Murari & Ors vs Union Of India & Ors on 1 November, 1996

Equivalent citations: AIRONLINE 1996 SC 49, (1997) 2 ICC 631, (1996) 4 LAND LR 541, (1997) 1 REC CIV R 308, (1997) 65 DLT 1001, 1997 (1) SCC 15, (1996) 4 CUR CC 95, (1997) 1 APLJ 29, (1997) LACC 38, (1996) 9 JT 742, (1996) 9 JT 742 (SC)

Author: Kuldip Singh

Bench: Kuldip Singh

PETITIONER:
MURARI & ORS.

Vs.

RESPONDENT:
UNION OF INDIA & ORS.

DATE OF JUDGMENT: 01/11/1996

BENCH:
KULDIP SINGH, FAIZAN UDDIN

ACT:

HEADNOTE:

JUDGMENT:

With transferred cases No. 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31/1995 Nos.13961-14029/96 With Civil Appeals/arising out of SLP (C) Nos. 2395, 2397, 2399, 2400, 2401, 2421, 394, 484, 305, 430-432, 1026, 1084, 2403, 740, 744, 2439, 2440, 1212, 802, 2608, 2669, 2601, 2815, 3434, 3611-3613, 3964, 5563, 5344, 4463, 4465, 4243, 5398, 4161, 4181. 1264, 1270, 2523, 2527, 2528, 3968, 3969, 4344, 5738, 5749, 5781, 5911, 5914, 5916, 5771, 6060, 6061, 6064, 6066, 5567, 7908, 6362, 7700, 8012, 8018, 8019, 8026, 8027, 8036, 7889 & 7875/1996. SLP(C) No.21671/96 (CC 1607/96) J U D G M E N T Faizan Uddin, J.

Leave granted, 1 .The appellants in the appeals enumerateted herein above had challenged the acquisition proceedings in respect of their respective lands acquired under he Land Acquisition Act,

1894 for purposes of planed development of Delhi by filing various writ phitions before the High Court of Delhi. The said write petition were dismissed by a Full Bench of the Delhi High Court by judgment dated December 14, 1995 against which these appeals have been preferred by special leave. Various notifications were issued from time to time under Section 4 of the Land Acquisition Act, 1894 for acquisition of land for the public purpose of planneddevelopment of Delhi. The said notification covered the land belonging to the transfer petitioners, appellants and some other persons. The transfer petitioners like others had also filed writ petitions in the High Court of Delhi being writ petitions No. 2179, 2178, 2140, 2139, 2197, 2083, 2138, 2144, 2199/1983 and civil writ petitions No. 810- 812/1984 challening the acquisition of their respective lands on various grounds. These writ petitions were pending in the High Court. However, during the course of hearing of writ petition (C) No. 4677/1985 pending before this Court it was felt necessary to transter all the aforesaid writ petitions from Delhi High Court to this Court. Consequently on the basis of Interlocutory Applications No. 20 and 21 of 1995 in W.P. (C) No. 4677/1985 this court by order dated December 14, 1994 directed that all the aforementioned writ petitions be transferred to this court. This is how those writ petitions stand transferred to this court which have been registered as transfer cases Nos. 21, 22, 23, 24, 25, 26, 27, 28, 29, 30 and 31 of 1995. As said earlier besides the aforementioned transfer cases large number of writ petitions filled by various persons were already pending before the High Court of Delhi challenging the acquisition of their respective lands for the public purpose of planned development of Delhi which were dismissed by a full Bench of the High Court of Delhi by the impugned common judgment dated December 14, 1995 against which the appeals referred to above have been filed by special leave. Since the common question of law and facts arise in all these transfer cases and appeals and, therefore, they were clubbed together and are being disposed of by this common judgment.

2. The facts in brief leading to the transfer cases and the appeals may he narrated thus:-

> Various notifications under Section 4 of the Land Acquisition Act (hereinafter referred to as the Act) were issued from time to time between 1959 and 1965 for the acquisition of several thousand acres of land for the common, public project, namely, planned development of Delhi. Declarations under Section under Section 6 of the Act were also made between the years 1966 and 1969, while the making of the awards was deferred till the year 1979-80. The master plan of Delhi was brought into force in September 1962 giving the details of the facts and circumstances under which it became imperative to have a development plan of the city of Delhi. It is common knowledge that after the partition of the country there was enormous and huge migration of population into India mainly at Delhi which resulted into a phenomenal growth of population of the settlers in Delhi besides considerable growth of industrial and commercial activities, which gave rise to various residential and occupational problems as a result of which various sub standard structures, complexes and colonies came into being without proper layouts and other essentials of life. No lands was available at reasonable price and within the reach of common man. It was in these circumstances and with a view to give a proper shape to the city of Delhi, the capital of India, the Central Government had set up a Delhi Development Authority in 1950 and later in December 1955 a Town Planning Organisation was set up under

the administrative control of Delhi Improvement Trust to monitor the planning development in the National Capital Territory of Delhi. It was in this background that planned development of Delhi was conceived of and to achieve that objective various notifications under Section 4 of the Act were issued from time to time between the period from 13.11.1959 and 21.11965 whereby large chunks of land were sought to be acquired. after issuance of notices under Section 9 and 10 of the Act a spate of writ petitions were filed challenging the acquisition proceedings on various grounds whose lands were sought to be acquired, most of which were dismissed including the Letters Patent Appeal by the High Court by an earlier judgment dated April 29,1972 vide I.L.R. (1971)

