Supreme Court of India
Rajasthan Housing Board And Ors. ... vs Kishan And Ors. Etc. Etc on 27 January, 1993
Equivalent citations: 1993 SCR (1) 269, 1993 SCC (2) 84
Author: B Jeevan Reddy
Bench: Jeevan Reddy, B.P. (J)

PETITIONER:
RAJASTHAN HOUSING BOARD AND ORS. ETC. ETC.

Vs.

RESPONDENT:
KISHAN AND ORS. ETC. ETC.

DATE OF JUDGMENT27/01/1993

BENCH:
JEEVAN REDDY, B.P. (J)
BENCH:
JEEVAN REDDY, B.P. (J)
KULDIP SINGH (J)

CITATION:
1993 SCR (1) 269 1993 SCC (2) 84
JT 1993 (1) 298 1993 SCALE (1)183

ACT:
Rajasthan Land Acquisition Act, 1953:
Sections 5(A), 6, 17(1), 17(4)-Acquisition of land-Notification dispensing with the enquiry-Validity of notification-Large extent of land acquired-Existence of superstructures here and there-Whether prevents the Government from exercising its power to acquire the land.
Land Acquisition Act, 1894:
Section 48-De-acquisition of land-Communication of tentative decision-Effect of-Possession of land taken-Whether open to the Govt. to withdraw from the acquisition.

HEADNOTE:
Notification under Section 4(1) of the Rajasthan Land Acquisition Act 1953 was published in the Gazette for the acquisition of certain lands for the benefit of the Rajasthan Housing Board. Another notification was issued under S. 17(4) dispensing with the provisions of S. 5(A) of the Act. A declaration under S.6 of the Act was also issues in respect of that area. The validity of the aforesaid notifications was challenged before the High Court by way of writ petitions. The challenge made was mainly on the grounds that since the land acquired was not waste or arable

land inasmuch as there were houses, huts, cattle sheds etc. on the land, the inquiry contemplated under S. 5(A) could not have been dispensed with; that there was no real urgency for dispensing with the Inquiry and that the houses and other structures on the land should not have been acquired. The Writ Petitions were dismissed by a Single Judge and Special Appeals were preferred to Division Bench. Since the two Judges In the Division Bench deferred in their opinions, the matter was referred to Third Judge. The Third Judge recorded his opinion on the questions, viz., whether it was necessary or obligatory for the Government to mention in the notification issued under S. 17(4) that the land proposed to be acquired was waste or arable and whether the non-mention thereof, vitiated the said notifica
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tions; and if a small fraction of an arable land proposed to be acquired was occupied by buildings like buts kham houses and pucca houses for residential purposes and for keeping fodder, cattle farms, cattle sheds and for similar other purposes, was it still permissible to treat the entire land as arable land and Issue notification under s. 17(4) read with Section 17(1) of the Rajasthan Land Acquisition Act 1953, and the legal consequences thereof. Then the matter went back to the Division Bench which observed that the opinion of the Third Judge was not categorical on the last question. Therefore, the last question was referred to a Full Bench. By a majority view the Full Bench held that inasmuch as there were pucca and kutcha houses, cattle-sheds etc. on a fraction of a land proposed to be acquired and since the notification was not severable the entire notification under s. 17(4) failed. Accordingly, the Full Bench quashed the declaration under s. 6 of the Act. Against this the respondent Board preferred the present appeal. Contending that the matter stood concluded by the decision of this Court in State of U.P. v. Smt. Pista Devi , [1986] 4 SCC 251.

The Writ Petition flied before this Court claimed that since the Petitioner Society also fulfilled the same public purpose served by the housing Board viz. housing, the Urban Development Minister had recommended that the land allotted to the petitioner. Society be denotified and de-acquired and to regularise the scheme of the Society, and that the Chief Minister has accepted the same. The Society thus contended that the proceedings were final and its lands could not be acquired.

