30 OF 2015
(ARISING OUT OF SLP (C) NO. 1664-1665 OF 2012)

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IN
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CIVIL APPEAL NO. 2705 OF 2013

CIVIL APPEAL NO. 3022 OF 2013

CIVIL APPEAL NO. 4902 OF 2014

CIVIL APPEAL NO. 4928 OF 2014

J U D G M E N T

A.K. SIKRI, J.

These matters were heard in detail for few days and hearing was concluded on 05.02.2015. Thereupon, we communicated the result in the open Court by pronouncing that appeals were dismissed and the reasons shall follow. These are, thus, our reasons for dismissing the appeals.

Leave is granted in all the special leave petitions.

PROLOGUE :

> The subject matter of most of these appeals are the Notifications dated 12- 03-2008 issued by the State of U.P. under Section 4 of the Land Acquisition Act ("Act" for

short) read with Section 17 of the Act as well as declaration issued under Section 6 of the Land Acquisition Act (hereinafter referred to as the 'Act') vide Notification dated 30.06.2008. Land situate in various villages of Noida and Greater Noida in Tehsil Dadri, District Gautam Budh Nagar was acquired. Some other Notifications under same provisions of the Act in respect of lands of these villages was also acquired by earlier Notifications. The purpose stated in the notifications was 'Planned Industrial Development'. Urgency provisions under Section 17(1) and 17(4) of the Act were invoked thereby dispensing with the right of objection otherwise given to the land holders under Section 5A of the Act. The total land which was acquired by these notification was 589.188 hectares. Some writ petitions were initially filed in the High Court of Allahabad challenging the said Notifications, with primary contention that invocation of emergency provision and taking away valuable right of the land holders under Section 5A of the Act was illegal, mala fide, arbitrary and colourable exercise of power. Some of the writ petitions came up before the Division Bench of the said High Court. One was Writ Petition (C) 45777 of 2008 in the case of Harish Chand and Others v. State of U.P. and Others wherein the High Court upholding the very same Notifications, on arriving at the conclusion that invocation of Section 17 of the Act was justified, dismissed that writ petition. It so happened that another Division Bench of the same High Court decided Writ Petition (C) No. 17068 of 2009; titled Karan Singh v. State of U.P. and others. The Division Bench rendered its judgment dated 19-07-2011 in the said case accepting the aforesaid contention of the writ petitioners and holding that invocation of provisions of Section 17 of the Act was not justified. Accordingly, the Division Bench quashed these Notifications.

As a sequel, spate of writ petitions came to be filed challenging the lands acquired not only by the notification dated 12-03-2008 but even by earlier notifications as well. When these petitions came up before another Division Bench it noticed the aforesaid two conflicting views expressed by two different Division Benches. This led the said Division Bench to refer the matter to the larger Bench and orders dated 26-07-2011 were passed in this behalf. This is how the matters were placed before the Full Bench and by that time as many as 471 writ petitions had accumulated. All these writ petitions were taken up analogously by the Full Bench and disposed of vide judgment dated 21.10.2011 with leading case known as Gajraj vs. State of U.P. (W.P. (C) 37443 of 201!). The Full Bench of the High Court has accepted the plea of the land holders that invocation of emergency clause contained in Section 17 of the Act was impermissible and unwarranted. At the same time, the High Court also noticed that in respect of land of many villages, possession had already been taken and substantial development work carried out. Even compensation was paid in such cases, the High Court, instead of quashing the Notifications in respect of those villages, chose to adopt the middle path in an endeavour to balance the equities of both sides. Thus, it enhanced the provisional compensation and also directed allotment of developed Abadi land to the extent 10% of their acquired land subject to maximum of 2500 sq. mtrs. However, in respect of three villages, when it found that no development work had been carried out at all by the Authorities during the intervening period, the High

Court chose to quash the Notifications including consequential actions and directed restoration of the land to the respective land owners.

It may also be noticed at this stage that when there was flurry of writ petitions in the High Court challenging the invocation of Section 17 and the Division Bench of the High Court in Harkaran Singh (supra) had held invocation of urgency powers to be bad in law, some land owners whose land was acquired much earlier by invoking clause (some of the Notifications of such land date back to 1979 or early 1980s as well) took adventurous step to file the writ petitions in the year 2011 challenging those Notifications. All these writ petitions, however, have been dismissed by the impugned judgment of the High Court on the ground that they are filed with inordinate delay and laches.

From the aforesaid, it is clear that three sets of directions are issued by the High Court, namely, (I) dismissing writ petitions filed with unexplained delays and laches; (ii) quashing the Notification in respect of three villages where no development work had taken place; and (iii) in respect of other villages, instead of quashing the action of acquisition of land in spite of accepting the plea that Section 17 was wrongly invoked, it has enhanced the compensation as well as extent of entitlement for allotment of developed Abadi plot.

The State Government/U.P. Development Board as well as many land owners have challenged the said Full Bench decision of the High Court. Insofar as special leave petitioners/appeals of the Government and Authority are concerned, they have already been dismissed. In these batches of matters, thus, we are concerned with the appeals of the land owners. Most of these appeals are filed against the Full Bench. However, some of the appeals arise against the earlier Division Bench judgment dated 25-11- 2008 whereby the High Court had upheld the same Notifications and rejected the challenge to the acquisition of land. Some appeals are filed by the NOIDA authority where the Division Bench had quashed the notification.

After narrating these preliminaries of the matters, we advert to the facts and events of the cases. For the sake of convenience, we will refer to the facts appearing in the writ petition of Gajraj as that was the lead case before the High Court as well.

FACTUAL MATRIX This writ petition was filed by 27 writ petitioners claiming themselves to be Bhumidaars with transferable right and owners of different plots of land situate in Village Patwari, Pargana, Tehsil – Dadri, District Gautam Budh Nagar. The Notification dated 12-03-2008 was issued by the State Government under Section 4(1) read with Section 17 of the Land Acquisition Act, 1894 notifying that the land mentioned in the schedule is needed for the public purpose namely, for the "planned industrial development" in Gautam Buddha Nagar. Inquiry under Section 5A having been dispensed with vide Notification dated 12-03-2008, State Government proceeded to issue declaration under Section 6 of the Land Acquisition

Act dated 30-06-2008.

The petitioners had pleaded in the writ petition that dispensation of the inquiry under Section 5A can only be an exception where the urgency cannot brook the delay. The respondents, without application of mind, dispensed with the inquiry. The acquisition proceedings were deprecated as void, unconstitutional, tainted with malafide, abuse of authority/power and non application of mind. It was pleaded that the procedure under Section 5A is mandatory which embodies a just and wholesome principle that a person whose property is being acquired or intended to be acquired should have occasion to persuade the authorities that his property be not touched for acquisition. It was also argued that land use of village Patwari was changed in the Master Plan 2021 after the issuance of notifications under sections 4 and 6, which is colourable exercise of powers and entire exercise is arbitrary, illegal and infringes rights of the petitioners guaranteed under Articles 14, 19 and 300A of the Constitution of India. These petitioners also stated in the writ petition that though there was some delay in filing the writ petition if counted from the date of notification but the writ petition was filed only when it came to their knowledge that the land use of village Patwari was changed in the Master Plan 2021 after the notifications under Sections 4 and 6 and land was sought to be allotted to the private builders, thereby giving go by to the objective for which the land was acquired. The petitioners further claimed that the part of the property of the petitioners is situate in village Abadi. It was pleaded that the authority had executed a lease deed dated 31-03-2010 in favour of respondent no. 4 M/s. Supertech Ltd, a company engaged in the construction, allotting 2,40,00 square meters land for constructing multi-storied complexes. It was also stated that although land was acquired for industrial development but the same had now been allotted to the builders by the Authority which clearly indicates that neither there was any appropriate plan and scheme for industrial development nor there was any urgency in the matter and the whole proceeding amounted to colourable exercise of power.

