Banda Development Authy, Banda vs Moti Lal Agarwal & Ors on 26 April, 2011

Equivalent citations: 2011 AIR SCW 2835, (2011) 102 ALLINDCAS 148 (SC), 2011 (4) ALL LJ 150, AIR 2011 SC (CIVIL) 1288, (2011) 4 ICC 12, (2011) 4 MAD LW 21, (2011) 86 ALL LR 739, (2011) 4 CIVLJ 82, 2011 (5) SCC 394, (2011) 1 CLR 1123 (SC), (2011) 4 ANDHLD 147, (2011) 5 SCALE 173, (2011) 4 ALL WC 3636, (2012) 113 CUT LT 522, 2011 (2) KLT SN 107 (SC)

Author: G.S. Singhvi

Bench: G.S. Singhvi, Asok Kumar Ganguly

REPO

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.3604 OF 2011

(Arising out of Special Leave Petition (C) No.30293 of 2010)

Banda Development Authority, Banda .....Ap

Versus

Moti Lal Agarwal and others .....Re

J U D G M E N T

G.S. Singhvi, J.

1. Leave granted.

2. The question which arises for consideration in this appeal is whether the Division Bench of the Allahabad High Court was justified in entertaining and allowing the writ petition filed by respondent No.1-Moti Lal Agarwal in 2008 for nullifying the acquisition of his land by the State Government vide notification dated 8.9.1998 issued under Section 4(1) read with Section 17(1) and 17(4) of the Land Acquisition Act, 1894 (for short, "the Act") which was followed by declaration dated 7.9.1999 issued under Section 6(1) read with Section 17(1) on the ground of non passing of award within the time prescribed under Section 11A.

3. By the notifications referred in the preceding paragraph, the State Government acquired 103 bighas land situated in Ladakapurwa and Bhawanipur villages, Pargana and District Banda for Tulsi Nagar Residential Scheme of the Banda Development Authority (for short, "the BDA"). Both the notifications were published in the manner prescribed under Sections 4(1) and 6(2) respectively.

4. On 5.6.2000, the Secretary of the BDA deposited Rs.63,47,855.07 towards 80% of the compensation payable in lieu of the acquisition of 103 bighas land. This was in compliance of the mandate of Section 17(3A). The concerned authorities of the State delivered possession of the acquired land to the BDA on 30.6.2001. The officers of the Revenue Department visited the site on 4.9.2001 and prepared the Field Book, copy of which has been produced before this Court along with affidavit dated 19.1.2011 of Shri Biri Singh, Executive Engineer, BDA. The Special Land Acquisition Officer passed award dated 14.6.2002 for the acquired land including plot No.795 of which 5 bighas 5 biswas was purchased by respondent No.1 vide registered sale deed dated 4.10.1982.

5. In the meanwhile, the BDA prepared lay out for the acquired land which was sanctioned by its Board on 8.5.2002. Thereafter, the land was developed in a phased manner and plots were carved out for economically weaker sections and LIG, MIG and HIG categories. The BDA also constructed flats for economically weaker sections and those belonging to lower income group. The plots and flats were allotted to the eligible persons who had applied in response to different advertisements issued by the BDA between 2.11.2002 and 26.4.2006.

6. After more than three years of publication of the declaration issued under Section 6(1), respondent No.1 filed suit being O.S. No.52 of 2003 in the Court of Civil Judge (Senior Division), Banda, and prayed that the defendants be directed to start the acquisition proceedings afresh and disburse compensation after sub-dividing and numbering plot No.795 in accordance with paragraph 63 of the Land Record Manual. The suit was dismissed on 1.9.2007 in view of the bar contained in the Uttar Pradesh Zamindari Abolition and Land Reforms Act and the Land Acquisition Act.

Respondent No.1 challenged the order of the trial Court in First Appeal No.364 of 2007 but withdrew the same by stating that the writ petition filed by him was pending.

7. In the writ petition filed by him on 24.3.2008, respondent No.1 challenged notifications dated 8.9.1998 and 7.9.1999 mainly on the ground that the acquisition proceedings will be deemed to have lapsed because the award was not passed within two years from the date of last publication of the declaration issued under Section 6(1). Respondent No.1 pleaded that though plot No.795 had not

been sub-divided and demarcated and physical possession thereof was not taken, the concerned authorities prepared Kabja Hastantaran Praman Patra dated 30.6.2001 and thereby took paper possession of his land. He also claimed that plot No. 795/3 owned by him had not been notified, but the concerned authorities colluded with Smt. Shashi Devi and other interested persons and reflected him as tenure holder of that plot.