Allowing the appeals by the Housing Board and dismissing the Writ Petition flied by the Housing Society, this Court,

HELD : 1. 'Mere was material before the government in this case upon which it could have and did form the requisite opinion that it was a case calling for exercise of power under Section 17(4) of the Rajasthan land Ceiling Act, 1953. The material placed before the Court disclosed that the government found, on due verification, that there was an

acute scarcity of land and there was heavy pressure for construction of houses for weaker sections and middle income group people, that the Housing Board had obtained a loan of Rs.16 crores under a time-bound programme to construct and utilise the said amount by 31.3.1983; that in the circumstances the Government was satisfied that unless possession was taken immediately, and the Housing Board permitted to proceed with

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the construction, the Board will not be able to adhere to the time-bound programme.There were also certain other materials upon which the government had formed the said satisfaction viz, that In view of the time-bound programme stipulated by the lendor, HUDCO, the Board and already appointed a large number of engineers and other subordinate staff for carrying out the said work and that holding an inquiry under Section 5-A would have resulted in uncalled for delay endangering the entire scheme and time-schedule of the Housing Board. The satisfaction under Section 17(4) of the Act Is a subjective one and that so long as there is material upon which the government could have formed the said satisfaction fairly, the court would not interfere nor would it examine the material as an appellate authority. This is the principle affirmed by decision of this Court not only under Section 17(4) but also generally with respect to subjective satisfaction. [279E-H, 280A-B]

State of UP. v. Smt. Pista Devi, [1986] 4 S.C.C. 251, relied on.

Sarju Prasad Saha v. The State of Uttar Pradesh, A.I.R. 1965 S.C. 1763 and Dora Phalauli v. State of Punjab and Ors., 4 [1979] 4 S.C.C. 485, distinguished.

2.1. The petitioner-cooperative society which claims to have purchased about 525 bighas of land from the khatedars represented to the Government to de-notify the land purchased by them. On the basis of the said representation, the then Minister in-charge of Urban Development took a decision to release the lands but he was over-ruled by the then Chief Minister. This issue lay dormant till 1990 till the general elections were announced. It is at this stage the petitioner-society made a representation to the Minister for Urban Development to de-notify the lands purchased by them. The Minister for Urban Development recommended de-notification which was approved by the Chief Minister. [281A-D]

2.2. 'Mere was no final decision at any time to de-notify the said lands. A tentative decision was no doubt taken in February, 1990 but before it could be implemented the government thought it necessary to ascertain the view of the Housing Board and to find out as to what the Board had done upon the land, what structures it had raised and what amount it had spent so that the Board could be compensated while delivering the possession back to the Housing society. Before this could be done there was a change In the

Government and the said tentative decision
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was reversed. In this view of the matter, it is not necessary to go into the question whether there was a communication of the 'decision' of the government to the petitioner. The communication must be of a final decision and not of a provisional or tentative decision. [285A-C]
2.3. In any event the government could not have withdrawn from the acquisition under Section 48 of the Act inasmuch as the Government had taken possession of the land. Once the possession of the land is taken it is not open to the government to withdraw from the acquisition. Admittedly possession was taken over by the Housing Board. (285D]
2.4. The notification under S.4 need not necessarily recite that the land proposed to be acquired is waste or arable. The non-recital does not vitiate the notification. [279C]
2.5. Where a large extent of land is acquired, the existence of a few superstructures here and there does not prevent the Govt. from exercising the power under S.17(4). [277B]

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No.1418 of 1986. From the Judgment and Order dated 6.1.86 of the Rajasthan High Court in D.B. Special Appeal No. 301 of 1982.

WITH C.A. Nos. 1419/86, 1420/86, 1846-47/86, 1848-49/86, 1850- 51/86, 185153/86, 1854-55/86, 2722-2738/92 & W.P. (C) No. 290/89, C.A. No. 185657/86 & C.P. No. 123 of 1991. Soli J.Sorabjee, S.P. Singh, Surya Kant and B.D. Sharma for the Appellants in C.A. No. 1418/86 etc.etc. and Respondent in W.P. No. 290/89.

D.D. Thakur, M.L. Lahoty, Ms. Shipra Khazanchi, K.C. Gehani and Prem Sunder Jha for the Petitioners in W.P. No. 290/89. F.S. Nariman, S.P. Singh, Surya Kant and Aruneshwar Gupta for the State of Rajasthan.