The State Government as well as Authority contested the matter by putting its justification to the invocation of Section 17 of the Act. It was pleaded that land was acquired for the purpose of industrial development. It was also stated that the Authority had been constituted vide Notification dated 28-01-1998 issued under the U.P. Industrial Area Development Act, 1976 (hereafter referred to as the '1976 Act') and the land was to be developed in accordance with the aims and objectives contained in the said Act included development of the land for residential and other purposes as well and was not confined to industrial development alone. Objection was raised to the maintainability of the writ petitions by contending that except few petitioners, all other had received compensation on various dates and, therefore, they were estopped from challenging the acquisition, once the possession of the land was taken, award was passed and compensation received. The Authorities also stated that land owner of about 83% of the land area had already been paid the compensation. In terms of numbers, out of 1605 persons, 1403 persons had accepted the

compensation. Development works had been carried out in the area in question which had already been demarcated into various sectors. The nature of development carried out was stated in detail in the affidavit. Invocation of urgency clause was also sought to be justified.

M/s. Supertech Limited, to whom certain area was allotted for development of the housing colony was also impleaded as the respondent. On its impleadment, this respondent also filed its counter affidavit stating the circumstances under which it was allotted the land for development of residential units. It also contended that the substantial work had already been undertaken by the said Company. So much so, out of 6000 residential units which were proposed to be constructed, 4471 units had already been booked by the members of public and paid part considerations. It was pleaded that in this manner third party interest had also been created. It would be relevant to point out here that apart from M/s. Supertech Limited, there were at least 10 more such developers who had been allotted the various chunks of acquired land for similar housing projects etc. JUDGMENT OF THE HIGH COURT After noticing the aforesaid facts and the contentions and having regard to the plethora of writ petitions which were filed pertaining to different villages, the High Court deemed it appropriate to categorize these writ petitions in different groups, village wise. 65 village wise categories were, accordingly, carved out. Out of these group 1-41 pertained to different villages of Greater NOIDA whereas villages in group 42-65 fell in NOIDA. Village Patwari was taken up as group 1. The High Court, thereafter, discussed the factual position in respect of each group which need not be mentioned, as unnecessary for our purposes. However, wherever this exercise is deemed proper, we would be referring to such factual details at the relevant steps.

Keeping in view the various submissions made by the writ petitioners in their petitions, the High Court framed as many as 17 issues or the points of consideration which had fallen for its discussion and decision. It would be apposite to take note of those issues at this juncture:

"(i) Object and Purpose of the 1976 Act: Whether the development of industries is the dominant purpose and object of U.P. Industrial Area Development Act, 1976.

(ii) Whether Acquisition Compulsory: Whether for carrying out the development of industrial area under 1976 Act, it is compulsory and necessary to acquire the land by the Authority?

(iii) Delay and Laches : Whether the delay and laches in the facts of the present case can bar the invocation or Constitutional remedy under Article 226 of the Constitution of India.

(iv) National Capital Regional Planning Board Act, 1985, its Consequences:

Whether the Authority can carry out development, utilise the land acquired as per its Master Plan 2021 without its approval/clearance by National Capital Regional Planning Board, and what is effect on its function of land acquisition after enforcement of 1985 Act?

(v) Invocation of Sections 17(1) and 17(4): Whether invocation of Sections 17(1) and 17(4) of the Land Acquisition Act and dispensation of inquiry under section 5A was in accordance with law in the cases which are under consideration?

(vi) Pre-notification and Post-notification delay: Whether delay caused before issuance of notification under Section 4 and delay caused subsequent to notification under Section 4 can be relied for determining as to whether urgency was such that invocation of Section 17(1) and 17(4) was necessary?

(vii) Colourable Exercise of Power: Whether acquisition of land are vitiated due to mala fide and colourable exercise of powers?

(viii) Taking of possession: Whether the possession of the land acquired was taken under Section 17(1) of the Land Acquisition Act in accordance with law?

(ix) Vesting: Whether after taking possession under Section 17(A) of the Act the challenge to the notifications under Section 4 read with 17(1) and 17(4) and Section 6 cannot be entertained due to the reason that land which has already been vested in the State cannot be divested?

(x) Section 11A; Whether acquisition under challenge has lap0sed under Section 11A of the Act due to non-declaration of the award within two years from the date of publication of the declaration made under section 6?

(xi) Section 17(3A): Whether non payment of 80% of the compensation as required by Section 17(3A) of the Land Acquisition Act is fatal to the acquisition o proceedings?

(xii) Waiver: Whether the petitioners who have accepted compensation by agreement have waived their right to challenge the acquisition proceedings?

(xiii) Acquiescence: Whether the petitioners due to having accepted the compensation by agreement have acquiesced to the proceedings of land acquisition and they are estopped from challenging the acquisition proceedings at this stage?

(xiv) Third Party Rights, Development and Construction: Whether due to creation of third party rights, development carried out by the Authority and developments and coonstructions made by the allottees on the acquired land subsequent to the acquisition, the petitioners are not entitled for the relief of quashing the notifications

under Section 4 read with Section 17(1) and 17(4) and Section 6 of the Act?

(xv) Effect of Upholding of some of the notifications in some writ petitions earlier decided: What are the consequences and effect of earlier Division Bench judgment upholding several notifications which are subject matter of challenge in some of these writ petitions?

(xvi) Conflicts in views of Division Benches: Which of the Division Bench decisions i.e. Harkaran Singh's case holding that invocation of Section 17(1) and 17(4) was invalid or earlier Division Bench judgment in Harish Chand's case holding that invocation of Section 17(1) and 17(4) was in accordance with law, has to be approved?

(xvii) Relief: To what relief, if any, the petitioners are entitled in these writ petition?" We are purposely eschewing the detailed discussion by the High Court on all the aforesaid issues. Suffice it to state here that after noticing the object and purpose of 1976 Act and discussing its provisions contained in this Act with reference to case law explaining the legal position of such statutory authorities entrusted with the task of development works, the High Court concluded that the stand of the Authority that unless the land is acquired by it. It cannot carry out any development works until the 1976 Act was misconceived and incorrect. The High Court remarked that the Authority was labouring under the aforesaid misconception and, therefore, concentrated only on acquisition of the land without taking care of other modes and means of industrial development and excessive acquisition of fertile agriculture land was due to the above mindset of the Authority.