8. The thrust of the affidavits filed by Shri Mam Chand, Executive Engineer and Shri Har Govind Swarnkar, Assistant Engineer on behalf of the BDA was that after taking possession of the acquired land, the BDA constructed roads and nalis, laid pipelines for supply of water and also erected poles for electric lines and plots carved out from the acquired land were allotted to people belonging to different categories. In paragraphs 2, 3 and 4 of his affidavit, Shri Har Govind Swarnkar, Assistant Engineer, averred as under:

> "2. That present supplementary counter affidavit has been necessitated as the petitioner through rejoinder affidavit to the counter affidavit filed on behalf of respondents no.1, 2 and 3 has brought on record the copies of Khasra for the year 1407- 1411 fasli.
>
> 3. That 1407 fasli is from 1st July, 1999 to 30th June, 2000 to 30th June, 2001. Similarly 1409 fasli is for the year 2001-02, 1410 fasli is for the year 2002-03, 1411 & 1412 fasli is for the year 2003-04 and 2004-05.
>
> 4. The perusal of these Khasras shows that there is no entry of sowing any crop in 1410-1412 fasli, namely no crop was shown and they were, admittedly, not in possession from July, 2002 towards. Possession has been taken from petitioner on 30.6.2001. 30.6.2001 corresponds to end of 1408 fasli. It is thus clear that petitioner was not in possession after 30.6.2001. Entry of sowing any crop in Khasra 1409 is patently erroneous since in 1409 fasli i.e. from 1st July, 2001 petitioner was not in possession. This entry is incorrect and no crop has been sown after possession was taken on 30.6.2001."

9. In a separate affidavit, Shri Girish Kumar Sharma, Tehsildar (J), Banda, supported the stand taken by the BDA. He categorically averred that possession of the acquired land was handed over to BDA on 30.6.2001 for the purpose of implementation of the residential scheme. Along with his affidavit, Shri Girish Kumar Sharma annexed photostat copy of report dated 14.7.2001 prepared by Naib Tehsildar, Banda, who had visited the spot and inspected the site.

10. Although, respondent No.1 did not question the acquisition proceedings on the ground of non compliance of Section 7 of the Act, the Division Bench of the High Court suo moto observed that the acquisition proceedings can be quashed on the ground of non compliance of that section. The Division Bench then referred to the entries made in the revenue records and held that the acquisition proceedings will be deemed to have lapsed because neither physical possession of the land was taken nor the award was passed within two years as per the mandate of Section 11A. The High Court distinguished the judgment of this Court in Satendra Prasad Jain v. State of U.P. (1993)

4 SCC 369 by observing that physical possession of the acquired land had not been taken for more than two years after publication of the declaration issued under Section 6(1).

11. Shri P.S. Patwalia, learned senior counsel for the appellant argued that the High Court was not at all justified in entertaining and allowing the writ petition filed after nine years of publication of the declaration issued under Section 6(1) and six years of the passing of award by the Special Land Acquisition Officer and that too by ignoring that during the intervening period the BDA carried out development, carved out plots and allotted the same to the eligible applicants including the members of economically weaker sections and also constructed flats for the economically weaker sections and lower income groups. Shri Patwalia submitted that respondent No.1 cannot justify belated filing of the writ petition on the ground that he was prosecuting the case in the civil Court because in the suit he had not prayed for quashing the notifications issued under Sections 4(1) and 6(1).

Learned senior counsel relied upon the judgments of this Court in Satendra Prasad Jain v. State of U.P. (supra), Awadh Bihari Yadav v. State of Bihar (1995) 6 SCC 31, Pratap v. State of Rajasthan (1996) 3 SCC 1, Allahabad Development Authority v. Nasiruzzaman (1996) 6 SCC 424, Government of A.P. v. Kollutla Obi Reddy (2005) 6 SCC 493 and argued that Section 11A is not applicable to the cases in which the land is acquired by invoking the emergency provisions contained in Section 17(1) and 17(4).

He submitted that the High Court committed serious error by quashing the acquisition proceedings on the premise that physical possession of the acquired land had not been taken on 30.6.2001 Learned counsel referred to letter dated 5.6.2000 vide which the BDA deposited a sum of Rs.63,47,855.07 towards the compensation payable to the land owners and submitted that the exercise undertaken for taking possession of the acquired land by the concerned authorities of the State and delivery thereof to the BDA could not have been brushed aside by the High Court by describing it as symbolic/paper possession.