P.N. Misra, Sushil Kumar Jain and Ms. Pratibha Jain for the Respondents.

The Judgment of the Court was delivered by B.P. JEEVAN REDDY, J. These appeals are preferred against the judgment of the Full Bench of the Rajasthan High Court allowing a batch of 16 special appeals. The special appeals were preferred against the judgment of a learned Single Judge dismissing a batch of 24 writ petitions. The result of the judgment of the Full Bench is that the notification issued by the Government of Rajasthan under Section 4(1) of the Rajasthan Land Acquisition Act, 1953 proposing to acquire a large extent of land stands quashed. The notification under Section 4(1) of the Rajasthan Act, published in the Rajasthan Gazette dated 13.1.1982, proposed to acquire a total extent of 2,.517 bighas (approximately equal to 1,580 crores) for the benefit of the Rajasthan Housing Board. On 9.2.1982, another notification was issued under Section 17(4) of the said Act dispensing with the provisions of Section 5(A). On the same day, a declaration

under Section 6 was also issued in respect of the said area. According to the Government, the possession of the land was also taken on 22nd and 24th of May, 1982. The validity of the said notifications was questioned in the batch of writ petitions (being S.B. Civil Writ Petition No. 707 of 1982 etc.) on three grounds viz., (i) that the land acquired was not a waste or arable land inasmuch as there were pucca and kutchha houses, huts and cattle sheds etc. On the said land. If so, the power under sub-section (1) and sub-sec- tion (4) of Section 17 could not have been invoked to dispense with the enquiry under Section 5(A); (ii) that there was no real urgency warranting the invocation of urgency clause. An inquiry under Section 5(A) ought to have been held, which is a valuable right given to the land- owners whose land is acquired under the Act; and (iii) that at any rate the houses and other structures on the land acquired should not have been acquired.

The learned Judge rejected all the three contentions and dismissed the writ petitions. Special appeals were preferred against the same which were heard by a Division Bench in the first instance. The two learned Judges, N.M. Kasliwal and K.S. Siddhu, JJ. differed in their opinions. Accordingly, the matter was referred to a third Judge by an order dated 12.12.1983. Three questions were framed for the consideration of third Judge viz., (1) whether it was necessary for the Government to mention in the notification that the land is waste or arable and whether the non-men-

tion of the said fact vitiates the notification; (2) whether it was obligatory upon the Government to mention in the notification issued under Section 17(4) that the land proposed to be acquired is waste or arable and whether the non-mention thereof vitiates the said notification; and (3) "if a small fraction of an arable land proposed to be acquired is occupied by buildings like huts, kham houses and pucca houses for residential purposes and for keeping fodder, cattle farms, cattle sheds and for similar other purposes, is it still permissible to treat the entire land as arable land and issue notification under Section 17(4) read with Section 17(1) of the Rajasthan Land Acquisition Act, 1953? If not, what are the legal consequences which such buildings aforementioned entail in the context of the said notification?' The third Judge recorded his opinion on the said questions but when the matter went back to the Division Bench, it was of the opinion that while the opinion of the learned third Judge on questions 1 and 2 was categorical, affirming the view of the learned Single Judge, his opinion on question No.3 was not clear or categorical. Accordingly, the said question No.3 was referred to a Full Bench. The Full Bench comprising N.M. Kasliwal, M.B. Sharma and Farooq Hasan, JJ. heard the parties and held by a majority (Sharma and Farooq Hasan, JJ.) that inasmuch as there were pucca and kutchha houses, cattle sheds etc. on a fraction of a land proposed to be acquired and also because the notification is not severable, the entire notification under Section 17(4) is liable to fail. Accordingly, the declaration under Section 6 was also quashed. The minority view was expressed by Kasliwal J. He was of the opinion that merely because on a small portion of the land proposed to be acquired there were pucca and kutchha houses, the invocation of power under Section 17(4) read with Section 17(1) of the Act was not bad. The opinion of the majority Judges is questioned in these appeals before us.

