M/S Larsen & Toubro Ltd vs State Of Gujarat & Ors on 18 March, 1998

Equivalent citations: AIR 1998 SUPREME COURT 1608, 1998 (4) SCC 387, 1998 AIR SCW 1351, 1998 (2) SCALE 373, 1998 (3) ADSC 308, (1998) 2 JT 536 (SC), (1998) 2 SCR 339 (SC), 1998 (2) SCR 339, (1998) 2 APLJ 45, 1998 ADSC 3 308, 1998 (2) JT 536, (1998) 3 GUJ LR 2012, (1998) 1 GUJ LH 683, (1998) 2 LANDLR 3, (1998) 3 MAD LW 16, (1998) 2 SCJ 667, (1998) 3 SUPREME 275, (1998) 2 ICC 174, (1998) 2 SCALE 373, (1998) 3 CIVLJ 723, (1998) 92 COMCAS 373, (1998) 2 CURCC 24, (1997) 30 ARBILR 70, (1998) 1 LACC 531

Author: D.P. Wadhwa

Bench: Sujata V. Manohar, D.P. Wadhwa

PETITIONER:
M/S LARSEN & TOUBRO LTD.

Vs.

RESPONDENT:
STATE OF GUJARAT & ORS.

DATE OF JUDGMENT: 18/03/1998

BENCH:
SUJATA V. MANOHAR, D.P. WADHWA

ACT:

HEADNOTE:

JUDGMENT:

WITH CIVIL APPEAL NOS 1673-76 OF 1998 (Arising out of SLP (C) Nos. 11900, 11957, 12986 and 14637/97 J U D G M E N T D.P. Wadhwa, J.

Leave granted.

All these five appeals arise out of a common judgmen dated February 27, 1997 of a Division Bench of the Gujarat High Court in three Special Civil Applications (SCA) Nos. 1568/87, 5149/89 and 5171/91 whereby the High Court set aside the acquisition of land for M/s Larsen and Toubro Ltd. (`L&T Ltd,' for short) under the provisions of the Land Acquisition Act, 1894 (for short, `the Act') comprised in SCAs 1568/87 and 5149/89 and dismissed the challenge of L&T ltd. in SCA 5171/91 for withdrawal from acquisition by the State Government under Section 48 of the Act. In all these matters, different notifications under Section 4 of the Act were issued as it appeared to the State Government that lands specified in these notifications which were under challenge in these matters were likely to be needed for the purpose of a housing colony of the L&T Ltd. "which was engaged in Engineering Manufactures Industries which was for a public purpose". All the lands are situated in village Mandalla, Taluk Choryasi, District Surat. In SCA 1568/1987 acquisition was set aside on the ground that there was no compliance with the provisions of Rules 3 and 4 of the Land Acquisition (Companies) Rules, 1963 (`Rules' for short). In SCA 5149/89 acquisition was set aside not only on the ground of non-compliance with the Rules 3 and 4 of the Rules but also that petitioners therein were not served with notice under Section 9 of the Act before passing of the award. In SCA 5171 High Court held that the decision of the State Government for withdrawal from acquisition under Section 48 of the Act was neither illegal nor ultra vires though the same would be enforceable only on the issuing of notification under Section 48 of the Act. In this case, High Court also held that actual physical possession of the land had not been delivered to the acquiring body L&T Ltd. Against the order passed in SCA 1568/87 both L&T Ltd. and the State Government have filed special leave petition Nos. 11957/97 and 12986/97 respectively. Against the order in SCA 5149/89 again both L&T Ltd. and the State Government have filed special leave petitions respectively bearing Nos. 11900/97 and 14637/97. Against the order in SCA 5171/91 it is only the L&T Ltd. who is aggrieved and has filed special leave petitions No. 11778/97. In this State Government is supporting its action for withdrawal from acquisition.

Under the Act, land can be acquired for a company as well. "Company" means a company as defined in Section 3 of the Companies Act, 1956. Petitioner is such a company. Under Section 4 of the Act whenever it appears to the appropriate Government that land in any locality is needed or is likely to be needed for any public purpose or for a company, a notification to that effect shall be published and a public notice also to be given in the said locality. under Section 5-A any person interested in any land notified under Section 4 can object to the acquisition of the land or of any land in the locality, as the case may be. Procedure is prescribed as to how objections are to be heard by the Collector and his naking the report to the Government. Under Section 6 when the appropriate Government is satisfied after considering the report, if any, made under Section 5-A that any land is needed for a public purpose, or for a company, a declaration shall be made to the effect. Part VII of the ACT deals with acquisition of land for companies. Under Section 39 falling in Part VII, the provisions of Section 6 to 16 and Sections 18 to 37 shall not be put in force in order to acquire land for any Company unless with the previous consent of the appropriate Government and not unless the Company shall have executed the agreement as prescribed. Under Section 40 an enquiry is to be made before the appropriate Government consents to acquisition of land for the Company. This Section, in relevant part, is as under:

"40 Previous enquiry - (1) Such consent shall not be given unless the appropriate Government be satisfied, either on the report of the Collector under Section 5-A, sub-section (2), or by an enquiry held as hereinafter provided -

> (a) that the purpose of the acquisition to obtain land for the erection of dwelling houses for workmen employed by the Company or for the provision of amenities directly connected therewith, or (aa).....
>
> (b).....