12. Shri W.H. Khan, learned senior counsel appearing for respondent No.1 supported the order under challenge and argued that the High Court rightly annulled the acquisition proceedings because physical possession of the land was taken only on 30.7.2002 and the award was passed after more than two years of publication of the declaration issued under Section 6(1).

Learned senior counsel relied upon Khasra Land Records of Fasli years 1407, 1408 and 1409, which have been filed with I.A. No.3 of 2011 to show that physical possession of the acquired land continued with respondent No.1 till July 2002 and argued that the document prepared by the State authorities showing delivery of possession to the BDA cannot be made basis for recording a finding that physical possession of the acquired land was taken on 30.6.2001. Learned senior counsel relied upon the judgments of this Court in Nahar Singh v. State of U.P. (1996) 1 SCC 434, NTPC Ltd. v. Mahesh Dutta (2009) 8 SCC 339 as also the judgments of the Allahabad High Court in Anil Kumar v. State of U.P. (2008) 2 AWC 1832 and Sushil Kumar v. State of U.P. (1999) 1 AWC 764 and submitted that symbolic/paper possession taken by the State authorities on 30.6.2001 was not sufficient for relieving the Land Acquisition Officer of the obligation to pass award within two years

of the last publication of the declaration issued under Section 6(1). Shri Khan then referred to the judgments of this Court in Vyalikaval Housebuilding Cooperative Society v. V. Chandrappa (2007) 9 SCC 304 and Babu Ram v. State of Haryana (2009) 10 SCC 115 and argued that respondent No.1 should not be non-suited on the ground of delay because no such objection was raised before the High Court.

13. We have considered the respective submissions. In the suit filed by him, respondent No.1 had unequivocally declared that he did not have any objection to the acquisition of land or the plots which were subject matter of the acquisition. The only grievance made by respondent No.1 was that the notification had been issued without sub-dividing plot No. 795. He also claimed that defendant No.3 had delivered possession to defendant No.4 on papers and they were trying to start construction after taking possession of his land. This is evident from paragraphs 5, 6, 8, 10 and 11 of the plaint, which are extracted below:

> "5. That description of the disputed plot which has acquired by the Gazette Notification is given as plot no.795 Rakba 12 Bigha and 795/2 Rakba 5 Bigha 5 Biswa. At the time of acquisition proceedings this fact came to liaht that olot no. 795 has not been sub-divided. Without sub-division of the plot it was not possible to acquire and give its compensation. Defendant No. 3 called for a report from Tehsildar, Banda regarding plot no.795 on the basis of possession and sub-division. After due inspection on the spot Tehsildar sent its detailed report dated 30.3.2001 to the defendant no. 3 stating clearly the sub-divided shares as follows:-
>
> Sr. No. Plot no. Rakba F
>
> Name
>
> 1. 795/1 06-16-10 Nathu, Shakhawat and
>
> Srikrishna
>
> 2. 795/2 09-08-05 Smt. Shashi Devi
>
> 3. 795/3 05-05-00 Motllal
>
> 4. 795/4 04-03-05 Shiv Devi
>
> 5. 795/5 12-00-00 Nathu, Sakhawat
>
> and Srikrishna
>
> 6. That according to Land Record Manual the provision to enter numbers in an account is to start numbering vis 1,2,3,4 from north-west to south east. In accordance to this provision only the above said sub-division was done which is also lawful. The

plaintiff has no objection with the sub-division.

8. That it is important to clarify here that the plaintiff does not have any objection to the acquisition proceedings or the plot no.s which are subject to the acquisition. The plaintiff only states that acquisition be done only after sub-division of 795 according to the rules. The proceedings were initiated on the basis of the report of Tehsildar dated 30.3.2001 and the compensation for 795/2 was prepared in the name of ShashiDevi and she was only shown as the Kastkaar in the said land and accordingly Akar part 11 was prepared and the notice under Section 14 was given to Shashi Devi. After wards at any subsequent stage records were manipulated and the plaintiff was shown as the Kastkaar of 795/2. The plaintiff had filed several objections, personally met with the officials of the defendants and given applications. Inspite of some decisions of inquiries in favour of the plaintiff has not been given any relief and due to the fact that defendant no.3 has delivered possession to defendant no. 4 on papers, the defendants are trying to start construction after taking possession of the land of the plaintiff and are shying away from their legal duty.

10. That in the interest of justice it is necessary that the defendants be ordered that the acquisition and disbursement of compensation be done only after due inspection of plot no.795 and thereafter numbering it in accordance with law on the basis of possession. Because the defendants are not paying any heed to the justified claim of the plaintiff so this suit is being filed.