Sri Soli Sorabji, learned counsel for the appellant (State of Rajasthan) submitted that the question considered by the Fun Bench of the High Court is since concluded by a decision of this court in State of U.P. v. Smt. Pista Devi, [1986] 4 S.C.C. 251 and, therefore, the appeals must be allowed straightaway. On the other hand, S/Sri D.D. Thakur and S.K. Jain, learned counsel for the

respondent-writ petitioners submitted on the basis of the decision in Sarju Prasad Saha v. The State of Uttar Pardesh, A.I.R. 1965 S.C. 1763 that once it is found that a portion of a land proposed to be acquired is not waste or arable, the entire notification should fail inasmuch as the notification is not severable. They also submitted that the decision in Dom Phalauli v. State of Punjab and Ors., [1979] 4 S.C.C. 485 supports their contention that the notification under Section 17(4) read with Section 17(1) should itself expressly recite that the land in respect of which the said power is being invoked is a waste or arable land and that non-recital of the said fact vitiates the notification. The learned counsel also sought to argue that there was no such urgency as to call for dispensing with the inquiry under Section 5(A). They submitted that when a large chunk of land comprising four villages was being acquired it was but fair and just that an inquiry under Section 5(A) was held The construction of houses by Housing Board, it was submitted, was not so urgent as to brook no delay and, therefore, the invocation of urgency was not called for.

So far as the main question which was considered by the Fun Bench is concerned,it is necessary to refer to the factual finding in the first instance. Although the writ petitioners contended that there were pucca houses, kham houses and huts used for residential purposes and also cattle sheds, cattle-ponds and other structures, no clear material was placed before the court. With the result that the Full Bench proceeded on the basis that these structures were stituated only upon a fraction of a land sought to be acquired. We may quote the following observation from the judgment of Sharma, J. (majority opinion):

> "From the pleadings of the parties, it can also no longer be disputed that in the case of some of the appellants on fraction of this land kuchcha houses, kham houses and even some pucca constructions are situated which are being used by the appellants for tethering their cattle, storage of fodder and grain and also for residential purposes. It cannot be said as to out of the large area of 2570.15 bighas on what portion such constructions have been made, but in case of the appellants in each case they could be only on a fraction of the entire land sought to be acquired.

(emphasis added) The question is, whether in such a situation the majority Judges of the Full Bench were right in holding that the notification under Section 17(4) should fail.

In State of U.P. v. Smt. Pista Devi, a bench comprising E.S. Venkataramiah and Khalid, JJ. considered an identical question. That case arose from Uttar Pradesh where by way of a State amendment sub-section 1(A) was introduced in Section 17. Paragraph 7 of the judgment brings out the ratio of the judgment besides quoting the said State Amendment. It reads:

> "It was next contended that in the large extent of land Acquired which has about 412 acres there were some buildings here and there and so the acquisition of those parts of the land on which buildings were situated was unjustified since those portions were not either waste or arable lands which could be dealt with under Section 17(1) of the Act. This contention has not been considered by the High Court. 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 in

> 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 super-structures. 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 super-structures have been constructed out of the development scheme. In such a situation where there is real urgency it would be difficult to apply Section 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. Whether the land in question is waste or arable land has to be judged by looking at the general nature and condition of the land. It is not necessary in this case to consider any further legality or the propriety of the application of Section 17(1) of the Act to such portions of land proposed to be acquired, on which super-structures were standing because of the special provision which is inserted as sub- section (1-A) of Section 17 of the Act by the Land Acquisition (U.P. Amendment Act) (22 of 1954) which reads thus:
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> (1-A) The power to take possession under sub- section (1) may also be exercised in the case of land other than waste or arable land, where the land is acquired for or in connection with sanitary improvements of any kind or planned development."

We are of the opinion that the principle enunciated in the said paragraph is the correct one and that the said principle is not really based upon sub-section (1-A) of Section 17 introduced by U.P. State Amendment. Having expressed a definite opinion that existence of a few super- structures here and there, where a large extent of land is being acquired, does not prevent the government from exercising the power under Section 17(4), the learned Judge evolved the following test: "whether the land in question is waste or arable has to be judged by looking at the general nature and condition of the land.' Having so held, the learned Judges referred to the U.P. State Amendment by way of an additional supporting ground. We are of the opinion that even apart from the said State amendment, the principle enunciated in the said decision is the correct one and is fully applicable here. Mr. Sorabji is, therefore, right in contending that the said decision concludes the said issue in these appeals.