Insofar as issues pertaining to compulsive acquisition and invocation of Section 17(1) and 17(4) are concerned, the High Court has arrived at a finding that such invocation of emergency/urgency clauses, thereby depriving the land owners of their most invaluable right to file objections under Section 5A of the Act, was illegal and unwarranted. As this issue is decided in favour of the land owners and against this finding appeals preferred by the State as well as the Authority have already been dismissed, it is not necessary to explain the raison d'etre behind these findings. We would be proceeding on the basis that invocation of Section 17(1) and Section 17(4) was wrong. Similarly, the findings of the High Court that exercise of power by the State was colourable and arbitrary need not be restated in detail, the same reason.

As far as the issue no. 4 pertaining the NCR planning Board Act is concerned, the High Court has held that land could not be acquired without the permission of the Board. Opinion of the High Court on this aspect was questioned by the State of U.P. as well as Authority in its appeals. However, it was found that as a matter of fact, insofar as these cases are concerned consent of the Board had been obtained. Having regard to this position, while dismissing the appeals of the State/Authority, we have left the said question of law open, namely, whether permission of the deemed under the Act of 1985 is a pre-condition before acquisition of the land. Therefore, that aspect also needs no elaboration at our end in these appeals.

It becomes clear from the above that the High Court arrived at a conclusion that since invocation of Section 17(1) and 17(4) was uncalled for and unwarranted, the acquisition of the land of the appellants herein was illegal. Notwithstanding, the same, the High Court did not grant the relief of setting aside the entire acquisition and restoring the land to the appellants. After the aforesaid findings, the High Court observed that insofar as grant of particular relief to the land owners in land acquisition proceedings is concerned, it depends on several important factors. Thus, the issue of 'reliefs' has been discussed specifically and independently under the aforesaid caption. Here, the High Court has observed that the creation of third party rights, development undertaken over the land in dispute as well as the steps taken by the land owners after declaration made under Section 6 of the Act would be the relevant consideration in determining the kind of relief that is to be granted to the land owners. Discussing the aforesaid aspects in the contexts of these proceedings, the High Court pointed out that in majority of cases third party rights had been created after issue of declaration under Section 6 and after taking possession of the land, substantial developments including constructions had been undertaken. Thus, in those cases where substantial development had taken place and/or third party rights had been created, the High Court deemed it proper not to interfere with the acquisition. At the same time in order to balance the equities, it felt that grant of higher compensation and better share in the developed land to these land owners would meet the ends of justice. The exact relief given in this behalf shall be stated at the appropriate stage.

The High Court also found that in three villages no such third party rights had been created and no developments had taken place. So far as these villages are concerned, the High Court deemed it apposite to release the land in favour of the land owners of those villages.

The High Court also found that many writ petitions were filed challenging the acquisitions in respect of which notifications were issued much earlier, were totally stale and suffered from laches and delays. In the opinion of the High Court, all those writ petitions which pertained to notifications issued prior to the year 2000 and the writ petitions were filed in the year 2011, these writ petitions deserved to be dismissed on the ground of inordinate delay and laches.

In nutshell, relief was categorised in three compartments. In the first instance, those writ petitions which were filed belatedly were dismissed. In the second category, three villages, namely, Devala (Group 40), village Yusufpur Chak Sahberi (Group 38) and Village Asdullapur (Group 42) the acquisition was set aside. Land acquisition in respect of remaining 61 villages is concerned, the acquisition was allowed to remain but the additional compensation was increased to 64.7% with further entitlement for allotment of development abadi plot to the extent of 10% of the acquired land of those land owners subject to maximum of 2500 sq. mtrs.

We now reproduce the exact nature of direction given by the High Court, which reads as follows:

> “In view of the foregoing conclusions we order as follows:
>
> 1. The Writ Petition No. 45933 of 2011, Writ Petition No. 47545 of 2011 relating to village Nithari, Writ Petition No. 47522 of 2011 relating to village Sadarpur, Writ Petition No. 45196 of 2011, Writ Petition No. 45208 of 2011, Writ Petition No. 45211

> of 2011, Writ Petition No. 45213 of 2011, Writ Petition No. 45216 of 2011, Writ Petition No. 45223 of 2011, Writ Petition No. 45224 of 2011, Writ Petition No. 45226 of 2011, Writ Petition No. 45229 of 2011, Writ Petition No. 45230 of 2011, Writ Petition No. 45235 of 2011, Writ Petition No. 45238 of 2011, Writ Petition No. 45283 of 2011 relating to village Khoda, Writ Petition No. 46764 of 2011, Writ Petition No. 46785 of 2011 relating to village Sultanpur, Writ Petition No. 46407 of 2011 relating to village Chaura Sadatpur and Writ Petition No. 46470 of 2011 relating to village Alaverdipur which have been filed with inordinate delay and laches are dismissed.

2(i). The writ petitions of Group 40 (Village Devla) being Writ Petition No. 31126 of 2011, Writ Petition No. 59131 of 2009, Writ Petition No. 22800 of 2010, Writ Petition No. 37118 of 2011, Writ Petition No. 42812 of 2009, Writ Petition No. 50417 of 2009, Writ Petition No. 54424 of 2009, Writ Petition No. 54652 of 2009, Writ Petition No. 55650 of 2009, Writ Petition No. 57032 of 2009, Writ Petition No. 58318 of 2009, Writ Petition No. 22798 of 2010, Writ Petition No. 37784 of 2010, Writ Petition No. 37787 of 2010, Writ Petition No. 31124 of 2011, Writ Petition No. 31125 of 2011, Writ Petition No. 32234 of 2011, Writ Petition No. 32987 of 2011, Writ Petition No. 35648 of 2011, Writ Petition No. 38059 of 2011, Writ Petition No. 41339 of 2011, Writ Petition No. 47427 of 2011 and Writ Petition No. 47412 of 2011 are allowed and the notifications dated 26.5.2009 and 22.6.2009 and all consequential actions are quashed. The petitioners shall be entitled for restoration of their land subject to deposit of compensation which they had received under agreement/award before the authority/Collector.

2(ii) Writ petition No. 17725 of 2010 Omveer and others Vs. State of U.P. (Group 38) relating to village Yusufpur Chak Sahberi is allowed. Notifications dated 10.4.2006 and 6.9.2007 and all consequential actions are quashed. The petitioners shall be entitled for restoration of their land subject to return of compensation received by them under agreement/award to the Collector.

2(iii) Writ Petition No. 47486 of 2011 (Rajee and others Vs. State of U.P. and others) of Group-42 relating to village Asdullapur is allowed. The notification dated 27.1.2010 and 4.2.2010 as well as all subsequent proceedings are quashed. The petitioners shall be entitled to restoration of their land.

3. All other writ petitions except as mentioned above at (1) and (2) are disposed of with following directions:

> (a) The petitioners shall be entitled for payment of additional compensation to the extent of same ratio (i.e. 64.70%) as paid for village Patwari in addition to the compensation received by them under 1997 Rules/award which payment shall be ensured by the Authority at an early date. It may be open for Authority to take a decision as to what proportion of additional compensation be asked to be paid by allottees.

Those petitioners who have not yet been paid compensation may be paid the compensation as well as additional compensation as ordered above. The payment of additional compensation shall be without any prejudice to rights of land owners under section 18 of the Act, if any.

(b) All the petitioners shall be entitled for allotment of developed Abadi plot to the extent of 10% of their acquired land subject to maximum of 2500 square meters. We however, leave it open to the Authority in cases where allotment of abadi plot to the extent of 6% or 8% have already been made either to make allotment of the balance of the area or may compensate the land owners by payment of the amount equivalent to balance area as per average rate of allotment made of developed residential plots.