11. That the defendants are going to start construction on the site very soon and they have demarcated the land by embedding stones from which it is clear that they are going to possess the disputed land. In all these circumstances the notice u/s 80 CPC cannot be served upon the defendants and with the permission of the Hon'ble Court, this suit is being filed without the notice."

(underlining is ours) The main and substantive prayer made in the plaint, which is extracted below, also shows that respondent No.1 had not questioned the acquisition proceedings:

"That the defendants be directed by order of Mandatory Injunction to start afresh the proceedings of acquisition and disbursement of compensation after sub-dividing and numbering plot no. 795 in accordance with para no. 63 of the Land Record Manual. In the alternative acquire the land from all the account holders and thereby proportionally pay them respective compensation."

14. The above extracted portions of the plaint unmistakably show that respondent No.1 had no complaint against the acquisition of land or taking of possession by the State Government and delivery thereof to the BDA and the only prayer made by him was that the defendants be directed to undertake fresh acquisition proceedings after sub-dividing plot No. 795 so that he may get his share of compensation. He filed writ petition questioning the acquisition proceedings after almost 9 years of publication of the declaration issued under Section 6(1) and about six years of the pronouncement

of award by the Special Land Acquisition Officer. During this interregnum, the BDA took possession of the acquired land after depositing 80% of the compensation in terms of Section 17(3A), prepared the layout, developed the acquired land, carved out plots, constructed flats for economically weaker sections of the society, invited applications and allotted plots and flats to the eligible persons belonging to economically weaker sections as also LIG, MIG and HIG categories. Unfortunately, the High Court ignored all this and allowed the writ petition on the specious ground that the acquired land did not vest in the State Government because physical possession of the land belonging to respondent No.1 was not taken till 31.7.2002 and the award was not passed within two years as per the mandate of Section 11A.

15. In our view, even if the objection of delay and laches had not been raised in the affidavits filed on behalf of the BDA and the State Government, the High Court was duty bound to take cognizance of the long time gap of 9 years between the issue of declaration under Section 6(1) and filing of the writ petition and declined relief to respondent No.1 on the ground that he was guilty of laches because the acquired land had been utilized for implementing the residential scheme and third party rights had been created.

The unexplained delay of about six years between the passing of award and filing of writ petition was also sufficient for refusing to entertain the prayer made in the writ petition.

16. It is true that no limitation has been prescribed for filing a petition under Article 226 of the Constitution but one of the several rules of self imposed restraint evolved by the superior courts is that the High Court will not entertain petitions filed after long lapse of time because that may adversely affect the settled/crystallized rights of the parties. If the writ petition is filed beyond the period of limitation prescribed for filing a civil suit for similar cause, the High Court will treat the delay unreasonable and decline to entertain the grievance of the petitioner on merits. In State of Madhya Pradesh v. Bhailal Bhai AIR 1964 SC 1006, the Constitution Bench considered the effect of delay in filing writ petition under Article 226 of the Constitution and held:

> ".....It has been made clear more than once that the power to give relief under Article 226 is a discretionary power. This is specially true in the case of power to issue writs in the nature of mandamus. Among the several matters which the High Courts rightly take into consideration in the exercise of that discretion is the delay made by the aggrieved party in seeking this special remedy and what excuse there is for it..... .....It is not easy nor is it desirable to lay down any Rule for universal application. It may however be stated as a general Rule that if there has been unreasonable delay the court ought not ordinarily to lend its aid to a party by this extraordinary remedy of mandamus. .....Learned counsel is right in his submission that the provisions of the Limitation Act do not as such apply to the granting of relief under Art 226. It appears to us however that the maximum period fixed by the legislature as the time within which the relief by a suit in a Civil Court must be brought may ordinarily be taken to be a reasonable standard by which delay in seeking remedy under Article 226 can be measured. The court may consider the delay unreasonable even if it is less than the period of limitation prescribed for a civil

> action for the remedy but where the delay is more than this period, it will almost always be proper for the court to hold that it is unreasonable."

17. In matters involving challenge to the acquisition of land for public purpose, this Court has consistently held that delay in filing the writ petition should be viewed seriously and relief denied to the petitioner if he fails to offer plausible explanation for the delay. The Court has also held that the delay of even few years would be fatal to the cause of the petitioner, if the acquired land has been partly or wholly utilised for the public purpose.