Such enquiry shall be held by such officer and at such time and place as the appropriate Government shall appoint. Under Section 41 if the appropriate Government is satisfied after considering the report of the Collector under Section 5-A and on the report under Section 40 that the proposed acquisition is for the purpose mentioned in Section 40 it shall require the Company to enter into an agreement providing for the following matters, namely:-

> "(1) the payment to the appropriate Government of the cost of the acquisition;
>
> (2) the transfer, on such payment, of the land to the Company;
>
> (3) the terms on which the land shall be held by the Company;
>
> (4) where the acquisition for the purpose of erecting dwelling houses or the provision of amenities connected therewith, the time within which, the conditions on which and the manner in which the dwelling houses or amenities shall be erected or provided;"

Under Section 42 every such agreement shall be published in the Official Gazette and shall thereupon have the same effect as if it had formed part of the Act. Under Section 55 of the Act powers have been conferred on the appropriate Government and on the Central Government to make rules. This Section, in relevant part, is as under:

> "55. Power to make rules.- (1) The appropriate Government shall have power to make rules consistent with this Act for the guidance of officers in all matters connected with its enforcement, and may from time to time alter and add to the rules so made;
>
> Provided that the power to make rules for carrying out the purposes of Part VII of this Act shall be exercisable by the Central Government and such rules may be made for the guidance of the State Governments and the officers of the Central Government and of the State Government:
>
> Provided further..... In exercise of the powers so conferred under Section 55 of the Act, the Central Government has framed Rules called "the Land Acquisition (Companies) Rules, 1963.

Arguments have proceeded on the basis that Rules 3 and 4 of the aforesaid Rules are mandatory. High Court has held that Rules 3 and 4 have been violated. We may set out Rules 3 and 4 which are as under:

"3. Land Acquisition Committee. -

(1) For the purpose of advising the appropriate Government in relation to acquisition of land under Part VII of the Act the appropriate Government shall, by notification in the Official Gazette, constitute a Committee to the called the Land Acquisition Committee.

(2) The Committee shall consist of

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(i) the Secretaries to the Government of the Departments of Revenue, Agriculture and Industries or such other officers of each of the said Departments as the appropriate government may appoint;

(ii) such other members as the appropriate Government may appoint, for such term as that Government may, by order, specify.

(3) The appropriate Government shell appoint one of the members of the Committee to be its Chairman. (4) The Committee shall regulate its own procedure.

(5) It shall be duty of the Committee to advise the appropriate Government on all matters relating to or arising out of acquisition of land under part VII of the Act, on which it is consulted and to tender its advice within one month from the date on which it is consulted:

Provided that the appropriate Government may on a request being made in this behalf by the committee and for sufficient reasons extend the said period to a further period not exceeding two months.

(4) Appropriate government to be satisfied with regard to certain matters before initiating acquisition proceedings,-(1) Whenever a company makes an application to the appropriate Government for acquisition of any land, that Government for acquisition of any land, that Government shall direct the Collector to submit a report to it on the following matters, namely-

(i) that the company has made its best endeavour to find out lands in the locality suitable for the purpose of acquisition.;

(ii) that the company has made all reasonable efforts to get such lands by negotiations with the persons interested therein on payment of reasonable price and such efforts have failed;

(iii) that the land proposed to be acquired is suitable for the purpose;

(iv) that the area of land proposed to be acquired is not excessive;

(v) that the company is in a position to utilise the land expeditiously; and

(vi) where the land proposed to be acquired is good agricultural land, that no alternative suitable site can be found so as to avoid acquisition of that land. (2) The Collector shall, after giving the company a reasonable opportunity to make any representation in this behalf, hold an inquiry into the matters referred to in sub-rule (1) and while holding such enquiry he shall

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(i) in any case where the land proposed to be acquired is agricultural land consult the Senior Agricultural Officer of the district whether or not such land is good agricultural land;

(ii) determine, having regard to the provisions of Section 23 and 24 of the Act, the approximate amount of compensation likely to be payable in respect of the land, which, in the opinion of the collector, should be acquired for the company; and

(iii) ascertain whether the company offered a reasonable price (not being less than the compensation so determined), to the persons interested in the land proposed to be acquired. Explanation.- For the purpose of this rule "good agricultural land" means any land which, considering the level of agricultural production and the crop pattern of the area in which it is situated, is f average or above average productivity and includes a garden or grove land. (3) As soon as may be after holding the enquiry under sub-rule (2) the collector shall submit the report to the appropriate government and a copy of the same shall be forwarded by the Government to the committee. (4) No declaration shall be made by the appropriate Government under Section 6 of the Act unless -

(i) the appropriate Government has consulted the committee and has considered the report submitted under this rule and the report, it any, submitted under Section 5A of the Act; and

(ii) the agreement under Section 41 of the Act has been executed by the company." We may also reproduced Section 9 which reads as under: "9. Notice to persons interested.

(1) the Collector shall then cause public notice to be given at convenient places on or near the land to be taken, stating that the government intends to take possession of the land, and that claims to compensation for all interests in such land may be made to him.

(2) Such notice shall state the particulars of the land so needed, and shall require all persons interested in the land to appear personally or by agent before the collector at a time and place therein mentioned (such time not being earlier than fifteen days after the date of publication of the notice), and to state the nature of the respective interests in the land and the amount and particulars of their claims to compensation for such interests, and their objections (if any) to the measurements made under Section

8. The Collector may if any case requires such statement to be made in writing and signed by the party or his agent.

(3) The Collector shall also serve notice to the same effect on the occupier (if any) of such land and on all such persons known or believed to be interested therein, or to be entitled to act for persons so interested, as reside or have agents authorized to receive service on their behalf, within the revenue district in which the land is situate.

(4) In case any person so interested reside elsewhere, and has no such agent, the notice shall be sent to him by post in a letter addressed to his last known residence, address or place of business and registered under Sections 28 and 29 of the Indian Post Office Act, 1898."