4. The Authority may also take a decision as to whether benefit of additional compensation and allotment of abadi plot to the extent of 10% be also given to;

(a) those land holders whose earlier writ petition challenging the notifications have been dismissed upholding the notifications; and

(b) those land holders who have not come to the Court, relating to the notifications which are subject matter of challenge in writ petitions mentioned at direction No.3.

5. The Greater NOIDA and its allotees are directed not to carry on development and not to implement the Master Plan 2021 till the observations and directions of the National Capital Regional Planning Board are incorporated in Master Plan 2021 to the satisfaction of the National Capital Regional Planning Board. We make it clear that this direction shall not be applicable in those cases where the development is being carried on in accordance with the earlier Master Plan of Greater NOIDA duly approved by the National Capital Regional Planning Board.

6. We direct the Chief Secretary of the State to appoint officers not below the level of Principal Secretary (except the officers of Industrial Development Department who have dealt with the relevant files) to conduct a thorough inquiry regarding the acts of Greater Noida (a) in proceeding to implement Master Plan 2021 without approval of N.C.R.P. Board, (b) decisions taken to change the land use, (c) allotment made to the builders and (d) indiscriminate proposals for acquisition of land, and thereafter the State Government shall taken appropriate action in the matter." We may point out at this stage that in respect of all these three categories, the High Court has provided its justification for granting relief in the aforesaid nature. We shall be referring to the same while discussing the cases of appellants belonging to one or the other category.

In nutshell, it may be pointed out that 65 villages which were the subject matter of bunch of writ petitions before the Full Bench of the High Court were grouped in 65 groups, village-wise and facts of acquisition, possession, if any, payment of compensation, developments, the nature of utilisation of those lands, and/or creation of third party rights were taken note of. Out of these 65 villages, 41 villages fall in Greater NOIDA and 24 in NOIDA. The High Court discussed the issue of laches and delays under Issue No. 3, as mentioned above, after referring to various judgments of this Court and culling out the principles contained therein on that basis. The High Court accepted the plea of inordinate delay insofar as acquisition of land in respect of village Nithari, Village Chauyra Sadedpur, Village Khoda, Village Sultanpur are concerned. These writ petitions are dismissed on the ground of delay. In respect of other villages, the Court repelled the contention of delay raised by the department, accepting the explanation given by land owners of those villages that they did not

oppose the acquisition earlier at the time of issuance of notification as the land was taken for industrial development. However, it is only when these land owners had come to know that instead of developing the land for the purpose for which it was acquired, the acquiring authority had transferred the land to the private persons and builders, that these land owners felt aggrieved and cheated and, therefore, there was sufficient explanation for coming to the Court at a time when these land owners discovered that the acquired land had been transferred to private persons. The Court, therefore, held that such writ petitions were to be entertained on merits, ignoring the delay.

Some of the appeals are filed by the land owners in respect of aforesaid villages where their petitions are dismissed on the ground of delay and laches. We are of the opinion that their writ petitions were rightly rejected by the High Court applying the principle of delays and laches. We are, thus, dismissing these appeals, upholding the order of the High Court.

The Arguments: Appellants Though many counsel appeared on behalf of appellants and argued the appeals, Mr. Amarendra Sharan, Mr. Rajiv Shankar Dwivedi, Mr. Jitendra Mohan Sharma, Mr. Mahabir Singh, Mr. Rakesh Dwivedi, Mr. Vijay Hansaria, Mr. S.C. Maheshwari, Senior Advocates and Dr. Suraj Singh, Advocate were the main architects who built the edifice of the appellants' appeals. Among themselves, they covered almost all the aspects which arise in these appeals. Other counsel either adopted those submissions or some of them pointed out some distinctive and peculiar facts of their cases. It is not necessary to reproduce the submission of each of the aforesaid senior counsel separately as we think that better course of action would be to spell out these submissions in consolidated form to avoid any repetition. The arguments which were advanced by these counsel, in support of their appeals, are recapitulated hereunder:

> (I) In the first instance, the illegalities committed in issuing the notifications for acquisition of land were pointed out which were even accepted by the High Court in the impugned judgment, in the following manner:
>
> (a) No permission of NCR Board was taken before issuing the notifications.
>
> (b) There was violation of Section 5-A of the Act which goes to the root of the matter, coupled with the finding that it amounted to colourable exercise of power.
>
> (c) There was violation of mandatory provision contained in Section 11-A of the Act as well.
>
> (d) Though, Section 17 (1) and Section 17 (4) of the Act were invoked, 80% of the compensation, which is mandatory requirement, was not paid to the appellants.
>
> (e) After acquiring the land purportedly for the purpose of industrial development, it was sold to private developers/real estate agencies for residential purposes, that too at a much higher rate.

As per the appellants, it would amply demonstrate that the Government acted more like a property dealer with intention to make money at the cost of the land owners/agriculturists.

(II) It was further argued that even when status quo orders were passed in many writ petitions, the Government had violated those orders and in this manner, third party rights were created, thereby committing contempt of court. When the third party interest were created in the aforesaid manner, the High Court should not have influenced itself by the said consideration in denying the relief to the appellants after holding that acquisition was illegal.

(III) It was also argued that in a case like this, doctrine of severance should have been applied by excluding only those portions of land in respect of which third party rights were created or development had taken place inasmuch as large chunk of land in these villages have still not been utilised for any purpose as these are thickly inhabited. By applying the doctrine of severance, Abadi land should have been included for the purpose of giving relief, when the acquisition was admittedly bound to be illegal. It was only, in this manner, equities could be balanced.

(IV) It was sought to be argued that in respect of three villages where acquisition is set aside on the ground that no development has taken place and third party rights are not created, this very principle should have been applied in respect of lands of those appellants in other villages where no third party rights were created or there was Abadi or where no possession was taken by the authorities and no compensation taken by the land owners and the land owners who belong to lower strata of society.

In nutshell, the submission is that such cases are exactly at par with the cases of 3 villages falling in para 2 of the direction, where the land acquisition has been quashed even when the compensation was taken and same treatment be accorded to at least those appellants who fall in this category.

(V) It was also argued that after holding the acquisition illegal, the Court had three alternatives namely:

> (a) payment of 67.4% compensation plus restoring 10% of the developed land to the land owners, which is followed by the High Court.
>
> (b) directing restoration of possession in all these cases with liberty to the Government to negotiate with the land owners.
>
> (c) permitting fresh acquisition.

Submission was that first alternative was not the best alternative adopted by the High Court and in the interest of justice, the second or third alternative should have been resorted to, more so, when it was found to be case of malice in law which can clearly be inferred from the findings arrived at by the High Court, on the basis of material established on record.