18. In Ajodhya Bhagat v. State of Bihar (1974) 2 SCC 501, this Court approved dismissal by the High Court of the writ petition filed by the appellant for quashing the acquisition of his land and observed:

> "The High Court held that the appellants were guilty of delay and laches. The High Court relied on two important facts. First, that there was delivery of possession. The appellants alleged that it was a paper transaction. The High Court rightly rejected that contention. Secondly, the High Court said that the Trust invested several lakhs of rupees for the construction of roads and material for development purposes. The appellants were in full knowledge of the same. The appellants did not take any steps. The High Court rightly said that to allow this type of challenge to an acquisition of large block of land piecemeal by the owners of some of the plots in succession would not be proper. If this type of challenge is encouraged the various owners of small plots will come up with writ petitions and hold up the acquisition proceedings for more than a generation. The High Court rightly exercised discretion against the appellants. We do not see any reason to take a contrary view to the discretion exercised by the High Court."

(emphasis supplied)

19. In State of Rajasthan v. D.R. Laxmi (1996) 6 SCC 445, this Court referred to Administrative Law H.W.R. Wade (7th Ed.) at pages 342-43 and observed:

> "The order or action, if ultra vires the power, becomes void and it does not confer any right. But the action need not necessarily be set at naught in all events. Though the order may be void, if the party does not approach the Court within reasonable time, which is always a question of fact and have the order invalidated or acquiesced or waived, the discretion of the Court has to be exercised in a reasonable manner. When the discretion has been conferred on the Court, the Court may in appropriate case decline to grant the relief, even if it holds that the order was void. The net result is that extraordinary jurisdiction of the Court may not be exercised in such circumstances....."

20. In Girdharan Prasad Missir v. State of Bihar (1980) 2 SCC 83, the delay of 17 months was considered as a good ground for declining relief to the petitioner.

21. In Municipal Corporation of Greater Bombay v. Industrial Development Investment Co. Pvt. Ltd. (1996) 11 SCC 501, this Court held:

> "It is thus well-settled law that when there is inordinate delay in filing the writ petition and when all steps taken in the acquisition proceedings have become final, the Court should be loath to quash the notifications. The High Court has, no doubt, discretionary powers under Article 226 of the Constitution to quash the notification under Section 4(1) and declaration under Section 6. But it should be exercised taking all relevant factors into pragmatic consideration. When the award was passed and possession was taken, the Court should not have exercised its power to quash the award which is a material factor to be taken into consideration before exercising the power under Article 226. The fact that no third party rights were created in the case is hardly a ground for interference. The Division Bench of the High Court was not right in interfering with the discretion exercised by the learned Single Judge dismissing the writ petition on the ground of laches."

22. In Urban Improvement Trust, Udaipur v. Bheru Lal (2002) 7 SCC 712, this Court reversed the order of the Rajasthan High Court and held that the writ petition filed for quashing of acquisition of land for a residential scheme framed by the appellant-Urban Improvement Trust was liable to be dismissed on the ground that the same was filed after two years.

23. In Ganpatibai v. State of M.P (2006) 7 SCC 508, the delay of 5 years was considered unreasonable and the order passed by the High Court refusing to entertain the writ petition was confirmed. In that case also the petitioner had initially filed suit challenging the acquisition of land. The suit was dismissed in 2001. Thereafter, the writ petition was filed. This Court referred to an earlier judgment in State of Bihar v. Dhirendra Kumar (1995) 4 SCC 229 and observed:

> "In State of Bihar v. Dhirendra Kumar this Court had observed that civil suit was not maintainable and the remedy to question notification under Section 4 and the declaration under Section 6 of the Act was by filing a writ petition. Even thereafter the appellant, as noted above, pursued the suit in the civil court. The stand that five years after the filing of the suit, the decision was rendered does not in any way help the appellant. Even after the decision of this Court, the appellant continued to prosecute the suit till 2001, when the decision of this Court in 1995 had held that suit was not maintainable."

24. In Sawaran Lata v. State of Haryana (2010) 4 SCC 532, the dismissal of writ petition filed after seven years of the publication of declaration and five years of the award passed by the Collector was upheld by the Court and it was observed:

> "In the instant case, it is not the case of the petitioners that they had not been aware of the acquisition proceedings as the only ground taken in the writ petition has been that substance of the notification under Section 4 and declaration under Section 6 of the 1894 Act had been published in the newspapers having no wide circulation. Even

> if the submission made by the petitioners is accepted, it cannot be presumed that they could not be aware of the acquisition proceedings for the reason that a very huge chunk of land belonging to a large number of tenure-holders had been notified for acquisition. Therefore, it should have been the talk of the town. Thus, it cannot be presumed that the petitioners could not have knowledge of the acquisition proceedings."