3. The said judgment was challenged in appeal before this Court which was also dismissed by judgment dated August 23, 1974 by a Constitution Bench of this Court which is reported in 1975 (1) SCR 8O2 = AIR 1974 SC 2077 Aflatoon & Ors. Vs. Ltd. Governor of Delhi, in which amongst others the contentions before this Court were raised that (1) the public purpose specified in the notification under Section 4 of the Act was vague as neither master plan nor zonal plan was in existence on the date of notification; (2) that there was inordinate delay in finalising the acquisition proceedings by reason of which the land owners were deprived of the benefits of the appreciation of price between the date of notification under Section 4 and the date of taking possession of the property; (3) that provisions of Section 23 of the Act laying down that the compensation should be determined with reference to the market value of the land as on the date of notification under Section 4 of the Act was unreasonable restriction and affecting the fundamental rights of the land owners. but this Court repelled all the contentions and dismissed the appeals and the writ petitions by maintaining the validity of notices issued under Section 4 of the Act laying down that in the case of an acquisition of large areas of land belonging to different persons, the specification of public purpose can only be with reference to the acquisition of the whole area for it may be difficult to specify the particular purpose for which each and every item of land comprised in the area is needed but unlike the case of an acquisition of a small area. The said Constitution Bench of this Court dispelled the challenge of the acquisition proceedings on the ground of delay by holding that the appellants of that case did not move the Court in the matter even after the declaration under section 6 was published in the year 1966 but they preferred to approach the Court with their writ petitions only in 1970 when notices under Section 9 were issued. This Court further took the view that the appellants of that case allowed the Government to complete the acquisition proceedings on the basis of the notifications under Section 4 and declaration under Section 6 of the Act which were available to them at the time when the notifications were published and if their objection is allowed to stand it would amount to putting a premium on dilatory tactics adopted by them. On the question of delay in completing the acquisition proceedings the Constitution Bench in the aforementioned case observed that about 600 objections were filed under Section 5-A of the Act and civil writ petitions were also filed challenging the validity of the acquisition proceedings. Consequently the Government unnecessarily had to wait for disposal of those objections and petitions before proceeding further in the matter and, therefore, it was bound to result in delay. It was further held that the Land Acquisition Act being a pre constitution Act its provisions are not liable to be challenged on the ground that they are not in conformity with the requirement of Article 31(2) of the Constitution. The land owners, therefore, could not complain about the payment of compensation computing with reference to the market

value of the land as on the date of notification under section 5 and Section 23 of the Act could not be held to be bad, as such a challenge is precluded in view of Article 31(5) of the Constitution. This Court further held that it is true that there could be no planned development of Delhi except in accordance with the provisions of Delhi Development Act after that Act came into force but there was no inhibition in the acquisition of land for planned development of Delhi under the Act before the master plan was ready.

4. Before the High Court a number of controversies and objections were raised and the acquisition proceedings were sought to be challenged on various grounds including challenge to the validity of the declarations made from time to time under Section 6 of the Act using the notification issued under Section 4 of the Act as the reservoir and that more than one declarations under Section 6 of the Act were issued which according to the transfer petitioners and the appellants were not permissible. A plea was raised that after the lapse of a long period and inordinate delay in completing the proceedings, the proceedings must result in the abandonment of the acquisition proceedings and no award on the basis of such proceedings can validly be made. It was also contended that more there one award is not contemplated by law in respect of the land, which was the subject matter of one declaration issued under Section 6 of the Act. A further contention raised before the High Court was with regard to the interpretation of Section 55 of Delhi Development Act, 1957 (hereinafter referred to as the Delhi Act). It was contended that some of the land owners had issued notice to the Central Government under sub-section (1) of Section 55 of the Delhi Act with regard to the requirement of the designated land under the master plan or sta zonal development plan but the Central Government failed to acquire the land within a period of 6 months from the date of receipt of the said notice as required by sub- section (2) of Section 55 and, therefore, the said omission on the part of the authorities to complete the acquisition proceedings within the stipulated time would result in abandonment of the acquisition proceedings completely in respect of such land to which Section 25 of the Delhi Act was applicable. It was also contended before the High Court by some of the transfer petitioners and appellants that according to Article 31-A of the Constitution the appropriate value of the land forming part of an estate which is sought to be acquired would be the market value prevailing at the time of award and not the value prevailing on the date of notification under Section 4 of the Act as contemplated in Section 23 thereof. The appellants of the civil writ petition No. 325/1982 (Ram Phal Vs Union of India) before the High Court took the plea that the Central Government had issued an order under Section 48 of the Land Acquisition Act withdrawing the acquisition proceedings in respect of their land and, therefore, the acquisition proceedings in respect of the said land be quashed. The High Court repelled all the aforementioned contentions as well as some other grounds on the basis of which the acquisition proceedings were sought to be quashed and dismissed the writ petitions by the common judgment as said earlier against which these appeals have been preferred. To some extent same grounds are advanced by the learned counsel appearing for the land owners in the transfer cases.