In first special leave petition No 12986/97, land situated in Survey No 40, Village Mandalla, Taluk Choryasi in district Surat was subject matter of acquisition. M/s Mangal Park Cooperative Housing Society, respondent No. 1 challenged the action of the State Government in acquiring the land by issuing notification and declaration under Sections 4 and 6 of the Act on the ground that it acted "without any authority of law and in purported exercise of the powers conferred upon it by committing fraud on the statute and by the colourable exercise of the said power and also without application of mind". First respondent, therefore, sought quashing of the notification under Section 4 and declaration under Section 6 of the Act. In whole body of the petition before the High Court it was never stated that provisions of rule 3 had been contravened. It was submitted that provisions of Sections 4 to 37 of the Act could not be put into operation to acquire land for a company unless with the previous consent of the State Government nor before the company had executed an agreement as mentioned in Section 41 of the Act. It was then submitted that in this case neither the consent of the State Government was obtained nor the company seemed to have executed agreement as provided in Section 37 read with section 41 of the Act before issuance of the notification under Section 4 and declaration under Section 6 of the Act. Rule 4 was quoted and with reference to it was contended that statutory requirements contained in the said rule had not been fulfilled before issuance of the impugned notification and declaration and also that L&T Ltd. made no efforts to purchase land by negotiation nor the competent authority had help any enquiry as contemplated by Rule 4. It was also alleged that under Section 42 the agreement entered into, if any, between the

State Government and L&T Ltd. was required to be published in the official gazette and that no such agreement to the knowledge of the petitioner was published in any gazette. In the counter affidavits filed in the High Court both L&T Ltd. and State Government denied the allegations so made by the petitioner, the first respondent herein.

In the absence of any allegation that Rule 3 had not been complied and there being no particulars in respect of non-compliance of Rule 4 also, it is difficult to see as to how the High Court could have reached the finding that statutory requirements contained in these Rules were not fulfilled before issuance of notification under Section 4 and declaration under Section 6 of the Act. High Court did not give any reason as to how it reached the conclusion that Rules 3 and 4 had not been complied in the face of the record of the case. Rather, it returned a finding which is unsustainable that it was "not possible on the basis of the material on record to hold that there was compliance with the rules 3 and 4". In the affidavit filed by Mr. S.M. Vankar, Under Secretary, Government of Gujarat, Department of Revenue it was stated that as per the requirement of Rule 3 a Committee had been constituted by the State Government which consisted of (1) Secretary, Revenue Department (Land Acquisition), (2) Joint Commissioner of Industries, (3) Deputy Secretary, Agricultural Department (4) past M.L.A., (5) Member and (6) President of Zila Panchayat. In this affidavit it was also stated that the Assistant Collector, Surat prepared a detailed report which he submitted to the Collector and placed before the aforesaid Committee. Deputy Secretary, who was Ex-Officio Member Secretary of the Committee addressed a letter to all the members in this connection and along with that letter he circulated a note in connection with the acquisition of the land in question. President of the District Panchayat and a Member of the Committee also submitted a separate report to the Deputy Secretary, Revenue Department. The Committee thereafter met and discussed the matter and recommended acquisition of land for L&T Ltd. to the Government. In this view of the matter it is difficult to understand as to how the High Court said that there was no compliance with Rule 3 by the State Government when as a matter of fact, as noted above, there was no mention of non-compliance with Rule 3 in whole body of the writ petition. High Court, in our opinion, failed to take note of the affidavit of Mr. Y.S. Trivedi, Senior Manager, L&T Ltd. and that of Mr. R.S. Bohora, Manager of the L&T Ltd. giving details and placing on record documents to show compliance with the requirements of Rule 4. We do not think it is necessary for us to set out in any detail as to how requirements of Rule 4 have been complied when in presence of the relevant record it was difficult for the respondent to contend otherwise. It was conceded that there was no specific averment relating to rule 3. Even otherwise, we find that stipulations contained in Rule 3 were fully observed. As regards non-compliance of Rule 4 it was submitted that there was no independent report of the collector. That is also not correct. It is not necessary for the Collector personally to examine all the details himself. He can certainly call for the report from the Assistant Collector as the circumstances of a case may demand and act on the same. As a matter of fact only two contentions had been raised by the petitioners before the High Court and that were that the land belonging to a cooperative housing society which itself was a public purpose could not be subject to acquisition and that Rule 4 had not been complied. There were, however, no particulars stated in the petition as to how it could be so said. It is not enough to allege that a particular rule or any provision has not been complied. It is a requirement of good pleading to give details, i.e., particulars as to why it is alleged that there is non-compliance with a statutory requirement. Ordinarily, no notice can be taken on such an allegation which is devoid any particular. No issue can be raised on a plea foundation of which is

lacking. Even where Rule Nisi is issued, it is not always for the department to justify its action when the Court finds that a plea has been advanced without any substance, though ordinarily department may have to place its full cards before the Court. In the present case, however, we find that the State has more than justified its stand that there has been compliance not only with rule 4 but with Rule 3 as well, though there was no challenge to rule 3 and the averments regarding non- compliance with Rule 4 were sketchy and without any particulars whatsoever, High Court was, therefore, not right in quashing the acquisition proceedings in SCA 1568/87.

In Special leave petition No. 11900/97 (arising out of SCA 5149/89), it was submitted by Mr. Naik, learned counsel for the appellant L&T Ltd. that the writ petition should have been dismissed by the High Court on the ground of laches. In this case notification under Section 4 was issued on January 23, 1986, declaration under Section 6 on February 10, 1987, notices under Section 9 issued on January 27, 1989 and possession of the land taken over on July 5, 1989 and the writ petition was filed on July 19, 1989. Mr. Naik said in view of the law laid down by this court notification under Section 4 has to be challenged within a reasonable time and for any petitioner to contend that it was challenged immediately after possession of the land was taken over was not a relevant circumstance to be taken into consideration. He criticised the judgment of the High Court holding that no notices under Section 9 of the Act had been served upon the petitioners. He referred to averments made in the writ petition itself wherein petitioners themselves admitted that two separate notices under Section 9 were served upon them as different portions of Survey No. 41/2 which were on the two sides of the canal were acquired. These petitioners further stated that as soon as the notices were served on them they made an application to the Deputy Collector and special Land Acquisition Officer concerned stating that the land was being acquired contrary to law and that the decision of the Government was illegal. It was also stated in the writ petition that various other points were also made in the representation to the Deputy Collector and Special Land Acquisition Officer. In view of specific admission by the petitioners themselves it is difficult to appreciate how the High Court could say that no notices under Section 9 of the Act has been issued to the petitioners. Mr. Naik further pointed out that there was no occasion for the High Court also to hold that there was non-compliance of Rules 3 and 4 when it was not the case of the petitioners anywhere.