25. In this case, the acquired land was utilized for implementing Tulsi Nagar Residential Scheme inasmuch as after carrying out necessary development i.e. construction of roads, laying electricity, water and sewer lines etc. the BDA carved out plots, constructed flats for economically weaker sections and lower income group, invited applications for allotment of the plots and flats from general as well as reserved categories and allotted the same to eligible persons. In the process, the BDA not only incurred huge expenditure but also created third party rights. In this scenario, the delay of nine years from the date of publication of the declaration issued under Section 6(1) and almost six years from the date of passing of award should have been treated by the High Court as more than sufficient for denying equitable relief to respondent No.1.

26. The two judgments relied upon by the learned counsel for respondent No.1 are not helpful to the cause of his client. In Vyalikaval Housebuilding Coop. Society v. V. Chandrappa (2007) 9 SCC 304, this Court held that where the acquisition was found to be vitiated by fraud and mala fide, the delay in filing the writ petition cannot be made a ground for denying relief to the affected person. In Babu Ram v. State of Haryana (supra), this Court held that the appellant cannot be denied relief merely because there was some delay in filing the writ petition. The facts of that case were that 34 kanals 2 marlas of land situated at Jind (Haryana) was acquired by the State Government under Section 4 read with Section 17(2)(c) and 17(4) for construction of sewage treatment plant. Notification under Section 4 was issued on 23.11.2005 and declaration under Section 6 was issued on 2.1.2006. Mitaso Educational Society, Narwana, filed suit for injuncting the State from constructing sewage treatment plant in front of the school. On 15.2.2006, the trial Court passed an order of injunction. In another suit filed by one Jagroop similar order was passed by the trial Court. After some time, the appellant filed writ petition under Article 226 of the Constitution.

Before this Court it was argued that relief should be denied to the appellant because there was delay in filing the writ petition. Rejecting this argument, the Court observed:

> "Since Section 5-A of the LA Act had been dispensed with, the stage under Section 9 was arrived at within six months from the date of the notice issued under Sections 4 and 17(2)(c) of the LA Act. While such notice was issued on 23-11-2005, the award under Section 11 was made on 23-5-2006. During this period, the appellants filed a suit and thereafter, withdrew the same and filed a writ petition in an attempt to protect their constitutional right to the property. It cannot, therefore, be said that there was either any negligence or lapse or delay on the part of the appellants."

27. De hors the aforesaid conclusion, we are convinced that the premise on which the High Court declared that the acquisition proceedings will be deemed to have lapsed because the award was not

passed within two years is ex facie erroneous. Admittedly, the State Government had acquired the land by issuing notification under Section 4 read with Section 17(1) and (4), which was followed by a declaration issued under Section 6(1) read with Section 17(1). By notification dated 7.9.1999, the Governor had directed Collector, Banda to take possession of the acquired land on the expiration of 15 days from the issue of notice under Section 9(1). In furtherance of the direction given by the Collector, the concerned revenue authorities took possession of the acquired land, which, as mentioned above, has already been utilized for implementing Tulsi Nagar Residential Scheme. Though, respondent No.1 succeeded in convincing the High Court that physical possession of his land had not been taken till 31.7.2002, after carefully perusing the record, we are convinced that the finding recorded on this issue is unsustainable. In paragraphs 8 and 11 of the plaint filed by him in the Court of Civil Judge (Senior Division), Banda, respondent No.1 had virtually admitted that possession of the acquired land was with the BDA. If this was not so, there was no occasion for him to make a grievance that the land had been demarcated by putting stones and the BDA was in the process of raising construction. That apart, respondent No. 1 did not deny the statements contained in the affidavits filed before the High Court that the revenue authorities visited the spot and made entries in the Field Book regarding delivery of possession. The photographs produced by the parties before this Court show that after taking possession of the acquired land, the BDA constructed roads,buildings etc., laid sewer lines and erected poles for electric lines. The photographs also reveal that by taking advantage of the impugned order, respondent No.1 took possession of a portion of the land on which the BDA had already carried out development. All this is sufficient to discard the claim of respondent No.1 that actual possession of the acquired land had not been delivered to the BDA till July, 2002.