In support of these submissions, learned counsel for the appellants referred to the following judgments:

> (i) Anand Singh & Anr. v. State of Uttar Pradesh & Ors.[1] "50. Use of the power by the government under Section 17 for 'planned development of the city' or `the development of residential area' or for `housing' must not be as a rule but by way of an exception. Such exceptional situation may be for the public purpose viz., rehabilitation of natural calamity affected persons; rehabilitation of persons uprooted due to commissioning of dam or housing for lower strata of the society urgently; rehabilitation of persons affected by time bound projects, etc. The list is only illustrative and not exhaustive. In any case, sans real urgency and need for immediate possession of the land for carrying out the stated purpose, heavy onus lies on the government to justify exercise of such power.
>
> xxx xxx xxx
>
> 55. In the facts and circumstances of the present case, therefore, the Government has completely failed to justify the dispensation of an enquiry under Section 5A by invoking Section 17(4). For this reason, the impugned notifications to the extent they state that Section 5A shall not apply suffer from legal infirmity. The question, then, arises whether at this distance of time, the acquisition proceedings must be declared invalid and illegal.
>
> 56. In the written submissions of the GDA, it is stated that subsequent to the declaration made under Section 6 of the Act in the month of December, 2004, award has been made and out of the 400 land owners more than 370 have already received compensation. It is also stated that out of the total cost of Rs. 8,85,14,000/- for development of the acquired land, an amount of Rs.

5,28,00,000/- has already been spent by the GDA and more than 60% of work has been completed. It, thus, seems that barring the appellants and few others all other tenure holders/land owners have accepted the `takings' of their land. It is too late in the day to undo what has already been done. We are of the opinion, therefore, that in the peculiar facts and circumstances of the case, the appellants are not entitled to any relief although dispensation of enquiry under Section 5A was not justified.

57. On behalf of the appellants, it was vehemently argued that the government may be directed to release their land from proposed acquisition. It was submitted by the appellants that houses/structures and buildings (including educational building) are existing on the subject land and as per the policy framed by the State Government, the land deserves to be exempted from acquisition. The submission of the appellants has been countered by the respondents and in the written submissions filed by the GDA, it is stated that the houses/structures and buildings which are claimed to exist, have been raised by the appellants subsequent to the notification under Section 4(1) of the Act and, therefore, they are not entitled to release of their land from acquisition.

58. In our view, since the existence of houses/structures and buildings as on November 22, 2003/February 20, 2004 over the appellants' land has been seriously disputed, it may not be appropriate to issue any direction to the State Government, as prayed for by the appellants, for release of their land from acquisition. However, as the possession has not been taken, the interest of justice would be subserved if the appellants are given liberty to make representation to the State authorities under Section 48(1) of the Act for release of their land. We, accordingly, grant liberty to the appellants to make appropriate representation to the State Government and observe that if such representation is made by the appellants within two months from today, the State Government shall consider such representation in accordance with law and in conformity with the State policy for release of land under Section 48(1) without any discrimination within three months from receipt of such representation." In support of the arguments that the equities were to be balanced on the facts of the case which according to the appellant were in their favour, following judgments were referred:

> (ii) H.M.T. Housing Building Co-operative Society v. Syed Khader & Ors.[2] "22. In the present case there has been contravention of Section 3(f)(vi) of the Act inasmuch as there was no prior approval of the State Government as required by the said section before steps for acquisition of the lands were taken. The report of Shri G.K.V. Rao points out as to how the appellant-Society admitted large number of persons as members who cannot be held to be genuine members, the sole object being to transfer the lands acquired for "public purpose", to outsiders as part of commercial venture, undertaken by the office- bearer of the appellant-Society. We are in agreement with the finding of the High Court that the statutory notifications issued under Sections 4(1) and 6(1) of the Act have been issued due to the role played by M/s S.R. Constructions, Respondent 11. On the materials on record, the High Court was justified in coming to the conclusion that the proceedings for acquisition of the lands had not been initiated because the State Government was satisfied about the existence of the public purpose but at the instance of agent who had collected more than a crore of rupees for getting the lands acquired by the State Government.

23. The appeals are accordingly dismissed. But in the circumstances of the case there shall be no orders as to costs.

24. We direct that as a result of quashing of the land acquisition proceedings including the notifications as aforesaid, the possession of the lands shall be restored to the respective landowners irrespective of the fact whether they had challenged the acquisition of their lands or not. On restoration of the possession to the landowners they shall refund the amounts received by them as compensation or otherwise in respect of their lands. The appellant, the respondents and the State Government including all authorities/persons concerned shall implement the aforesaid directions at an early date."

(iii) H.M.T. House Building Cooperative Society v. M. Venkataswamappa and others[3]

(iv) Bangalore City Cooperative Housing Society Limited v. State of Karnataka and others[4] "87. The three Judge Bench also approved the view taken by the High Court that the acquisition of land

was vitiated because the decision of the State Government was influenced by the Estate Agent with whom the Appellant had entered into an agreement. Paras 21 and 22 of the judgment, which contain discussion on this issue are extracted hereunder: (1st H.M.T. House Building Coop. Society v. Syed Khader and others, (1995) 2 SCC 677 "21. Mr. G. Ramaswamy, learned Senior Counsel appearing on behalf of the appellant, submitted that merely because the appellant Society had entered into an agreement with Respondent 11, M/s S.R. Constructions, in which the latter for the consideration paid to it had assured that the lands in question shall be acquired by the State Government, no adverse inference should be drawn because that may amount to a tall claim made on behalf of M/s S.R. Constructions in the agreement. He pointed out that the notifications under Sections 4(1) and 6(1) have been issued beyond the time stipulated in the agreement and as such, it should be held that the State Government has exercised its statutory power for acquisition of the lands in normal course, only after taking all facts and circumstances into consideration. There is no dispute that in terms of agreement dated 1-2- 1985 payments have been made by the appellant Society to M/s S.R. Constructions. This circumstance alone goes a long way to support the contention of the writ Petitioners that their lands have not been acquired in the normal course or for any public purpose. In spite of the repeated query, the learned counsel appearing for the appellant Society could not point out or produce any order of the State Government under Section 3(f)(vi) of the Act granting prior approval and prescribing conditions and restrictions in respect of the use of the lands which were to be acquired for a public purpose. There is no restriction or bar on the part of the appellant Society on carving out the size of the plots or the manner of allotment or in respect of construction over the same. That is why the framers of the Act have required the appropriate Government to grant prior approval of any housing scheme presented by any cooperative society before the lands are acquired treating such requirement and acquisition for public purpose. It is incumbent on the part of the appropriate Government while granting approval to examine different aspects of the matter so that it may serve the public interest and not the interest of few who can as well afford to acquire such lands by negotiation in open market. According to us, the State Government has not granted the prior approval in terms of Section 3(f)(vi) of the Act to the housing scheme in question. The power under Sections 4(1) and 6(1) of the Act has been exercised for extraneous consideration and at the instance of the persons who had no role in the decision-making process - whether the acquisition of the lands in question shall be for a public purpose. This itself is enough to vitiate the whole acquisition proceeding and render the same invalid.

22. In the present case there has been contravention of Section 3(f)(vi) of the Act inasmuch as there was no prior approval of the State Government as required by the said section before steps for acquisition of the lands were taken. The report of Shri G.K.V. Rao points out as to how the appellant-Society admitted large number of persons as members who cannot be held to be genuine members, the sole object being to transfer the lands acquired for "public purpose", to outsiders as part of commercial venture, undertaken by the office- bearer of the appellant-Society. We are in agreement with the finding of the High Court that the statutory notifications issued under Sections 4(1) and 6(1) of the Act have been issued due to the role played by M/s S.R. Constructions, Respondent 11. On the materials on record, the High Court was justified in coming to the conclusion that the proceedings for acquisition of the lands had not been initiated because the State Government was satisfied about the existence of the public purpose but at the instance of agent who had collected more than a crore of rupees for getting the lands acquired by the State Government.