5. The main attack by learned counsel appearing for all the appellants and those representing the transfer petitioners was advanced for quashing the acquisition proceedings on the ground of delay in completing the acquisition proceedings. M/s. Soli Sorabjee, Venugopal, P.N. Lekhi, Kapil Sibal, Rajiv Dhavan, H.N. Salve, G.L. Sanghi learned senior counsel and host of other advocates appearing for the appellants made a concerted effort to show that there was unreasonable delay of about 15 to

20 years in completing the acquisition proceedings by the respondents by reason of which the land owners were deprived of the reasonable and real price of their properties who have been offered only a pittance of compensation after a long lapse of time while the prices have gone up many times high in between the period from the date of notification under Section 4 to the date of making the award and taking possession of the properties. It was submitted that the main purpose in issuing the notifications under Section 4 of the Act during the period from 1959 - 1965 was to freeze the price of the land causing great loss to the land owners. The decision rendered in the case of Ram Chand Vs. Union of India 1994 (1) SCC 44 was sought to be distinguished by contending that the same cannot stand as a bar in cases for the reason that though the award had been made in the year 1980 but no possession was taken from the land owners and, therefore, Ram Chand's case has no application to the facts of the present case. Shri Soli Sorabjee further added that there is internal inconsistency in the decision of Ram Chand's case and the same cannot be taken to be an authority on the proposition in all situations but different principles have to be applied on circumstances of each case when the fact situation is different. It was vehemently urged by all the learned advocates that the award of interest at the rate of 12 percent after the expiry of two years from August 1974 in respect of the awards made prior to the amendment of Section 23 of the Act would not mitigate the loss suffered by the land owners. The 18th report of the Public Accounts Committee of the 7th Lok Sabha on the working of the Delhi Development Authority was also sought to be pressed in service to support the aforementioned submissions in addition to various decisions of this, Court. It was stated that the Public Accounts Committee in its report dated 26.4.1981 at page 101 stated in para 5.29 that it is well known fact that the D.D.A. acquires land from the land owners at a very low rate and after development sells it at exorbitant rates thereby earning huge profits. It was stated that even where land is acquired for a public purpose, a reasonable compensation has to be paid but in cases where land is acquired and later sold by auction or for commercial purposes, as has happened in most cases, the ommittee feels the land owners/farmers should not be compelled to part with their holdings at throw away price, the committee therefore recommended that the Land Acquisition Act may be suitably amended so that the interest of the farmers are properly safeguarded.

6. After giving our thoughtful consideration to the submissions made above, it may be stated that the report of the Public Accounts Committee referred to above and on which great emphasis was laid is nothing but recommendations for the necessary amendment in the Act. The recommendations of any authority howsoever high it may be cannot be enforced unless the same take the shape of law. The provisions of the Land Acquisition Act as they stand today have to be interpreted and applied in accordance with existing position of law and in its true sense of perspective in respect of which this Court has made authorotative pronouncements on the points raised and contended by the learned counsel. In the present case as stated earlier after issuance of the notifications and notices under Section 9 and 10 of the Act not only large number of objections were filed by the land owners whose land was sought to be acquired but a number of writ petitions were filed in the Delhi High Court challenging the validity of the notification under Section 4 as well as the declaration under Section 6 in which interim orders of stay were passed by the High Court which resulted in the considerable delay. Thus the authorities alone were not responsible for the delay but the land owners were equally responsible for the same . In such circumstances and on consideration of several decisions of this Court including those rendered in the case of Bihar State Housing Board Vs. Ram Behari Mahato AIR 1988 SC 2134; and Ujjain Vikas Pradhikaran Vs. Raj

Kumar Johri 1992 (1) SCC 329 this Court in the case of Ram Chand Vs. Union of India 1994 (1) SCC 44 took the view that in any case there. was no justification for the authorities to make the award in 1980/1981/1983 when the declaration under Section 6 was made in 1966-69, but at the same time, in view of the facts of delay caused by land owners themselves in approaching the Courts and the developments already made on the lands for public use, quashing of acquisition proceedings would not be appropriate. But at the same time in the said decision this Court also took the view that the land owners alone were not responsible for the entire delay that was caused in completing the acquisition proceedings. This Court in the said decision pointed out that all those writ petitions were dismissed by this Court on August 23, 1974 in the case of Aflatoon Vs. Ltd. Governor of Delhi yet no effective steps were taken by the respondents till 1980- 81 and in some cases even till 1983 for which the respondents could give no justification for that delay on their part in completing the acquisition proceedings even after the judgment of this Court in Aflatoon's case. This Court having regard to the fact that the Delhi Administration and Delhi Development Authority after taking possession of the lands various developments have been made and third party interest have also been created and, therefore, having regard to the larger public interest declined to quash the acquisition proceedings on the ground of delay but at the same time having regard to the interest of the land owners who were likely to suffer loss in rating the price of the land with reference to the date of notification under Section 4, directed payment of an additional amount of compensation to be calculated at the rate of 12 percent per annum after expiry of two years from August 23, 1974, the date of judgment of this Court in Aflatoon's case (supra) till the date of the making of the awards by the Collector to be calculated with reference to the market value of the lands in question on the date of notification under Section 4(1) of the Act. We do not find any inconsistency in the said decision (Ram Chand's case) and find ourselves in respectful agreement to the view taken by this Court in the case of Ram Chand (supra). The same principle has to be applied in those cases in which the possession is not taken and there is no reason to distinguish such cases from the application of the principles laid down in Ram Chand's case merely on the ground that possession is not taken from some of the land owners. In this connection the fact could not be lost sight of that the land owners have enjoyed possession all these years and have taken the benefit of the usfruct and other advantages out of the said land and, therefore, they stand even in an advantageous position than those land owners from whom the possession was taken earlier.