28. What should be the mode of taking possession of the land acquired under the Act? This question was considered in Balwant Narayan Bhagde v. M.D. Bhagwat (1976) 1 SCC 700. Untwalia, J. referred to the provisions contained in Order XXI Rules 35, 36, 95 and 96 of the Code of Civil Procedure, decisions of different High Courts and opined that even the delivery of so called "symbolical" possession is delivery of "actual"

possession of the right, title and interest of the judgment-debtor. Untwalia,J.

further observed that if the property is land over which there is no building or structure, then delivery of possession over the judgment-debtor's property becomes complete and effective against him the moment the delivery is effected by going upon the land. The Learned Judge went on to say:

> "When a public notice is published at a convenient place or near the land to be taken stating that the Government intends to take possession of the land, then ordinarily and generally there should be no question of resisting or impeding the taking of possession. Delivery or giving of possession by the owner or the occupant of the land is not required. The Collector can enforce the surrender of the land to himself under Section 47 of the Act if impeded in taking possession. On publication of the notice under Section 9(1) claims to compensation for all interests in the land has to be made; be it the interest of the owner or of a person entitled to the occupation of the land. On the taking of possession of the land under Section 16 or 17 (1) it vests

> absolutely in the Government free from all incumbrances. It is, therefore, clear that taking of possession within the meaning of Section 16 or 17 (1) means taking of possession on the spot. It is neither a possession on paper nor a "symbolical" possession as generally understood in civil law. But the question is what is the mode of taking possession? The Act is silent on the point. Unless possession is taken by the written agreement of the party concerned the mode of taking possession obviously would be for the authority to go upon the land and to do some act which would indicate that the authority has taken possession of the land. It may be in the form of a declaration by beat of drum or otherwise or by hanging a written declaration on the spot that the authority has taken possession of the land. The presence of the owner or the occupant of the land to effectuate the taking of possession is not necessary. No further notice beyond that under Section 9(1) of the Act is required. When possession has been taken, the owner or the occupant of the land is dispossessed. Once possession has been taken the land vests in the Government.

(emphasis supplied) Bhagwati J., (as he then was), speaking for himself and Gupta, J. disagreed with Untwalia, J. and observed:

> ".....We think it is enough to state that when the Government proceeds to take possession of the land acquired by it under the Land Acquisition Act, 1894, it must take actual possession of the land, since all interests in the land are sought to be acquired by it. There can be no question of taking "symbolical" possession in the sense understood by judicial decisions under the Code of Civil Procedure. Nor would possession merely on paper be enough. What the Act contemplates as a necessary condition of vesting of the land in the Government is the taking of actual possession of the land. How such possession may be taken would depend on the nature of the land. Such possession would have to be taken as the nature of the land admits of. There can be no hard and fast rule laying down what act would be sufficient to constitute taking of possession of land. We should not, therefore, be taken as laying down an absolute and inviolable rule that merely going on the spot and making a declaration by beat of drum or otherwise would be sufficient to constitute taking of possession of land in every case. But here, in our opinion, since the land was lying fallow and there was no crop on it at the material time, the act of the Tehsildar in going on the spot and inspecting the land for the purpose of determining what part was waste and arable and should, therefore, be taken possession of and determining its extent, was sufficient to constitute taking of possession. It appears that the appellant was not present when this was done by the Tehsildar, but the presence of the owner or the occupant of the land is not necessary to effectuate the taking of possession. It is also not strictly necessary as a matter of legal requirement that notice should be given to the owner or the occupant of the land that possession would be taken at a particular time, though it may be desirable where possible, to give such notice before possession is taken by the authorities, as that would eliminate the possibility of any fraudulent or collusive transaction of taking of mere paper possession, without the occupant or the owner ever coming to know of it."

(emphasis supplied)

29. In Balmokand Khatri Educational and Industrial Trust v. State of Punjab (1996) 4 SCC 212, the Court negatived the argument that even after finalization of the acquisition proceedings possession of the land continued with the appellant and observed:

> "It is seen that the entire gamut of the acquisition proceedings stood completed by 17-4-1976 by which date possession of the land had been taken. No doubt, Shri Parekh has contended that the appellant still retained their possession. It is now well-settled legal position that it is difficult to take physical possession of the land under compulsory acquisition. The normal mode of taking possession is drafting the panchnama in the presence of panchas and taking possession and giving delivery to the beneficiaries is the accepted mode of taking possession of the land. Subsequent thereto, the retention of possession would tantamount only to illegal or unlawful possession".

30. In P.K. Kalburqi v. State of Karnataka (2005) 12 SCC 489, the Court referred to the observations made by Bhagwati, J. in Balwant Narayan Bhagde v. M.D. Bhagwat (supra) that no hard and fast rule can be laid down as to what act would be sufficient to constitute taking of possession of the acquired land and observed that when there is no crop or structure on the land only symbolic possession could be taken.

31. In NTPC v. Mahesh Dutta (2009) 8 SCC 339, the Court noted that appellant NTPC paid 80 per cent of the total compensation in terms of Section 17(3A) and observed that it is difficult to comprehend that after depositing that much of amount it had obtained possession only on a small fraction of land.