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95. The Division Bench of the High Court in Subramani, ILR 1995 Kant 3139, noted that the terms of the agreement entered into between the Society and M/s. Devatha Builders was not for the acquisition of land but only for development of the acquired land. The Division Bench also noted that the agreement was entered into between the Society and the owners in 1985, whereas the Government gave approval for acquisition in 1985 and the agreement with the developer was of 1986. The Division Bench also noted that no stranger had been inducted as a member of the society. However, the acquisition which was under challenge in Writ Petition No. 28707 of 1995 was declared illegal because the House Building Cooperative Society concerned has not framed any housing scheme and obtained approval thereof from the State Government. The Division Bench also expressed the view that remedy under Article 226 was discretionary and it was not inclined to nullify the acquisition made for the society because the petitioners had approached the Court after long lapse of time and there was no explanation for the delay.

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132. Before concluding we consider it necessary to observe that in view of the law laid down in the 1st H.M.T. case (paragraphs 19, 21 and 22), which was followed in 2nd H.M.T. case and Vyalikawal House Building Cooperative Society's case, the view taken by the Division Bench of the High Court in Narayana Raju's case that the framing of scheme and approval thereof can be presumed from the direction given by the State Government to the Special Deputy Commissioner to take steps for issue of notification under Section 4(1) cannot be treated as good law and the mere fact that this Court had revoked the certificate granted by the High Court cannot be interpreted as this Court's approval of the view expressed by the High Court on the validity of the acquisition.

133. In the result, the appeals are dismissed. However, keeping in view the fact that some of the members of the appellant may have built their houses on the sites allotted to them, we give liberty to the appellant to negotiate with the respondents for purchase of their land at the prevailing market price and hope that the landowners will, notwithstanding the judgments of the High Court and this Court, agree to accept the market price so that those who have built the houses may not suffer.

134. At the same time, we make it clear that the appellant must return the vacant land to the respondents irrespective of the fact that it may have carved out the sites and allotted the same to its members. This must be done within a period of three months from today and during that period the appellant shall not change the present status of the vacant area/sites. The members of the appellant who may have been allotted the sites shall also not change the present status/character of the land. The parties are left to bear their own costs." In support of the proposition that it was a case of malice in law, reference was made to the judgment in the case of S. Partap Singh v. State of Punjab[5].

Countering the arguments of delay and laches putforth by the respondents even in appellants cases, the reference was made to the judgment in the case of S.P. Chengalvaraya Naidu v. Jagannath and others[6], in support of the plea that fraud vitiates all action and it was a case of fraud where land was acquired for one purpose but thereafter the Government sought to utilise it for some other

purpose. In this behalf, reliance was also placed in the case of Vyalikaval Housebuilding Coop. Society v. V. Chandrappa and others[7]:

> "3. This writ petition was contested by the appellant society as the respondent and it was alleged that it was hopelessly barred by time being delayed by 14 years and it was also submitted that the writ petitioners had participated in the inquiry under Section 5A of the Act and have also received substantial amount from the appellant society pursuant to the agreement executed in their favour. Learned Single Judge dismissed the writ petition on the ground of being hopelessly barred by time and the writ petitioners participated in the proceedings therefore they have acquiesced in the matter. Aggrieved against this order passed by learned Single Judge, a writ appeal was filed by the respondents which came to be allowed by the Division Bench for the reasons mentioned in another writ appeal decided by the same Division Bench headed by the Chief Justice of the High Court on 17.1.2000. In that writ appeal the Division Bench held that the entire acquisition on behalf of the appellant society was actuated with fraud as held in Narayana Reddy v. State of Karnataka ILR 1991 Kar. 2248. In that case it was held as follows:
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> "As seen from the findings of G.V.K. Rao Inquiry Report, in respect of five respondent societies and the report of the Joint Registrar in respect of Vyalikaval House Building Co-operative Society, these societies had indulged in enrolling large number of members illegally inclusive of ineligible members and had also indulged in enrolling large number of bogus members. The only inference that is possible from this is that the office- bearers of the societies had entered into unholy alliance with the respective agents for the purpose of making money, as submitted for the petitioners otherwise, there is no reason as to why such an agreement should have been brought about by the office-bearers of the society and the agents. Unless these persons had the intention of making huge profits as alleged by the petitioners, they would not have indulged in enrolment of ineligible and bogus members. The circumstance that without considering all these relevant materials the Government had accorded its approval, is sufficient to hold that the agents had prevailed upon the Government to take a decision to acquire the lands without going into all those relevant facts. The irresistible inference flowing from the facts and circumstances of these cases is, whereas the power conferred under the Land Acquisition Act is for acquiring lands for carrying out housing scheme by a housing society, in each of the cases the acquisition of lands is not for a bona fide housing scheme but is substantially for the purpose of enabling the concerned office-bearers of respondent-societies and their agents to indulge in sale of sites in the guise of allotment of sites to the members/ associate members of the society to make money as alleged by the petitioners and therefore it is a clear case of colourable exercise of power. Thus the decision of the Government to acquire the lands suffers from legal mala fides and therefore the impugned notifications are liable to be struck down." Judgment in the case of Royal Orchid Hotels Limited and Anr. v. G. Jayarama Reddy and Ors.[8] also relied upon to counter the plea of delay and laches, wherein this

Court held:

> "24. The first question which needs consideration is whether the High Court committed an error by granting relief to Respondent 1 despite the fact that he filed the writ petition after a 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.
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> 25. Although the 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 the 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.

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31. 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 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 1 and the 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." The Arguments : Respondents Mr. L.N. Rao, learned senior counsel appearing for the official respondents, emphatically countered the aforesaid submissions. He argued that in most of these

appeals, writ petitions were filed in the High Court challenging the acquisition after passing of the award and taking possession of the land and in most of the cases, the land owners had even received the compensation. Therefore, these writ petitions were not maintainable and should have been dismissed on the ground of laches and delay inasmuch as acquisition cannot be challenged after the award is passed and compensation is received. He sought to distinguish the judgments cited by the appellants' counsel. He submitted that the High Court has wrongly fixed the cut-off date as 06.07.2011. He also submitted that the High Court was in error in rejecting the arguments of acquiescence as acceptance of compensation clearly meant that these land owners had acquiesced into the action of the authorities in acquiring the land. His submission was that case should have been examined keeping in view the aforesaid factors and the plea taken by the writ petitioners that they felt aggrieved only when they came to know land was allotted/sold to private builders, was totally irrelevant and could not have been the ground to entertain the writ petitions on merits.