The learned counsel for the respondents, however, submitted on the basis of the decision in Sarju Prasad Saha v. The State of U.P. & Ors., A.I.R. 1965 S.C. 1763 that in such a situation the notification being not severable, the entire notification should fail. We cannot agree. That was a converse case in the sense that a major part of the land proposed to be acquired was covered by buildings and constructions whereas only smaller part was waste or arable. It is in such a case that the court opined that the notification cannot be held to be partially good and partially bad. Accordingly, it was held, dispensing with enquiry under Section 5(A) by invoking the urgency clause in Section 17(4) was bad. Paragraph (9) relied upon by the learned counsel may now be set out. It reads:

> "One other point raised at the Bar may be briefly referred to. It was contended by Mr. S.P. Sinha appearing on behalf of the Municipal Board, Basti, that a part of the land notified for acquisition was waste or arable and in support of his contention, counsel referred us to certain revenue record. But if only a part of the land is waste or arable

> and the rest is not, a notification under S. 17(4) dispensing with compliance with the requirements of S. 5-A would be invalid. It would not be open to the Court to regard the notification as partially good and partially bad, for if the State had no power to dispense with the inquiry in respect of any part of the land notified under S.4(1), an inquiry must be held under S.5-A giving an opportunity to persons interested in the land notified to raise their objections to the proposed acquisition and in that inquiry the persons interested cannot be restricted to raising objections in respect of land other than waste or arable land."

We don not think that in a case where only a fraction of a large extent of land sought to be acquired is not waste or arable, the observations made in the said judgment are applicable.

The counsel for the respondents then relied upon Dora Phalauli v. State of Punjab & Ors., [1979] 4 S.C.C. 485 in support of their contention that the notification under Section 17(4) should necessarily recite that the land concerned is waste or arable land and that absence of such recital renders the. notification invalid. The observations relied upon in the judgment of N.L. Untwalia and A.P. Sen, JJ. read thus:

> "It is to be clearly understood that under sub-section (4), the appropriate Government may direct that the provisions of Section 5-A shall not apply where in the opinion of the State Government, the provisions of sub- section (1) or sub-section (2) are applicable, otherwise not. For making the provisions of sub-section (1) applicable, two things must be satisfied, firstly that the land in respect of which the urgency provision is being applied is waste or arable and secondly, that there is an urgency to proceed in the matter of taking immediate possession and so the right of the owner of the land for filing an objection under Section 5-A should not be made available to him. In the portion of the notification which we have extracted above, it is neither mentioned that the land is waste or arable nor has it been stated that in the opinion of the Government, there was any urgency to take recourse to the provisions of Section 17 of the Act. A direction to the Collector has been given to take action under Section 17 on the ground of urgency but this is not a legal and complete fulfillment of the requirement of the law. It is to be remembered that the right of a person having any interest in the property to file an objection under Section 5- A of the Act should not be interfered with in such a casual or cavalier manner as has been done in this case."

The learned Judges observed that the notification neither mentions that the land is waste or arable nor does it mention that in the opinion of the government there was urgency to take recourse to the provision of Section 17. The decision is not really based upon the ground that the notification fails to recite that the land is waste or arable. The paragraph read as a whole shows that the learned Judges were impressed more by the fact that the notification does not state that the government is of the opinion that it was a case where the inquiry under Section 5-A ought to be dispensed with under Section 17(4). It is in that context that they also pointed out that the notification does not recite that the land is waste or arable. Section 17(4) does not require that notification itself should recite the

fact that the land concerned is waste or arable. In such a situation there is no basis for the respondent's contention that the notification should itself recite the said fact nor does the said decision support their contention.