Nevertheless L&T Ltd. and the State Government filed affidavits showing absolute compliance with Rules 3 and 4. The fact that there was certainly no allegation of non- compliance with Rules 3 and 4 in the writ petition has been admitted by learned counsel for the respondents 1 to 4.

High Court held that actual physical possession of the land subject matter of the acquisition proceeding was not handed over to the appellant while it was the contention of the appellant as well as the State Government that possession of the land was handed over to L&T Ltd. on July 5, 1989. At the time the possession was taken over a Panchanama was prepared duly witnessed by two farmers of the Village Magdalla and singed by the Circle Officer evidencing handing over of possession and also by M.H. Adhikari an officer of the L&T Ltd. for taking over possession. The possession receipt of the same date duly signed by the Circle Officer and the officer of the L&T Ltd. was given. L&T Ltd. thus took possession of the land in presence of the panchas. Panchanama recites that both the witnesses (Panchas) had been intimated in advance by Mamlatdar, Choryasi and that possession of the concerned land that day taken over in their presence by the Circle Officer and that the land was

an open spot and there was no construction or crops grown therein. Possession of the land was taken over along with the trees standing thereon. As noted above, possession was thereafter delivered to the representative of the L&T Ltd. at that time itself. In the High Court it was contended that no actual physical possession of the land had been taken. The petitioners filed affidavits of the Panchas who had signed the Panchanama. In these affidavits they stated that they were called to the office of the Panchayat and that their signatures were obtained on blank papers and that they had not gone to the sita and that neither the landlord was present not the actual possession was delivered to the acquiring body. Ready with these affidavits High Court noticed from the recitation in the Panchanama that it was nowhere mentioned that the panchas had gone to the site from the office of the panchayat. It was not disputed that in the revenue records it was L&T Ltd. who was shown in possession of the land. Affidavits of the Panchas filed in the High Court which contained statements contrary to what was recorded in the Panchanama and against the revenue entries are quite meaningless and in our opinion High Court unnecessarily put undue reliance on the same. High Court could not convert itself into a revenue court and hold that in spite of the Panchanama and the revenue records actual physical possession of the acquired land had not been handed over to the acquiring body. High Court, in our opinion, has not correctly analysed the two judgments of this Court in Balmokand Khatri Educational and Industrial Trust, Amritsar vs. State of Punjab [1996] 4 SCC 212 and Balwant Narayan Bhagde vs. M.D. Bhagwat and Ors. [1976] 1 SCC 700 to come to the conclusion that actual physical possession of the land was not taken over by the State.

In Balwant Narayan Bhagde vs. M.D. Bhagwat & Ors, [(1975) Supp. SCR 250 = 1 SCC 700], a three Judge Bench of this Court was considering the question of taking possession of the acquired land under the Act. Bhagwati, J. (as he then was) delivered judgment for himself and A.C. Gupta, J. He said he agreed with the conclusion reached by Untwalia, J. (who was the third Judge) as also with the reasoning on which the conclusion was based. He, however, said that a separate judgment was being written as he felt that it was not necessary to consider the question of delivery of "symbolical" and "actual" possession as provided in Rules 35, 26, 95 and 96 of order XXI of the Code of Civil Procedure as that was not necessary for the disposal of the appeal before the Court. Bhagwati, J. said as under:

> "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 tat 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 out opinion, since the land was lying fallow and there was no crop on it at the material time, the act of he 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."

In Tamil Nadu Housing board vs. Viswam (Dead) by LRs. [(1996) 8 SCC 259] the issue whether the land in question was taken possession of in proceedings under the Act. It is not necessary for us to refer to the facts of that case. We find the following statement of law relevant to the controversy in the present case:

> "It is settled law by series of judgments of this Court that one of the accepted modes of taking possession of the acquired land is recording of a memorandum of Panchanama by the LAO in the presence of witnesses winged by him/them and that would constitute taking possession of the land as it would be impossible to take physical possession of the acquired land. It is common knowledge that in some cases the owner/interested person may not cooperate in taking possession of the land."

In Balmokand Khatri Educational and Industrial Trust, Amritsar vs. State of Punjab & Ors. [(1996) 4 SCC 212], this Court again considered the same very question of taking possession of land and said as under:

> "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 Panchanama in the presence of Panchas and taking possession and giving delivery to the beneficiaries is accepted mode of taking possession of the land. Subsequent thereto, the retention of possession would tantamount only to illegal or unlawful possession."

It is strange that State Government itself have gone back on the Panchanama prepared on July 5, 1987. It has brought on record an affidavit sworn in August 1996 of Mr. D.J. Parmar, Deputy Secretary, Department of Revenue of the State Government wherein it is mentioned that the only requirement of Section 48 of the Act it that the Government can withdraw from acquisition when possession of the land has not been taken. He deposes that the State Government had duly verified the fact and that it was an admitted fact that the Government had not taken possession of the land bearing Survey Nos. 39 and 41/2. He said the Government got verified the fact regarding possession

of land in Survey No. 41/2 and that it had deputed an Under secretary, Revenue Department who after verifying the position at the site along with the Deputy Collector, Surat and Mamlatdar, Surat, had drawn up a Panchanama dated July 4, 1991 regarding actual physical possession of the land and as a matter of fact he noticed that whatever land L&T Ltd. had acquired in Magdalla and possession taken had been fenced while land of Survey No.41/2 has no fancing and that the same was in possession of the original owners. Mr. Parmar therefore, justified the stand of the State Government in withdrawing from the acquisition. Panchanama mentioned in the affidavit of Mr. Parmar admits there is no construction and it is an open land. It is certainly diabolical to contend on the basis of Panchanama prepared on July 4, 1991 to say that possession of the land was not handed over to L&T Ltd. on July 5, 1989. In view of the pendency of the proceeding in the High Court at that time and in the face of the interim order when High Court was seized of the matter it is difficult to appreciate how it was proper for the State Government to depute its officers to find out as to who were in possession of the land in question and then to justify its action under Section 48 of the Act. There is on record a letter dated April 12, 1990 addressed by the Assistant Collector, choryasi Prant to the Government advocate giving his comments on the affidavit of the petitioner (Respondent No.1) in SCA 5149/89. He sent his comments as under:

> "On 05-07-1989 Circle Officer, Athwa has because of no occupant remaining present took possession in presence of Panchas and delivered to representative of Larsen and Toubro company. By a Notice No. JMN/Vashi-1346/89 of 30th June, 1989 issued by Mamlatdar, Choryasi Shri Chhimabhai Limas informed in the matter of taking over of possession on 5th July, 1989 at noon 1200 hrs. A copy of the said notice is enclosed herewith. Circle officer Athwa has taken possession making 09out a Panchanama i;n presence of residents of village Magdalla. When possession was taken the land in question was open at site. There was no construction or crop in it. Reference to that is made in Panchanama. Thus the statement made by Petitioner that there was a standing crop in it is false and in copy of 7/12 of 1989-90 in village From No. 7/12 he name of Larsen and Toubro Company has been recorded as occupant. Accordingly the statement of the petitioner that possession has not been given is false. On 04-03-1990 Sarpanch has certified that the land in question is under cultivation. But on record of village From 7/12 the name Larsen and Toubro Company is going on hence the certificate of 4th March 1990 of Sarpanch is false. This land is under Revenue Survey No. and Gram Panchayat that is Sarpanch has no authority to give certificate concerned record of Revenue Survey No. Thus the certificate of Sarpanch is false. Panchakayas of Circle Officer dated 5th July 1989 is enclosed."

The Assistant Collector also stated in his comments that all the acquisition formalities were completed and hence section 48 of the Act would not apply. Assistant Collector is the person on the spot to verify to the facts when possession was delivered. After the aforesaid clear and unambiguous stand of the State Government it would appear there was rethinking in the State Government and a case was sought to be made out to justify that since no possession was taken over, action under Section 48 of the Act would acquire validity.

That apart the question of having taken possession of land would be more relevant in the case where the State is withdrawing from acquisition proceedings under Section 48 of the Act. Finding of the High Court that possession of the land subject matter of SCA 5149/89 had not been handed over by the State Government to L&T Ltd. is not correct. Other findings of the High Court that notices under Section 9 of the Act had not been served upon the petitioners and that there was no compliance with Rules 3 and 4 of the Rules are also not correct. As noted above State Government is also aggrieved by the order allowing SCA 5149/89 whereby High Court quashed the notification under Section 4 and declaration under Section 6 of the Act. In this SCA 5149/89 State Government supported the stand of the L&T Ltd. and also in this appeal. It has also stated that the possession of the land subject matter of the writ petition was taken over and delivered to L&T Ltd. on July 5, 1989.

Mr. Naik also submitted that it was not the requirement of law to issue notices to interested parties under Section 9 of the Act and he referred to a few decisions of this Court. In view of the fact, however, that there was no complaint of notices under Section 9 not having been served on the respondents, this question does not arise for consideration in this case.

This Court has repeatedly held that writ petition challenging the notifications issued under Section 4 and 6 of the Act is liable to be dismissed on the ground of delay and laches if challenge is not made within a reasonable time. This Court has said that the petitioner cannot sit on the fence and allow the State to complete the acquisition proceedings on the basis that notification under Section 4 and the declaration under Section 6 were valid and then to attack the notifications on the grounds which were available to him at the time when these were published as otherwise it would be putting premium on dilatory tactics. Writ petition (SCA 5149/89) is thus barred by laches as well.

Special leave petition No 11778/97 arises out SCA No. 5171/91 which was filed by the L&T Ltd. in the High Court. In the writ petition L&T Ltd. had prayed for quashing of the action of the State Government in withdrawing land under survey Nos. 39, 41/2 and 44/2 of village Magdalla from acquisition under Section 48(1) of the Act of which acquisition was for the purpose of housing colony for L&T Ltd. and sought a direction to the State Government and Special Land Acquisition Officer, respondents 1 and 2 herein, to complete the acquisition proceedings after notifications under Section 4 and under Section 6 which had been issued. There are as many as 13 respondents in this appeal, respondents 3 to 13 being the persons whose land the State Government has withdrawn from acquisition under Section 48 of the Act. Appellant admits that in respect of lands comprising in survey Nos. 39 and 44.2 possession had not been taken. However, its contention is that possession of land comprised in Survey No. 41/2 was taken and on that account also any action under section 48(1) of the Act would be bad in law. The fact that possession of land in the writ petition and Survey No. 41/2 was in fact taken has strenuously denied by not only the private respondents but also by the State Government. It is admitted that though there is an order of the State Government withdrawing from acquisition on notification has yet been issued in the official gazette and on that ground also appellant submits there could not be any valid withdrawal from acquisition and any action of the respondents in pursuance to that very decision of State Government to withdraw from acquisition would be illegal.

In respect of certain portions of land comprised in Survey No. 41/2, subject matter of SCA 5149/89 (SLP 11900/97), we have already held that L&T Ltd. was put in possession. Any action under Section 48 of the Act to that extent of land is bad in law.

In support of his submission Mr. Naik said that apart from the fact that there was no notification issued under Section 48 of the Act making withdrawal from acquisition the reasons for withdrawal from acquisition are justiciable and the beneficiaries for whom the land is acquired are to be heard. it is the beneficiary and in the present case L&T Ltd. which is the affected party. When there is withdrawal from acquisition of the land, owners are well protected under sub-section (2) and (3) of Section 48 of the Act. Mr. Naik submitted that there cannot be any unilateral withdrawal and there has to be bona fide exercise of poser in case the State Government decides to withdraw fro acquisition before possession is taken over.