It was also argued by Mr. Rao that the High Court could not have enhanced the compensation by 64.7% in writ petition filed under Article 226 as it was not a public law remedy. His plea in this behalf was that Land Acquisition Act provided for complete machinery for determination of the compensation and reference by the land owners under Section 18 of the Act had already been sought and present way to matters are pending before the Reference Court to determine the market value of the land. He argued that merely because in the case of Patwari village, the Government had entered into an agreement with some of the villagers for payment of compensation by increasing it by 64.70%, would not mean that High Court could extend that to all villages in the absence of any agreement with those parties. In the same wave length, he challenged the direction for allotment of developed Abadi plot to the extent of 10% of the acquired land subject to maximum of 2500 square metres by pointing out that the aforesaid allotment was under

> the scheme of the Government which provided for allotment of 5% developed Abadi plot in respect of Noida land and 6% of developed Abadi plot where the land acquired was situated in Greater Noida. Here again, it was pleaded, the High Court could not tinker with the said policy by enhancing the entitlement for allotment to 10%. It was also argued that in any case once the compensation was enhanced, there was no reason to give allotment of larger area of land and it amounted to giving double benefit to the land owners.
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> Without prejudice to the aforesaid contentions, Mr. Rao submitted that in spite of these serious infirmities in the judgment of the High Court, insofar as Government authorities are concerned, they were ready to pay the higher compensation and even allot land to the extent of 10% subject to the condition that quietus is given to all these cases with no further benefits. He pointed out that 64.7% additional compensation had already been given to about ninety percent land owners. Further, 6% of land/flats had already been allotted to ninety percent farmers. He further argued that care was taken at the time of acquisition itself not to touch the Abadi land.

Mr. Rakesh Dwivedi and Mr. Pramod Swarup, senior advocates, who appeared for private respondents/builders to whom the land was allotted, supported the aforesaid submissions of Mr. Rao and submitted that substantial justice had been done by the High Court in these cases and, therefore, in exercise of its power under Article 136 of the Constitution of India, the Court should not interfere with the exercise done by the High Court.

Our Analysis of the subject matter:

We have bestowed our serious consideration to the submissions made by learned counsel for parties on both sides. No doubt, the High Court has held that it was wrong exercise in law on the part of the Government to invoke the provisions of Sections 17(1) and 17(4) of the Act, thereby dispensing with the enquiry under Section 5A of the Act which amounted to taking away the valuable right of the land owners. That is a finding on merit. However, it is subject to the caveat that the writ petitions filed by the appellants herein could be considered on merits and were not to be dismissed on the grounds of laches and delay. Such a contention was indeed taken by the respondents/ authorities before the High Court. However, the same has been repelled. Primary reason given by the High Court in this behalf is that the delay was explained satisfactorily inasmuch as the land acquired for the purposes of industrial development was, at a later period of time, allotted to private builders for development of residential units and when this was done it came to the knowledge of the appellants. Aggrieved by this step taken by the Noida authorities, the appellants filed the writ petitions. Thus, in nutshell, allotment of the land by the Noida authorities at a subsequent point of time has weighed with the High Court. In other words, it is clear that the appellants did not challenge the acquisition per se inasmuch as when the land was acquired even after invoking urgency provisions contained in Section 17 of the Act and dispensing with the requirement of Section 5A of the Act, this position was accepted by the land owners. They even allowed the authorities to proceed further in passing the award and taking possession from many of these land owners and even paying compensation to them. It is a matter of record that before coming to the Court and filing the writ petitions, most of these appellants had received the compensation. They also sought reference under Section 18 of the Act for higher compensation. Physical possession of land of many of these appellants have also been taken. In many other cases, paper possession had been taken before filing of the writ petition. A great deal of argument was made as to whether such physical possession/paper possession should be treated as taking possession in the eyes of law, it would be a debatable point inasmuch as in various judgments, this Court has held that whenever there is large scale of acquisition and possession of large chunk of land belonging to number of persons is to be taken, paper possession would be a permissible mode, particularly when it is Abadi land. We are not going into this controversy since the ultimate outcome is not influenced by the aforesaid factor, as would be noticed in the later part of judgment. However, what we highlight and reiterate is that these appellants were not aggrieved by the acquisition per se in the

manner it was done by the respondents. As per their own case, they became aggrieved only when they found that land was not utilised for the purpose for which it was acquired namely industrial development but a large portion thereof was sought to be given away to the builders for development of the land as residential. The High Court, while accepting such a plea of the land owners on the ground of laches and delay, has referred to certain judgments which were relied upon before us as well and taken note of above.

This leads to an incidental issue as to whether development of land for residential purposes is impermissible and could have given a fresh cause of action to the land owners to approach the Court. Here, we would like to refer to the judgment of this Court in Nand Kishore Gupta and Ors. v. State of U.P. and Ors.[9] which concerns the same Act viz. U.P. Industrial Area Development Act, 1976. In that case, for Yamuna Express Project, the land was acquired setting it to be 'public purpose'. The land was utilised for construction of Yamuna Expressway and along therewith development of the part of the land was undertaken for commercial, amusement, industrial, institutional and residential purposes as well. It was accepted that construction of Yamuna Expressway was work of public importance. However, the utilisation of land for development of other purposes, namely, commercial, amusement, industrial, institutional and residential etc. was challenged, as not amounting to acquisition for 'public purpose'. There was another feature namely for the development of the land in the aforesaid manner Public Private Partnership (PPP) was formed and private parties were asked to undertake the development on BOT (Built, Operate and Transfer) basis. Such PPP on BOT basis was also challenged as colourable exercise of power in which private parties were involved. The challenge was repelled by this Court holding that acquisition of land along Yamuna Express for development of the same for commercial, amusement, industrial, institutional and residential purposes was complimentary to creation of Expressway. Such complimentary purpose was also treated as 'public purpose'. It was also contended by the land owners that the acquisition was not for “public purpose” because: (a) its object was not covered by Section 3(f) of the Act, (b) it really fell not under Part II of the Act but under Part VII thereof as it virtually amounted to acquisition of land for the contractor Company J, (c) the compensation was coming wholly from J and not from the Government or YEIDA, (d) the acquisition for so-called interchange was not at all necessary and was a colourable exercise of power. They further contended that the application of Sections 17(1) and 17(4) of the Act was wholly unnecessary and therefore, the enquiry under Section 5-A could not have been dispensed with. All the aforesaid contentions were rejected. Going by the dicta in the aforesaid judgment, it is contended by the authorities that merely because the part of the land is utilised for residential purpose, it cannot be said that the respondents- authorities have not adhered to the purpose for which the land is acquired. As per them, this would be complimentary purpose to the main purpose.

We have to keep in mind that in all these cases, after the land was acquired, which was of very large quantity and in big chunks, further steps were taken by passing the award, taking possession and paying compensation. In many cases, actual possession was taken and in rest of the cases, paper possession was taken where because of the land under Abadi, actual possession could not be taken on spot immediately. Fact remains that in many such cases where possession was taken, these land owners/appellants even received compensation. All these petitions have been filed only thereafter which may not be maintainable stricto sensu having regard to the law laid down by the Constitution Bench of this Court in Aflatoon and Ors. v. Lt. Governor of Delhi and Ors.[10] and the dictum of this judgment is followed consistently by this Court in various cases [See Murari and Ors. v. Union of India and Ors.[11], Ravi Khullar and Anr. v. Union of India and Ors.[12], Anand Singh and Anr. v. State of U.P. and Ors.[13]] Once we look into the matter from the aforesaid prospective, the argument of the appellants that giving away of the land by allotment to the private developers for construction of residential units gave them the fresh cause of action, gets dented to a great extent. No doubt, following Royal Orchid Hotels Limited case and other similar cases, the High Court has not dismissed the writ petitions filed by the appellants on the ground of delay and laches accepting the plea of the appellants that they felt aggrieved on coming to know that the land was sought to be given to the private persons for development. In this way, discretion is exercised by the High Court in entertaining the writ petitions on merits. Since such a discretion is exercised, we would not like to interfere with that discretion, more so, when a very fair stand is taken by Mr. Rao, learned senior counsel appearing for the Noida authority, as mentioned above. However, the aforesaid position in law is stated to highlight that it was equally possible to dismiss these writ petitions as the same were filed belatedly after passing of the award and when in most of the cases, possession was taken and compensation paid. When we examine the matter from the aforesaid angle, we reach an irresistible conclusion that the High Court has gone an extra mile in finding the solution to the problem and balancing the equities in a manner which is favourable to the land owners.