7. It was then contended that it was not open to the Government to issue more than one declaration under Section 6 of the Act with regard to the land comprised within one notification under Section 4 of the Act. In other words it was submitted that the notification under Section 4 cannot be treated as a reservior from which land could be taken from time to time and declaration one after the other may be made under Section 6 of the Act which is not permissible under the Act and, therefore, the acquisition proceedings were liable to be, quashed on this ground. In this connection we feel it necessary to mention some of the facts and circumstances which are relevant to the submissions made above and to see whether the submissions have any merit or not to the facts and circumstances of the present case. It may be stated that similar question was raised before this Court in the case of State of M.P. Vs. Vishnu Prasad Sharma AIR 1966 SC 1593 decided by a Bench comprised of three learned Judges of this Court. The majority view taken was that the provisions in Section 17(4) of the Act do not lead to the conclusion that Section 6 of the Act contemplates successive notification following the notification made under Section 4 of the Act. It was held that

the intention of Section 4, 5-A and 6 of the Act was not to have successive declarations under Section 6. It was observed that even in a case of emergency there can at the most be only two notifications under Section 6 following one notification under Section 4(1), one relating to the land which is covered by S.17 (1) and the other relating to the land which is not covered by Section 17(1), provided both kinds of land are notified by one notiication under Section 4(1) of the Act. In order to meet the situation created by the judgment in the case of Vishnu Prasad Sharma (supra) the President of India promulgated the Land Acquisition (Amendment Validation) Act No. 13 of 1967, Section 2 of which purported to amend Section 5-A of the Principal Act permitting more than one award in respect of the land which had been notified under Section 4 of the Act; Section 3 of the said amendment Act purported to amend Section 6 of the Principal Act by empowering different declaration to be made from time to time in respect of different parcels of land covered by the same notification made under Section 4(1) irrespective of whether one report or the different reports had been made under sub-Section 2 of Section 5-A of the Principal Act. Further Section 4 of the Amendment Act, 1967 purported to validate all acquisitions of land made or purported to have been made under the Principal Act before the commencement of the ordinance dated January 20, 1967, notwithstanding that more than one declaration under Section 6 had been made in pursuance of the same notification under Section 4(1) and notwithstanding the judgment decree or order of any Court to the contrary. The validity of the aforesaid Amending Act has been upheld by this Court in the case of Uday Ram Sharma Vs. Union of India 1968 (3) SCR 41 = AIR 1968 SC 1138 which has been further reaffirmed by this Court in the case of Aflatoon (supra). Some of the learned counsel appearing for the appellants contended that the aforementioned Amending Act was promulgated with a view to over reach the decision of this Court rendered in the case of Vishnu Prasad Sharma but such a submission could not be accepted in view of the decision of this Court referred to above upholding the validity of the said Amending Act.

8. Dr. Siddhu learned counsel appearing for the appellants in the civil appeal arising out of SLP (C) No. 2669/1978 as well as some other counsel contended that the land in village Masodpur sought to be acquired is in personal cultivation of the land owner which is a small area and by virtue of the second proviso of Article 31-A of the Constitution it will not be lawful for the State to acquire any portion of such land as is within the ceiling limit applicable to the land owner under any law for the time being in force. It was also asserted that the market price of the land prevailing on the date of taking over the possession of the land should be ascertained and paid to the land owner and not the price prevailing on the date of notification under Section 4 of the Act. Reliance was placed on the decision rendered by this Court in the case of D.G. Mahajan Vs. State of Maharashtra AIR 1977 SC 915 wherein it has been observed that the second proviso of Article 31-A confers a right and this right is higher than the one under clause (2) of Article 31 on a person in respect of such portion of land under his personal cultivation as is within the ceiling limit applicable to him and if the Act by creating an artificial concept of a family unit and fixing ceiling on holding of agricultural land by such family unit, enables land within the ceiling limit to be acquired without payment of full market values it would be taking away or abridging the right conferred by the second proviso. Thus even according to this decision the land within the ceiling limit may be acquired but on payment of the full market value. The question, therefore, arises whether the market value prevailing on the date of the award or taking of possession of the land or the one with reference to the date of notification made under Section 4(1) of the Act is payable as the just and proper compensation.