State Government in the Revenue Department issued a `Yadi' (memo) on April 11, 1991 withdrawing from the acquisition of land under Survey No. 39 and 41/2 of the village Magdalla. This decision of the State Government was communicated to L&T Ltd. on April 29, 1991/May 3, 1991. Yet another `Yadi' (memo) was issued by the State Government on May 3, 1991 withdrawing from acquisition of the land under Survey No. 44/2 in village Magdalla under Section 48 (1) of the Act. L&T Ltd. was informed of this decision on June 3, 1991. High Court held that Section 48 created an absolute right as a dominion eminent in favour of the State which proposes to acquire the land to take unilateral decision to withdraw from the acquisition and there was no restriction on its powers to withdraw from acquisition except in a case where in pursuance to the acquisition proceeding, owner of the land was dispossessed. High Court said that this restriction on the State to withdraw from acquisition, when possession had not been taken, could not be there and that it was unable to hold that appellant ought to have been heard by the State before passing the order of withdrawing from the acquisition.

All the formalities as per requirements of Rules 3 and 4 had been complied with and so also the provisions of Section 40, 41 and 42 of the Act. After the notifications had been issued under Section 4 and 6 of the Act, notices under section 9 were issued on April 1, 1987, present writ petition (SCA 5171/91) was filed by L&T Ltd. on July 15, 1991 when its protest against withdrawal from acquisition of the land to the State Government failed. What led the State Government to withdraw from the acquisition is reflected from its affidavit in reply filed in the writ petition of the appellant. it is as under:

> "I say that various land owners who are respondent in this petition has made application to the government. I say that the said decision is bona fide can be seen from the applications were given by the land owners much prior to the date of the Election, i.e. as back as in March, 1991 and the lane owners had pointed out various facts including the fact that there are various lands have been acquired in past and since they are poor agriculturists left with no other land, their land should be released from acquisition. They had pointed out hardship to them. All these applications were processed legally. For example in the case of Ganapatbhai Narottambhai, application was made on 12-03-1991 pointing out that his lands in village in Magdalla have been

acquired for one purpose or the other with the result that he was left with no land. His lands were acquired for Surat Urban Development Authority housing Indian Oil Corporation, Surat Municipal Corporation etc. Similar applications were also given by other lands owners mentioning the reason why their lands should be denotified from acquisition. The government has thereafter got verified the facts and ordered release of the land. I say that the government has not released from acquisition all the lands which were acquired for petitioner, but only part of the lands in which the government found bona fide case for withdrawal from acquisition the Government has done so. Not only that but after the land were released from the acquisition the petitioner Larsen Toubro has filed objections and representations against the same. Immediate on getting the petition from Larsen Toubro petitioner herein on 21--6-

1991 the Prant Officer Choryasi Prant has written at the instructions of the Government to the land owners not to proceed further on the basis that the land have been denotified. This the been done because objections filed by Larsen and Toubro were under consideration. Thereafter having verified all the facts, Government was convinced that there was no reason to the change the said order and therefore Government i.e., Under Secretary, Revenue Department informed the Deputy Collector by his letter dated 15-07-1991 that the instructions which were given in the previous letter, stay order given is withdrawn."

Mr. Naik strongly objected to the observations made by the High court that it would be open to the appellant to lay its claim and sue the State Government for damages if any suffered by it on account of the action of the State Government in withdrawing from the acquisition. He said it was not for the High Court to advise the beneficiary to go to the civil court for damages when challenge before it was to the very legality of the action of the State Government withdrawing from acquisition. Mr. Naik said it was also wrong for the High Court to observe that the land which was proposed to be withdrawn from acquisition was in reality not needed by the appellant and on that account withdrawal from acquisition would not have seriously prejudiced the appellant in the implementation of its housing scheme for its employees and that "nothing of that sort has been taken place in this case". Mr. Naik said has per the report of the Surat Urban Development Authority all the lands which were subject matter of acquisition in all the three writ petitions measured 29 acres which satisfied only 45% need for housing of the employees of the L&T Ltd. he said the observations of the High Court were entirely against the record. Mr. Naik appears to be right in his submissions . High Court has not properly considered the need of the appellant. it was only after all the enquiries as required under the Act and the Rules has been made that action to acquire land for housing scheme of the employees of the appellant was taken. It was submitted that the lands were needed by the appellant and were situated in the middle of the other lands being acquired for the housing colony for the appellant. Appellant said that there was no ground for the State Government to withdraw from acquisition when proceeding for acquisition had been initiated as for back as in the year 1986. Appellant had established a large industry at Hazira and its needs for a housing colony for its staff and workers were imperative. Appellant said that it was not able to provide suitable accommodation to its employees to make appropriate arrangement for their transport to the factory and that most of the staff had scattered residential accommodations in the city of Surat.

They all came from different surrounding villages and even from Surat. Their regularity of attendance and efficiency was affected on account of the long distances they had to travel to reach the factory of the appellant. These difficulties became aggravated during the rainy season and in extreme climate. Appellant had also difficulties in finding accommodation in Surat for its employees and had to pay large amounts towards rent. The appellant said that the lands proposed to be withdrawn from acquisition were such that the planning of the appellant housing colony would go haywire. It was also submitted that the land proposed to be withdrawn from acquisition did constitute a compact block at one end of the lands acquired for the appellant housing colony. Various other pleas were also raised which did not find favour with the High Court and rather not adverted to. The appellant alleged that apart from legal submissions that appellant had been denied opportunity of being heard before decision was taken by the State government withdrawing from acquisition, the action of the state Government was politically motivated inasmuch as the decision was taken at the time of General Elections to the Parliament. This allegation has however been denied by the State Government. It has justified its action otherwise as stated above and asserted that it was not the requirement of law nor necessary to hear the appellant before taking decision to withdraw from acquisition under Section 48(1) of the Act. A great deal of agruments were addressed if it was the requirement of law that a notification withdrawing from acquisition had to be issued and before that the beneficiary for whom the acquisition proceedings were initiated to be heard.