Sri Thakur further argued that the construction of houses by Housing Board is not of such urgency as to call for the invocation of the said power. We are not satisfied. Firstly, on this question the decision of the Rajasthan High Court is against the writ petitioners. The learned Single Judge negatived it as well as Division Bench following the opinion of the third Judge. Secondly, we are satisfied that there was material before the government in this case upon which it could have and did form the requisite opinion that it was a case calling for exercise of power under Section 17(4). The learned Single Judge has referred to the material upon which the government had formed the said opinion. The material placed before the Court disclosed that the government found, on due verification, that there was an acute scarcity of land and there was heavy pressure for construction of houses for weaker sections and middle income group people; that the Housing Board had obtained a loan of Rs. 16 crores under a time-bound programme to construct and utilise the said amount by 31.3.1983; that in the circumstances the Government was satisfied that unless possession was taken immediately, and the Housing Board permitted to proceed with the construction, the Board will not be able to adhere to the time-bound programme. In addition to the said fact, the Division Bench referred to certain other material also upon which the government had formed the said satisfaction viz., that in view of the time- bound programme stipulated by the lender, HUDCO, the Board had already appointed a large number of engineers and other subordinate staff for carrying out the said work and that holding an inquiry under Section 5-A would have resulted in uncalled for delay endangering the entire scheme and time-schedule of the Housing Board. It must be remembered that the satisfaction under Section 17(4) is a subjective one and that so long as there is material upon which the government could have formed the said satisfaction fairly, the court would not interfere nor would it examine the material as an appellate authority. This is the principle affirmed by decisions of this court not only under Section 17(4) but also generally with respect to subjective satisfaction. For the above reasons, the appeals are allowed and the judgment of the Full Bench of the Rajasthan High Court impugned herein as set aside. Having regard to the facts and circumstances of the case, we direct the parties to bear their own costs.

WITH PETITION (C) NO. 290 OF 1989 This writ petition is preferred by the New Pink Grih Nirman Sahkari Sangh questioning the very same notification which were questioned in the writ petitions filed in Rajasthan High Court and which have given rise to the aforementioned Civil Appeals. It was admitted because of the pendency of the above appeals and was directed to be heard alongwith them. In the writ petition, several reliefs are asked for viz., quashing of the notification under Section 4(1), quashing of the notification under Section 17(1), quashing of the notification under section 17(4) as well as the declaration under Section 6. It is prayed that the acquisition proceedings must be declared to have been withdrawn by virtue of the order of the Hon'ble Housing Minister of Rajasthan dated 20th July, 1984. Before us, however, Sri D.D. Thakur, learned counsel for the petitioner urged only one contention viz., that by virtue of the decision of the Minister in-charge of Urban Development, Government of Rajasthan and the Chief Minister dated 8.2.1990 the Rajasthan Government must be held to have withdrawn from the said acquisition proceedings within the meaning of Section 48 of the Land Acquisition Act, 1894 in so far as the lands purchased by the

petitioner-society are concerned. For a proper appreciation of this contention, it is necessary to notice the relevant facts and circumstances in their sequence.

The notification under section 4(1) was published on 12.1.1982. On 9.2.1982, the notification under section 17(4) and the declaration under section 6 were issued. According to the government, possession was also taken of the entire extent of land on 22nd and 24th of May, 1982.

The petitioner-cooperative society which claims to have purchased about 525 bighas of land from the khatedars represented to the Government to de-notify the land purchased by them. On the basis of the said representation, the then Minister in-charge of Urban Development took a decision on 20.7.1984 to release the lands but he was over- ruled by the then Chief Minister Sri Harideo Joshi on 29.4.1985. The decision of the Chief Minister has also been placed before us. This issue lay dormant till 1990. On 27.1.1990, general elections were announced. Polling was to take place on 27.2.1990. It is at this stage that a sudden urgency appears to have developed in this matter again. The petitioner-society made a representation on 6.2.1990 to the Minister for Urban Development to de-notify the lands purchased by them. The Minister for Urban Development recommended de-notification which was approved by the Chief Minister Sri Harideo Joshi on 8.2.1990. It was signed by the Minister concerned on 13.2.1990.