9. In the present case it may be noted that the provisions of sub-Section (1) of Section 23 of the Act provide the payment of the compensation of such land, building or structure prevailing on the date of publication of the notification under sub-Section (1) of Section 4, the validity of which was upheld by this Court in the case of Aflatoon (supra) wherein it was observed at page 809-F.G. of the report as under:

> "The Land Acquisition Act is a pre- Constitution Act. Its provisions are not, therefore, liable to be challenged on the ground that they are not in conformity with the requirement of article 31(2). What the appellants and writ petitioners complain is that their properties were acquired by paying them compensation computed with reference to the market value of the land as on the date of the notification under S. 4 and that S. 23 is, therefore, bad. This, in substance, is nothing but a challenge to the adequacy of compensation. Such a challenge is precluded by reason of Article 31(5). In other words, the appellants and the writ petitioners cannot challege the validity of S.23 on the ground that compensation payable under its provisions is in any way inadequate, because, such a challenge would fly in the face of Article 31(5)."

That being to, the argument advanced by the learned counsel could not be accepted. Here a reference may also be made to the decision in the case of P.V. Mudaliar Vs. Deputy Collector 1965 (1) SCR 614 (621-H) in which it has been observed as under:

> "Under Article 31(2) and (2A) of the Constitution a State is prohibited from making a law for acquiring land unless it is for a public purpose and unless it fixes the amount of compensation of specifies the principles for determining the amount of compensation. But Article 31-A lifts the ban to enable the State to implement the pressing agrarian reforms. The said object of the Constitution is implicit in Article 31-A. If the argument of the respondents be accepted, it would enable the State to acquire the lands of citizens without reference to any agrarian reform in derogation of their fundamental rights without payment of compensation and thus deprive Article 31(2) practically of its content. If the intention of the parliament was to make Article 31(2) a dead letter it would have clearly expressed its intention. This Court cannot by interpretation enlarge the scope of Article 31-A. On the other hand the Article , as pointed out by us earlier, by necessary implication, is confined only to aqrarian reforms. Therefore , we held that Article 31-A would apply only to a law made for acquisition by the State of any "estate" or any rights therein or for extinguishment or modification of such rights if such acquisition, extinguishment or modification is connected with agrarian reform."

(emphasis supplied) In the same report it has been further observed at page 631-D as under:

> One of the elements that should properly be taken into account in fixing the compensation is omitted:

> it results in the inadequacy or the compensation but that in itself does not constitute fraud on power, as we have explained earlier. We, therefore , hold that the Amending Act does not offend Article 31(2) of the Constitution."
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> A reference may also be made to the decision in the case of Nagpur Improvement Trust Vs. Vithal Rao 1973 (1) SCC page 500 para 35 which reads as under:
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> "The learned counsel was not able to satisfy us that the above case was distinguishable. We are of the opinion that the case was rightly decided and must govern this case. In this view of the matter, it is not necessary to refer to all the cases referred to us at the Bar. We may mention that Mr. Tarkunde also placed reliance on Article 31(A)
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> (l)(a) of the Constitution. It is now well settled that Article 31(A) (1)(a) has relevance to agrarian reforms and development. It has nothing to do with acquisition of land for building of a capital of a State.

10. further, a Constitution Bench of this Court in the case of Vajravalu Vs. Sp. Dy. Collector - AIR 1965 SC 1017 observed in para 14 page 1083 Col. IT as under:-

> " A scrutiny of the amended Article discloses that it accepted the meaning of the expressions "Compensation" and "principles" as defined by this Court in Mrs Bela Banerjee's case, 1954 SCR 558 (AIR 1954 SC 170). It may be recalled that this Court in the said expressions and then stated whether the principles laid down take into account all the elements which make up the true value of the properly appropriated and exclude matters which are to be neglected, is a justiciable issue to be adjudicated by the Court. Under the amended Article, the law fixinq the amount of compensation or laying down the principles governing the said fixation cannot be questioned in any court on the ground that the compensation provided by that law was inadequate."

10. It is thus clear from these decisions that Article 31A has got nothing to do with acquisition of land for building of a capital of a State. In the present case before us also the land is not said to be acquired for purposes of any agrarian reforms and development but for the planned development of Delhi and that being so the argument advanced by the learned counsel in this behalf that the land belonging to a small agriculturist within celling limit cannot be acquired or the value of the land of the agriculturists sought to be acquired should be determined on the price/value prevailing on the date of award or taking of possession and not on the value prevailing on the date of notification under Section 4(1) cannot be accepted. In the case of Ram Chand (supra) also in para 4 of the report this Court while dealing with Article 31-A took the view that the Constitution ensures under the second proviso to Article 31- A that where any law makes provision for the acquisition by the State, of land held by a person, under his personal cultivation, within the ceiling limit, it shall not be lawful for the state to acquire any portion of such land "unless the law relating to the acquisition of such land, building or structure provides for payment of compensation at a rate which shall not be less than the market value thereof". It has been further observed in the same para that by Constitution