In State of Maharashtra & Anr. vs. Umashankar Rajabhau & Ors. [(1996) 1 SCC 299] a submission was made that Maharashtra Road Transport Corporation for whom the notification was issued for acquiring the land for public purpose did not need the plots of land. This Court observed that "so long as there is no notification published under Section 48(1) of the Act withdrawing from the acquisition, the Court cannot take notice of any subsequent disinclination on the part of the beneficiary". In U.P. Jal Nigam, Lucknow through its Chairman & Anr. vs. Kalra Properties (P) Ltd., Lucknow & Ors. [(1996) 3 SCC 124] land stood vested in the state under Section 17(2) of the Act free from all encumbrances. The Court said that it was settled law that once possession is taken by operation of Section 17(2), the land vested in the State free from all encumbrances unless the notification under Section 48(1) was published in the Gazette withdrawing from the acquisition. The Court further said, "there is no other provision under the Act to have the acquired land divested, unless, as stated earlier, notification under Section 48(1) was published and the possession is surrendered pursuant thereto". In Murari & Ors. vs. Union of India & Ors. [(1997) 1 SCC 15] this Court affirmed the Full Bench decision of the Delhi High Court in Roshanara Begum vs. Union of India & Ors. [AIR 1996 Delhi 206]. It was submitted before the Court, which was the alternative argument, that the withdrawal of certain land included in the notification under Section 4 could be effected only by denotifying the release and that since there was no such notification denotifying the release, it could not be regarded as a release within the meaning of Section 48 of the Act. The argument was that Section 48 could be applied only when the release was published in the official Gazette in the same manner as the notification under Section 4 and declaration under Section 6 of the Act are published in view of the provisions contained in Section 21 of the General Clauses Act and since no such notification was published in the official Gazette, mere information given with regard to the withdrawal from acquisition would be of no consequence. This Court referred to its earlier decisions in State of Maharashtra & Anr. vs. Umashankar Rajabhau & Ors. [(1996) 1 SCC 299] and also in U.P. Jal Nigam, Lucknow through its Chairman & Anr. vs. Kalra Properties (P) Ltd.,

Lucknow & Ors. [(1996) 3 SCC 124] and said "in this view of the matter even if we assume that there was an order for release of certain land from acquisition the same could not be given effect to in the absence of a notification denotifying the acquisition of land". In The Special Land Acquisition Officer, Bombay & Ors. vs. M/s Godrej & Boyce [JT 1987 (4) SC 218 = (1988) 1 SCC 50] the State Government wanted to withdraw from acquisition of land by exercising its power under Section 48 but the owner of the land insisted that the government should be directed to go ahead with the acquisition, take over the land and pay him the compensation. The High Court Struck down the order made under Section 48 and directed and State Government to acquire the lands of the respondent-owner. This Court held that the High Court committed error in doing so. In the context whether the view taken by the High Court that a decision of withdrawal from acquisition must be backed by reasons and could not be arbitrary or whimsical, this Court said as under:

> "We may observe that having regard to the scheme of the Act as discussed above, it is difficult to see why the State Government should at all be compelled to give any cogent reasons for a decision not to go ahead with its proposal to acquire a piece of land. It is well settled in the field of specific performance of contracts that no person will be compelled to acquire a piece of land as any breach of a contract to purchase it can always be compensated for the damages. That is also the principle of Section 48(2).
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> This Court even examined the question if the withdrawal was bona fide and held that to be so. We are, however, not concerned with that issue in the present case.
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> In Amarnath Ashram Trust Society and another vs. The Governor of Uttar Pradesh and others [JT 1997 (9) S.C. 659] the argument by the appellant was that when acquisition was under Part VII, when land is acquired for a company and when all the formalities have been completed including execution of the agreement for payment of cost of the acquisition and Section 6 notification has also been issued, it was not open to the Government to withdraw from such acquisition without the consent of the company for which the land had been acquired. It was submitted that the power to withdraw from acquisition was not absolute and was fettered by implicit restrictions and was thus justiciable. In that case the government had issued notification under Section 4 of the Act notifying its intention to acquire the land for a public purpose namely "playground of students of Amar Nath Vidya Ashram (Public School), Mathura". Thereafter, inquiries under Section 5-A and under Rule 4 of the Land Acquisition (Company) Rules, 1963 were made and the Government also entered into an agreement with the appellant as required by Section 40(1) of the Act. It then issued a declaration under Section 6 mentioning the fact that the report made under Rule 4 was considered by the Government and that the Land Acquisition Committee constituted under Rule 3 of the said Rules was consulted and the agreement entered between the appellant and the Governor was duly published recording satisfaction of the Governor that land mentioned in the agreement needed for construction of a playground. The acquisition of land was challenged by the owner of the land by filling writ petition in the Allahabad High Court and an interim order was passed directing

the parties to maintain status quo as regards possession. During the pendency of the said writ petition the government denotified the land from acquisition in exercise of its power under Section 48 of the Act. Challenge to this by the appellant in the High Court failed. Contention of the State before this Court was that the State was under no obligation to give any reason for withdrawing from the acquisition and when it was shown that the power was exercised boa fide it was not open to the Court to invalidate such an action even if the reason given by the State was found to be erroneous. it was submitted on behalf of the State that Section 48 contained no words of limitation as regards the exercise of power and the only limitation put upon the power of the State Government was that it could exercise that power till possession of the land sought to be acquired was taken and not thereafter. Strong reliance was placed by the State upon the decision of this Court in special Land Acquisition Officer, Bombay vs. Godrej and Boyce [JT 1987 (4) SC 218]. This Court, however, distinguished the judgment in Godrej and Boyce's case as in that case the challenge to the withdrawal order under Section 48 was by the owner himself and as provided in sub- section (2) of Section 48 if as a result of withdrawal from acquisition any damage be suffered by any party he could be paid damages for the loss caused to him. The decision in the case of Godrej and Boyce's case was, therefore distinguished as in the case before the Supreme Court the challenge was by the beneficiary. This Court observed that the decision in Godrej and Boyce case was no authority laying down the proposition that in all cases where power was exercised under Section 48 of the Act it was open to the State Government to act unilaterally and that it could withdraw from acquisition without giving any reason or for any reason whatsoever. The Court observed as under:

"In an acquisition under Part VII of the Act, Position of the company or the body for which the land acquired is quite different from that of the owner of the land. As a result of withdrawal from the acquisition whereas the owner of the land is ordinarily not likely to suffer any prejudice or irreparable loss, the company for whose benefit the land was to be acquired, may suffer substantial loss."