The recommendation put up by the Urban Development Minister for the consideration of the Chief Minister stated the following facts: The petitioner-society had entered into agreements of sale in 1974-75 and 1975-76 for purchasing a substantial extent of land for developing the Indira Bihar Residential Scheme and had also allotted plots to its three thousand members during the years 1976 to 1981. The society had deposited Rs. 50,000 as sub-division charges according to rules in the year 1981 with the Urban Improvement Trust and had initiated proceedings for technical approval of the scheme in the same year. The society had also deposited a sum of Rs. 9 lakhs towards conversion of the land (from agricultural to urban land) in the office of the Additional Collector, Land Conversion in March, 1982 under the Land Conversion Rules, 1981. The Housing Board had actually started the proceedings for acquisition and the acquisition notifications were issued in January, 1982 i.e., after the society had taken the above steps. The petitioner-society had obtained a stay order against the acquisition proceed- ings and that as in 1990, the stay granted by the Supreme Court was in force. On 18.1.1990, the State Government had taken a policy decision to regularise and de-acquire the lands under acquisition covered by schemes of the Housing Cooperative Societies on payment of prescribed amount. The said policy may be applied to the petitioner-society. As far as the question of exemption from urban land ceiling is concerned, all the plot holders of this society, like other societies, will hand over their plots to the Jaipur Land Authority and it shall be deemed to be the government land but will be re-allotted to the same plot holders after charging the fixed price and development charges on prescribed terms. This procedure is being followed by Jaipur Development Authority in other matters as well. In this way, the problem of exemption from the urban land ceiling would also be solved. The final recommendation was: 'looking to the aforesaid facts it is desirable to direct to de-acquire that land of the scheme under the provisions of section 48 of the Land Acquisition Act, 1894 and regularise the scheme because this society is fulfilling the same public purpose of housing by starting proceedings for which the Housing Board wants to acquire this land later on for this purpose."

The above recommendation was accepted by the Chief Minister on 8.2.1990 as stated hereinbefore. It appears that the matter again came before the Hon'ble Chief Minister on 23.2.1990 when he approved a note, the latter half of which reads as follows: "Therefore, it will be in the interest of broad public interest that this land of the society be regularised according to the decision of Cabinet after releasing it from acquisition, as is the opinion of Honourable Minister Incharge Local Self Govt, and Housing Minister. As far as the question of Scheduled Caste/Tribes land is concerned, in this respect the Government has already taken a decision much before, according to which the proceedings are to be taken." Evidently, in pursuance of the aforesaid decision, the Deputy Secretary, Urban Development and Housing Department, Government of Rajasthan, Jaipur addressed the following letter to the secretary, Rajasthan Housing Board, Jaipur:

"RAJASTHAN GOVERNMENT URBAN DEVELOPMENT AND HOUSING DEPARTMENT No. F. 5(3) UDH/92 DATED 24.4.90.

Secretary, Rajasthan Housing Board, Jaipur.

Sub:- In the matter of De-acquisition of land of Indira Bihar Scheme Sahkari Samiti situated in village Devri, Sukhalpura, Jhalana Chaur, and Goliyabas.

Sir, In respect of the above subject it has been directed by the State Govt. that a decision to release the aforesaid land of the Society from acquisition has been taken. It has been brought to the notice of the State Government that some improvement has been done by you on the land covered by this scheme. Therefore, kindly intimate as to what development works have been performed by you on the land covered by the aforesaid scheme of the society and how much expenditure has been incurred by the Housing Board in it. Please send the full particulars to the State Govt. immediately also inform as to at what stage the matter is going in the courts without delay. Now so far as possible do not make any development works further on this land. Intimate as to whether possession of the land has been taken or not. Before restoring the possession to the society the amount of development charges will have to be returned back, therefore, send the valuation within three days. Conversion charges will be payable according to the rules. The copies of the orders of the court may also be sent.