(Forty Fourth Amendment) Act, 1978, clause (f) of Article 19 and Article 31 have been deleted and, as such, to hold property is no more a fundamental right. But still the mandate under second proviso to Article 31-A continues regarding payment of market value in respect of the land, the subject matter of acquisition, and that the Act provides for payment of compensation in respect of the acquisition made, at the market value of the land, as such it is consistent with the second proviso to Article 31-A. But in view of sub-section (1) of Section 11 and sub-section (1) of Section 23 the market value of such land is to be fixed with reference to the date of the publication of notification under section 4, sub-section (1), irrespective of the dates on which declaration under Section 6 or award under Section 11 are made or possession is taken under Section 16 of the Act. In this view of the matter the contentions raised with regard to Article 31-A could not be accepted and are accordingly rejected. The acquisition procedings, therefore, could not be quashed on that account also.

11. Dr. Sidhu learned counsel appearing for the appellants in appeal arising out of SLP (C) No. 2669/1996 further submitted that Khasra No. 364/21 was not notified under Section 6 of the Act as the land to be acquired yet an award has been made in respect thereto also which deserves to be quashed to the extent of the land of the said khasra No. He submitted that forgery was committed by changing the khasra No. 264/21 into khasra No.364/21 as in the gazette notification the land notified was khasra No.264/21 and not khasra No. 364/21. This contention of the learned counsel may be disposed of without going into the merits of the submissions in view of the fact that the learned counsel himself admitted that a review against the said mistake is pending in the High Court itself.

12. Learned counsel for the appellants as well as the counsel appearing for the transfer petitioners also strenuously urged with great force that the land was sought to be acquired for the planned development of Delhi and, therefore the provisions of Delhi Development, Act, 1957 became applicable to such acquisition of land and the acquisition or land can be made only in accordance with master plan and zonal plans to be framed under the Delhi Development Act. It was contended that on the issuance of the notification under Section 4 of the Act for acquisition of the land for planned development of Delhi it has to be inferred that the land which was notified under Section 4 of the Act for planned development of Delhi is the land designated for compulsory acquisition within the meaning of Sub-Section (1) of Section 55 of the Delhi Act but as the land sought to be acquired was not so acquired within the period of six months from the date of service of notice under sub-section (2) of section 55 of the said Act by the land owners, therefore after the expiry of the period of 10 years of the coming into force of the master plan, the land sought to be acquired went out of the compulsory acquisition and the same would be deemed to have been released from acquisition. It was submitted that sub-section (2) of Section 55 provides that the owner of the land may serve on the Central Government a notice requiring his interest in the land to be acquired and if the Central Government fails to acquire the land within the period of six months the same shall have the effect as if the land were not required to be kept as an open space or unbuilt or were not designated as subject to compulsory acquisition. It was asserted that since some of the land owners whose land was sought to be acquired had given such notice to the Central Government but the Central Government did not acquire the land within the specified period and, therefore, the acquisition proceedings must be quashed on that account. After a careful consideration of the submissions made above, we are of the view that there is absolutely no merit in this contention. It

must be shown that the particular land is designated in the master plan of zonal development plan which is the subject matter of acquisition.

13. It may be pointed out that in the present case before us no zonal development plans were prepared with regard to the said land. In the master plan there is no particularisation of any land which can be said to be required for compulsory acquisition under the Delhi Act. Neither Section 55 nor any other provisions of the Delhi Act contain any inhibition for acquisition of the land for the public purposes of planned development of Delhi under the provisions of the Land Acquisition Act. As said earlier, the notifications under section 4 of the Act were already issued between the period from 1959 to 1965 as a result of which the application of Section 55 of the Delhi Act was locked up by virtue of acquisition process under the Land Acquisition Act. This apart the land cannot be acquired within the period of six months as contemplated in Section 55 of the Delhi Act unless an agreement under Section 11(2) of the Act has reached because if the objections are filed under Section 5-A or in response to notice under Section 9 and 10 the proceedings are bound to consume considerable time beyond the prescribed limit of six months contained in Section 55 of the Delhi Act. It is for these reasons that Section 15(1) was enacted in the Delhi Act which provides interalia that if in the opinion of the Central Government any land is required for the purpose of development , or for any other purpose, under the said Act, (Delhi Act) so the Central Government may acquire such land under the provisions of the Land Acquisition Act 1894. It is thus distinctly clear that despite the enforcement of the Delhi Development Act, 1957 Section 15 (1) thereof lays down that the land for the purposes of development may be acquired under the provisions of the Land Acquisition Act. This contention was also advanced before the High Court, The Full Bench of the High Court after considering the arguments at length and taking all the facts and circumstances of the case into consideration recorded the following conclusion:-

> Assuming that the argument advanced by Mr. Lekhi is correct that once the land is notified for compulsory acquisition in Section 4 and 6 of the Land Acquisition Act, it would be deemed to have been so designated in the master plan, even then the provisions of Section 55 would not come into force till the zonal development plan is also prepared and thereafter 10 years period had elapsed and the land so designated is not acquired within the stipulated period after service of notice, only in that situation, it may be possible to say that the land has gone out of the expression of compulsory acquisition used in Section 55 of the Act. It is not possible to agree with the contentions that the land is deemed to be designated for the purpose of master plans it would not be deemed to be designated by same inference for the purpose of zonal development plan."
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> We find ourselves in agreement with the view taken by the High Court referred to above. Thus the argument based on the provision of Section 55 (1) and (2) of the Delhi Act have no merit and, therefore, the same cannot be sustained.