32. In Sita Ram Bhandar Society v. Govt. of NCT, Delhi (2009) 10 SCC 501 and Omprakash Verma v. State of Andhra Pradesh (2010) 13 SCC 158, it was held that when possession is to be taken of a large tract of land then it is permissible to take possession by a properly executed panchnama. Similar view was expressed in the recent judgment in Brij Pal Bhargava v. State of UP 2011(2) SCALE 692.

33. The judgment in Nahar Singh v. State of U.P. (supra) on which reliance was placed by the learned senior counsel for respondent No.1 is clearly distinguishable. In that case, the Court had found that possession of the acquired land had not been taken by the State and the award was not passed even after two years from the date of coming into force of the Land Acquisition (Amendment) Act, 1984 whereby Section 11A was inserted in the Act.

34. The principles which can be culled out from the above noted judgments are:

> i) No hard and fast rule can be laid down as to what act would constitute taking of possession of the acquired land.

ii) If the acquired land is vacant, the act of the concerned State authority to go to the spot and prepare a panchnama will ordinarily be treated as sufficient to constitute taking of possession.

iii) If crop is standing on the acquired land or building/structure exists, mere going on the spot by the concerned authority will, by itself, be not sufficient for taking possession. Ordinarily, in such cases, the concerned authority will have to give notice to the occupier of the building/structure or the person who has cultivated the land and take possession in the presence of independent witnesses and get their signatures on the panchnama. Of course, refusal of the owner of the land or building/structure may not lead to an inference that the possession of the acquired land has not been taken.

iv) If the acquisition is of a large tract of land, it may not be possible for the acquiring/designated authority to take physical possession of each and every parcel of the land and it will be sufficient that symbolic possession is taken by preparing appropriate document in the presence of independent witnesses and getting their signatures on such document.

v) If beneficiary of the acquisition is an agency/instrumentality of the State and 80% of the total compensation is deposited in terms of Section 17(3A) and substantial portion of the acquired land has been utilised in furtherance of the particular public purpose, then the Court may reasonably presume that possession of the acquired land has been taken.

35. In the light of the above discussion, we hold that the action of the concerned State authorities to go to the spot and prepare panchnama showing delivery of possession was sufficient for recording a finding that actual possession of the entire acquired land had been taken and handed over to the BDA. The utilization of the major portion of the acquired land for the public purpose for which it was acquired is clearly indicative of the fact that actual possession of the acquired land had been taken by the BDA.

36. Once it is held that possession of the acquired land was handed over to the BDA on 30.6.2001, the view taken by the High Court that the acquisition proceedings had lapsed due to non-compliance of Section 11A cannot be sustained. In Satendra Prasad Jain v. State of U.P. (supra), this Court considered the applicability of Section 11A in cases involving acquisition of land under Section 4 read with Section 17 and observed:

"Ordinarily, the Government can take possession of the land proposed to be acquired only after an award of compensation in respect thereof has been made under Section 11. Upon the taking of possession the land vests in the Government, that is to say, the owner of the land loses to the Government the title to it. This is what Section 16 states. The provisions of Section 11-A are intended to benefit the landowner and ensure that the award is made within a period of two years from the date of the

> Section 6 declaration. In the ordinary case, therefore, when Government fails to make an award within two years of the declaration under Section 6, the land has still not vested in the Government and its title remains with the owner, the acquisition proceedings are still pending and, by virtue of the provisions of Section 11-A, lapse. When Section 17(1) is applied by reason of urgency, Government takes possession of the land prior to the making of the award under Section 11 and thereupon the owner is divested of the title to the land which is vested in the Government. Section 17(1) states so in unmistakable terms. Clearly, Section 11-A can have no application to cases of acquisitions under Section 17 because the lands have already vested in the Government and there is no provision in the said Act by which land statutorily vested in the Government can revert to the owner."

(emphasis supplied)

37. The same view was reiterated in Awadh Bihari Yadav v. State of Bihar (supra), Pratap v. State of Rajasthan (supra), Parsinni v. Sukhi (1993) 4 SCC 375, Allahabad Development Authority v. Nasiruzzaman (supra) and Government of A.P. v. Kollutla Obi Reddy (supra).

38. In the result, the appeal is allowed. The impugned order is set aside and the writ petition filed by respondent No.1 is dismissed with cost quantified at Rs.1,00,000/-. Respondent No.1 shall deposit the amount of cost with the appellant within a period of two months from today.

.....

.....J. [G.S. Singhvi] .....J. [Asok Kumar Ganguly] New Delhi April 26, 2011.