Yours faithfully, sd/ Dy. Secretary.' A copy of the said letter was also marked to the petitioner society as would be evident from the endorsement at the foot of the said letter which reads:

"No. F. 5(3) UDB/90 Dated: 29.2.90 Copy to the secretary, New Pink City Grah Nirman Sahkari Samiti Ltd., Bapu Bazar, Jaipur for information. He may kindly intimate as to within what period of time the amount of Development charges and cost of land etc. will be deposited.

sd/ Dy. Secretary to the Govt.

28.2.90"

The learned counsel for the writ petitioners stops here and says that the above proceedings constitute a definite and final decision to de-notify and de-acquire the lands and that nothing more was required to be done to constitute withdrawal from acquisition within the meaning of section

48. Sri F.S. Nariman, the learned counsel appearing for the government of Rajasthan, however, filed an additional affidavit setting out the developments subsequent to the aforesaid letter dated 24.2.1990 which may now be noticed. The additional affidavit is sworn to by the Secretary, Rajasthan Housing Board, Sri M.K.Khanna. It is stated that in response to the aforesaid letter dated 24.2.1990, the Rajasthan Housing Board represented to the Government that the land should not be de-notified whereupon the Secretary, urban Development and Housing ordered the stopping of the issuance of notification for de-acquisition of the land of the petitioner society on 25.5.1990. (Meanwhile, a new Government represented by a different political party had come into power). The order of the secretary dated 25.5.1990 is filed as Ann. X-1 to the additional affidavit. It is further submitted that at no time any notification was issued withdrawing from the acquisition. It is further stated that on 13.12.1990 the then Chief Minister referred the entire matter pertaining to de-acquisition of petitioner's land to the Beri Commission for report. The said commission was constituted to look into illegalities and irregularities committed by the functionaries and officials of the previous government. The Beri Commission reported that the decision to de-acquire the lands of the petitioner-society was in contravention of the earlier decision of the Cabinet, contrary to law and against public interest. The commission stated that the said decision was the result of the influence brought upon the concerned Minister by the petitioner- society and is not a fair decision. The Chief Minister also acted under the influence and pressure of the petitioner-society and, therefore, his decision too is not a proper one. Accepting the said report, the government intimated the Rajasthan Housing Board that there is no question of de-acquiring the said land. The letter dated 24.4.1990 was also formally withdrawn on 31.10.1991. It is also stated in the said additional affidavit that the Khatedars from whom the society claimed to have purchased the said land under agreements of sale, have by separate letters intimated the Secretary, Rajasthan Housing Board and the Land Acquisition Collector as far back as 5th April, 1982 that they had no objection to the acquisition of their lands. They asked for compensation @ Rs. 40,000/ per bigha.

From the above material it is clear that there was no final decision at any time to de-notify the said lands. A tentative decision was no doubt taken in February, 1990 but before it could be implemented the government thought it necessary to ascertain the views of the Housing Board and to find out as to what the Board had done upon the land, what structures it had raised and what amount it had spent so that the Board could be compensated while delivering the possession back to the Housing society. Before this could be done there was a change in the government and the said tentative decision was reversed. In this view of the matter, it is not necessary for us to go into the question whether there was a communication of the 'decision' of the government to the petitioner. The communication must be of a final decision and not of a provisional or tentative decision.

We are of the further opinion that in any event the government could not have withdrawn from the acquisition under section 48 of the Act inasmuch as the Government had taken possession of the land. Once the possession of the land is taken it is not open to the government to withdraw from the acquisition. The very letter dated 24.2.1990 relied upon by the counsel for the petitioner recites that

'before restoring the possession to the society the amount of development charges will have to be returned back..... This shows clearly that possession was taken over by the Housing Board. Indeed the very tenor of the letter is, asking the Housing Board as to what development work they had carried out on the land and how much expenditure they had incurred thereon, which could not have been done unless the Board was in possession of the land. The Housing Board was asked to send the full particulars of the expenditure and not to carry on any further development works on that land. Reading the letter as a whole, it cannot but be said that the possession of the land was taken by the government and was also delivered to the Housing Board. Since the possession of the land was taken, there could be no question of withdrawing from the acquisition under section 48 of the Land Acquisition Act, 1894.

For the above reasons, the writ petition fails and is dismissed with costs.

G.N. Appeals allowed.
Petition dismissed.