14. A half hearted argument was also advanced to the effect that the life span of the master plan was 20 years but the acquisition proceedings are not yet complete and therefore, the notifications issued for acquisition of the land for planned development of Delhi have lost their value and the acquisition

proceedings should be quashed. These argument is also without any merit for the simple reason that Delhi is the capital of the largest democratic country of the world. There is inflow of more than a lacs of people every year to this city. It is ever expanding cosmopolitan commercial and industrial city with multifarious national and international activities. The city of Delhi is confronted with serious housing problems due to enormous growth and ever expanding population. Consequently Delhi Development is a continuous unending process for which no terminal point for the completion of such process can be visualised. In these facts and circumstances simply because there is a delay which in the facts and circumstances of the present case was bound to occur, it cannot justifiably contended that the notifications issued were rendered ineffective. As pointed out by the High Court and in our opinion rightly so that large tracks of land was sought to be acquired for purpose of constructing huge residential colonies and commercial areas and, therefore, the delay was bound to occur in completing the acquisition proceedings. However, the Legislature appears to have taken notice of such delays and it was for these reasons that it came to the rescue of land owners by amending the Land Acquisition Act by introducing Section 11-A in the Act providing the completion of the acquisition proceedings within the time frame stipulated therein in order to save the land owners from undue loss with regard to the price of land sought to be acquired compulsorily.

15. Shri P.N. Lekhi, Shri Rajiv Dhavan and various other counsel appearing for the appellants contented that the Government by its order dated August 4, 1995 had withdrawn its notification issued under Section 4 of the Act involving certain areas of land sought to be acquired in exercise of its power under Section 48 of the Act and, therefore, it was submitted that if one part of the land is released for the public purpose the whole land covered under the notification will stand released as the Government cannot give a differential treatment which will be get by the principles enunciated in Article 14 of the Constitution. As against this the learned counsel for the respondents refuted the allegation with regard to the withdrawal of certain land from the acquisition for the planned development of the city of Delhi. Alternatively it was submitted that the withdrawal of certain land included in the notification under Section 4 could be effected only by denotifying the release and since there is no such notification denotifying the release it could not be regarded as a release within the meaning of Section 48 of the Act. In other words Section 48 of the Act may be applied only when the release is 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 give with regard to the withdrawal from acquisition will be of no consequence. Various decisions were cited for and against by the parties at the Bar but we do not propose to burden this judgment by citing them all except those which are most relevant on the point in controversy.

16. It may be noticed that Sub-Section (1> of Section 48 of the Act contemplates that except in the case provided for in Section 36, the Government shall be at liberty to withdraw from the acquisition of any land of which possession has not been taken. This Section thus confers power on the Government to withdraw any land from the acquisition but such power can be exercised only before taking the possession of the land sought to be acquired. In this connection before we proceed to examine the relevant decisions it would be appropriate to refer to the observations made by the Full Bench of the High Court in the impugned judgment with regard to this controversy. The original

record in which the Minister concerned is said to have passed the order for withdrawal was produced before the High Court which was perused by the Full Bench. The photostat copies of the notings were also placed on record of the High Court and after the perusal of the original record the Full Bench found that in fact no order has been made by the Minister concerned which may be said to be an order for withdrawal of acquisition. The High Court observed that mere communication of the misconstrued orders by the officials would not have the effect of an order of the Government withdrawing from acquisition. The High Court on a careful perusal of the original file and the noting contained therein and approved by the Minister came to the definite conclusion that the Minister had directed that the matter be taken up with the N.C.T Delhi for denotifying and for release of the land immediately which was indicative of the fact that the Minister had not himself passed the order for releasing the land from acquisition and the release from acquisition was left to the decision of N.C.T, Delhi and since N.C.T Delhi did not give its consent the release of the said land was not denotified. The High Court, therefore, took the view that the communication sent to the appellants concerned purporting to be an order under Section 48 of the Acat is invalid and the land acquisition proceedings cannot be quashed on the basis of such invalid communication. In our opinion the view taken by the High Court cannot be said to be erroneous calling for any interference by this Court.