The Court examined the reasons given by the State withdrawing from acquisition and held that the decision of the Government to withdraw from acquisition was based upon misconception of the correct legal position and that such a decision had to be regarded as arbitrary and not bona fide. Then the Court said as under:

"Particularly, in a case where as a result of a decision taken by the Government other party is likely to be prejudicially affected, the Government has to exercise its power bona fide and not arbitrarily. Even though Section 48 of the Act confers upon the State wide discretion it does not permit it act in an arbitrary manner.

Though the State cannot be compelled to acquire land compulsorily for a company its decision to withdraw from acquisition can be challenged on the ground that power has been exercised mala fide or in an arbitrary manner. Therefore, we cannot accept

the submission of the learned counsel for the State that the discretion of the State Government in this behalf is absolute and not justiciable at all."

It was submitted by mr. Salve that Section 48 of the Act did not contemplate issue of any notification and withdrawal from the acquisition could be by order simpliciter. He said that Section 4 and 6 talked of notification being issued under those provisions but there was no such mandate in Section 48. It was thus contended that when statute did not require to issue any notification for withdrawal from the acquisition, reference to Section 21 of the General Clauses Act was not correct. Section 21 of the General Clauses Act is as under:

"21. Power to issue, to include power to add to, amend, vary or rescind, notifications, orders, rules or bye-laws.- Where by any Central Act, or Regulation, a power to issue notification orders, rules, or bye-laws is conferred, then that power includes a power exercisable in the like manner and subject to the like sanction, and conditions, if any, to add to, amend, vary or rescind any notifications, orders, rules or bye-laws so issued."

Mr. Salve said that Section 21 expressly referred to the powers being given to issue notifications etc. under an Act or Regulations and under this that poser included power to withdraw or rescind any notification in the similar fashion. It was therefore submitted that when Section 48 did not empower the State Government to issue any notification and it could not be read into that provision that withdrawal had to be issued by a notification. His argument, therefore, appeared to be that on correct interpretation of Section 21 of the General Clauses Act before reaching the stage of Section 48, the State Government could withdraw notifications under Sections 4 and 6 of the Act by issuing notification withdrawing or rescinding earlier notifications and that would be the end to the acquisition proceedings. We do not think that Mr. Salve is quite right in his submissions. When Sections 4 and 6 notifications are issued, much has been done towards the acquisition process and that process cannot be reversed merely be rescinding those notification. Rather it is Section 48 under which, after withdrawal from acquisition is made, compensation due for any damage suffered by the owner during the course of acquisition proceedings is determine and given to him. it is, therefore, implicit that withdrawal from acquisition has to be notified.

Principles of law are, therefore, well settled. A notification in the Official Gazette is required to be issued if the State Government decides to withdraw from the acquisition under Section 48 of the Act of any land of which possession has not been taken. An owner need not be given any notice of the intention of the State Government to withdraw from the acquisition and the State Government is at liberty to do so. Rights of the owner are well protected by sub-section (2) of Section 48 of the Act and if he suffered any damage in consequence of the acquisition proceedings, he is to be compensated and sub-section (3) of Section 48 provides as to how such compensation is to be determined. There is, therefore, no difficulty when it is the owner whose land is withdrawn from acquisition is concerned. However, in the case a company, opportunity has to be given to it top show cause against any order which the State Government proposes to make withdrawing from the acquisition. Reasons for this are not far to seek. After notification under Section 4 is issued, when it

appears to the State Government that the land in any locality is needed for a company, any person interested in such land which has been notified can file objections under Section 5-A(1) of the Act. Such objections are to be made to the collector in writing and who after giving the objector an opportunity of being heard and after hearing of such objections and after making such further enquiry, if any, as the Collector thinks necessary, is to make a report to the State Government for its decision. Then the decision of the State Government on the objections is final. Before the applicability of other provisions in the process of acquisition, in the case of company, previous consent of the State Government is required under Section 39 of the Act nor unless the company shall have executed the agreement as provided in Section 41 of the Act. Before giving such consent, Section 40 contemplates a previous enquiry. then compliance with Rules 3 and 4 of the Land Acquisition (Company) Rules, 1963 is mandatarily required. After the stage of Section 40 and 41 is reached, the agreement so entered into by the company with the State Government is to be published in the Official Gazette, This is Section 42 of the Act which provides that the agreement on its publication would have the same effect as if it had formed part of the Act. After having done all this, State Government cannot unilaterally and without notice to the company withdraw from acquisition. Opportunity has to be given to the company to show cause against the proposed action of the State Government top withdraw from acquisition. A declaration under Section 6 of the Act is made by notification only after formalities under part VII of the Act which contains Section 39 to 42 have been complied and report of the Collector under Section 5-A(2) of the Act is before the State Government who consents to acquire the land on its satisfaction that it is needed for the company. A valuable right, thus, accrues to the company to oppose the proposed decision of the State government withdrawing from acquisition. The State Government may have sound reasons to withdraw from acquisition but those must be made known to the company which may have equally sound reasons or perhaps more which might persuade the State Government to reverse its decision withdrawing from acquisition. In this view of the matter it has to be held that Yadi (Memo) dated 11.4.91 and Yadi (Memo) dated 3.5.91 were issued without notice to the appellant (L&T Ltd.) and are, thus, not legal.

Accordingly all these appeals are allowed with costs; impugned judgment of the High Court is set aside. SCA 1568/87 and SCA 5149/89 filed in the High Court are dismissed and SCA 5171/91 is allowed. Yadi (Memo) dated 11.4.91 and Yadi (Memo) dated 3.5.91 containing orders of the State Government withdrawing from acquisition of the land are quashed. A direction is issued to the respondents 1 and 2 to complete the acquisition proceeding in pursuance to the notification under Section 4 and declaration under Section 6 of the Land Acquisition Act.