We have also to keep in mind another important feature. Many residents of Patwari village had entered into agreement with the authorities agreeing to accept enhanced compensation at the rate of 64.7%. This additional compensation was, however, agreed to be paid by the authorities only in respect of land owners of Patwari village. The High Court has bound the authorities with the said agreement by applying the same to all the land owners thereby benefiting them with 64.7% additional compensation. There could have been argument that the authorities cannot be fastened with this additional compensation, more particularly, when machinery for determination for just and fair compensation is provided under the Land Acquisition Act and the land owners had, in fact, invoked the said machinery by seeking reference under Section 18 thereof. Likewise, the scheme for allotment of land to the land owners provides for 5% and 6% developed land in Noida and Greater Noida respectively. As against that, the High Court has enhanced the said entitlement to

10%. Again, we find that it could be an arguable case as to whether High Court could grant additional land contrary to the policy. Notwithstanding the same, the Noida authority have now accepted this part of the High Court judgment after the dismissal of the appeals filed by the Noida authority, and a statement to that effect was made by Mr. Rao. We may point out that while dismissing the appeals of Noida authority, following remarks were made: "9. Insofar as allotment of 10 per cent of the plots is concerned, the High Court, in exercise of its discretionary power, has thought it fit, while sustaining the notification issued by the authority for protecting them for allotting 10 per cent of the developed plots; and, there again they have put a cap of 2,500 sq.mtrs. In fact, in the course of the order, the High Court has taken into consideration the agreement that was entered into by the authority with the villagers of Patwari and, in some cases, the authority itself has agreed to raise 6 to 8 per cent of the developed plots to the agriculturists. The High Court has also taken into consideration the observations made by this Court in the case of Bondu Ramaswamy Vs. Bangalore Development Authority, 2010 (7) SCC 129, where this Court has gone to the extent of directing the authorities to allot 15 per cent of the developed plots. In our view and in the peculiar facts and circumtances of these cases, since the relief that is given to the respondents/agriculturists is purely discretionary relief by the Court in order to sustain the notification issued by the authorities, we do not find any good ground to interfere with the impugned judgment(s) and order(s) passed by the High Court, at the instance of the petitioners/appellants/ authorities, namely, NOIDA and Greater NOIDA.

10. This order shall not be treated as a precedent in any other case." Thus, we have a scenario where, on the one hand, invocation of urgency provisions under Section 17 of the Act and dispensing with the right to file objection under Section 5A of the Act, is found to be illegal. On the other hand, we have a situation where because of delay in challenging these acquisitions by the land owners, developments have taken in these villages and in most of the cases, third party rights have been created. Faced with this situation, the High Court going by the spirit behind the judgment of this Court in Bondu Ramaswamy and Others (supra) came out with the solution which is equitable to both sides. We are, thus, of the view that the High Court considered the ground realities of the matter and arrived at a more practical and workable solution by adequately compensating the land owners in the form of compensation as well as allotment of developed Abadi land at a higher rate i.e. 10% of the land acquired of each of the land owners against the eligibility and to the policy to the extent of 5% and 6% of Noida and Greater Noida land respectively.

Insofar as allegation of some of the appellants that their abadi land was acquired, we find that this allegation is specifically denied disputing its correctness. There is specific averment made by the NOIDA Authority at so many places that village abadi land was not acquired. It is mentioned that abadi area is what was found in the survey conducted prior to Section 4 Notification and not what is alleged or that which is far away from the dense village abadi. It is also mentioned that as a consequence of the acquisition, the Authority spends crores and crores of rupees in developing the

infrastructure such as road, drainage, sewer, electric and water lines etc. in the unacquired portion of the village abadi. During the course of hearing, Chart No. 2 in respect of each village of Greater Noida was handed over for the consideration of this Court, wherein the amount spent by the Authority on the development, including village development (which is the unacquired village abadi), has been given in Column No. 4 thereof. It has been the consistent stand of the NOIDA Authority that prior to the issuance of Section 4 Notification under the Land Acquisition Act, 1894, survey was conducted and the abadi found in that survey was not acquired. In fact, affidavits in this respect have also been filed not only in this Court but also in the High Court. We have mentioned that there has been a long gap between acquisition of the land and filing of the writ petitions in the High Court by these appellants challenging the acquisition. If they have undertaken some construction during this period they cannot be allowed to take advantage thereof. Therefore, it is difficult to accept the argument of the appellants based on parity with three villages in respect of which the High Court has given relief by quashing the acquisition.

To sum up, following benefits are accorded to the land owners:

(a) increasing the compensation by 64.7%;

(b) directing allotment of developed abadi land to the extent of 10% of the land acquired of each of the land owners;

(c) compensation which is increased at the rate of 64.7% is payable immediately without taking away the rights of the land owners to claim higher compensation under the machinery provided in the Land Acquisition Act wherein the matter would be examined on the basis of the evidence produced to arrive at just and fair market value;

This, according to us, provides substantial justice to the appellants.

Conclusion Keeping in view all these peculiar circumstances, we are of the opinion that these are not the cases where this Court should interfere under Article 136 of the Constitution. However, we make it clear that directions of the High Court are given in the aforesaid unique and peculiar/specific background and, therefore, it would not form precedent for future cases.

We may record that some of the appellants had tried to point out certain clerical mistakes pertaining to their specific cases. For example, it was argued by one appellant that his land falls in a village in Noida but wrongly included in Greater Noida. These appellants, for getting such clerical mistakes rectified, can always approach the High Court.

The Full Bench judgment of the High Court is, accordingly, affirmed and all these appeals are disposed of in terms of the said judgment of the Full Bench.

In view of the aforesaid, the contempt petitions also stand disposed of.

.....CJI (H.L. DATTU) .....J. (A.K. SIKRI) .....J. (ARUN MISHRA) NEW DELHI;

MAY 14, 2015.

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[1] (2010) 11 SCC 242 [2] (1995) 2 SCC 677 [3] (1995) 3 SCC 128 [4] (2012) 3 SCC 727 [5] AIR 1964 SC 72 [6] (1994) 1 SCC 1 [7] (2007) 9 SCC 304 [8] (2011) 10 SCC 608 [9] (2010) 10 SCC 282 [10] AIR 1974 SC 2077 [11] (1997) 1 SCC 15 [12] (2007) 5 SCC 231 [13] (2010) 11 SCC 242