17. Here it would be relevant to refer to some of the decisions of this Court on the question of release of the land under Section 48 and its validity under the law. In the case of Chandra Bansi Singh & Ors. Vs. State of Bihar & Ors. 1984 (4) SCC page 316 this Court observed that perhaps the appellants wanted to persuade this Court to strike down the entire notification so that when a fresh notification is issued they may be able to get a higher compensation in view of sudden spurt and rise in the price of land and other commodities in between the period when the acquisition was made and when the actual possession was taken. This Court took the view that it was not acceptable to uphold the aforesaid process of reasoning. The release was declared to be bad as a result of which the entire notification issued under Section 4 would be deemed to be valid and the land specially belonging to the land owner would form part of the acquisition. It has been further held that the release being a separate and subsequent act of the Collector, could not invalidate the entire notification but would only invalidate the portion released, with the result that the original notification would be restored to its position as it stood on the date of its notification. Assuming therefore, that there was release of certain areas of land belonging to certain land owners, the entire notification could not be rendered invalid. Further this Court in a recent decision rendered in State of Maharashtra Vs. Uma Shankar Rajabhau & JT 1995 (8) SC 508 took the view in para 3 of the report as follows:-

> "It is brought to our notice that after the notification was quashed by the High Court, no further steps were taken by the Government. It is not necessary since it is being challenged in the appeal in respect of these three plots. A submission was made that the Corporation does not need these three plots of lands for the employees. 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."

18. The same view was expressed by this Court in yet another decision in the case of U.P. Jal Nigam Vs. M/s Kalra Properties (P) Ltd. In this view of the matter even if we assume that there was an

order for release of certain land from the acquisition the same could not be given effect to in the absence of a notification denotifying the acquisiton of land.

19. Some of the learned counsel for the appellants also submitted that even the land shown in the green colour in the master plan which has been sought to be acquired but it is not understood as to for what purpose the said land is being acquired. It was also submitted that there are large number of structures and complexes raised on the land sought to be acquired in which schools, sports and other recreational activities are going on Shri G.L. Sanghi, learned counsel appearing for the appellants in Civil Appeal arising out of SLP (c) No.5771/1996 and Civil Appeal arising out of SLP (c) No.740/1996 as well as other advocates appearing for some other appellants submitted that there exist factories, workshops, godowns and MCD school besides residential houses and quarters over the land belonging to the appellant Partap Singh situated at Roshanara Road, Sabzi Mandi, Delhi which has been acquired and that there exist modern and well developed farm house with modern facilities in the land belonging to the appellant Roshanara Begum, where there are a good number of other structures and fruit bearing trees. Consequently these areas do not require further development as they are already developed and, therefore, the said land should be released from acquisition. Mr. Sanghi , learned counsel appearing for some of the appellants urged that the concerned appellant had developed a sports complex providing modern amenities therein and if the same is demolished there would be great national waste. It was, therefore, urged that such Complexes and built up areas should be deleted from the acquisition. It may be pointed out that in the master plan the land indicated in green colour is reserved for recreational facilities. The recreational facilities are also part of the planned development of Delhi and it cannot be disputed that recreational amenities are also part of the life of the people and an important feature of a developed society. Therefore, no legitimate objection can be made in the acquisition of such land which are shown in green colour. So far as the structures and constructions made on the land are concerned there is no material to show that they were made before the issuance of notification under Section 4 of the Act. It is also not clear whether such constructions were raised with or without necessary sanction/approval of the competent authority. No grievance therefore can legitimately be raised in that behalf as the same would be regarded as unauthorised and made at the risk of the land owners. Here a reference of a decision of this Court in the case of State of U.P. Vs. Pista Devi - AIR 1986 SC 2025 may be made with advantage, para 7 of which reads as under:

> "It was next contended that in the large extent of land acquired which was about 412 acres there were some buildings here and there and so the acquisition of these parts of the land on which buildings were situated was unjustified since these portions were not either waste to or arable lands which could be dealt with under S. 17(1) of the Act. This contention has not been considered by the High Court.
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> We do not, however, find any substance in it. The Government was not acquiring any property which was substantially covered by buildings. It acquired about 412 acres of land on the outskirts of Meerut city which was described as arable land by the Collector. It may be true that here and there were a few superstructures. In a case of this nature where a large extent of land is being acquired for planned development of the urban area it would not be proper to leave the small portions over which some

> superstructures have been constructed out of the development scheme. In such a situation where there is real urgency it would be difficult to apply S. 5-A of the Act in the case of few bits of land on which some structures are standing and to exempt the rest of the property from its application."
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> In the present case also a large extent of land measuring thousands of acres has been acquired and, therefore, it would not be proper to leave out some small portions here and there over which some structures are said to be constructed out of the planned development of Delhi. We may, however, add here that during the course of the arguments Shri Goswami learned counsel appearing for the respondents-State made a statement that the Government will consider each of the structures and take a decision in that respect. We, therefore, leave this issue to the discretion of the respondent.

20. After overall consideration of the issues involved in these transfer cases and the appeals we find no ground to take a different view than the one taken by the High Court in the impugned judgment. Consequently, the acquisition proceedings could not be quashed on any grounds. We also find ourselves in respectful agreement with the view taken by this Court in the case of Ram Chand (supra). Consequently. the appeals fail and are hereby dismissed. The transfer cases are allowed in terms of the order made in the case of Ram Chand (supra) directing that the tranfer petitioners and the appellants shall be paid an additional amount of compensation to be calculated at the rate of 12 per cent per annum, after the expiry of two years from the date of decision of Aflatoon's case i.e. August 23, 1974 till the date of making of the awards by the Collector, to be calculated with reference to the market value of the land in question on the date of notification under Section 4(1) of the Act. In the facts and circumstances of the case we make no order as to costs.