(2020) 02 CHH CK 0002

Chhattisgarh High Court

Case No: Writ Petition No. 381 Of 2005

Kiran Devi Agrawal And Ors		APPELLANT
	Vs	
State Of Chhattisgarh Through The Secretary And Ors		RESPONDENT

Date of Decision: Feb. 4, 2020

Acts Referred:

- Constitution Of India, 1950 - Article 226
- Land Acquisition Act 1894 - Section 4, 4(1), 5, 6, 8, 9(1), 9(2), 11, 16, 17, 17(1), 17(4), 36, 48, 48(1)
- General Clauses Act, 1897 - Section 21
- Urban Land (Ceiling And Regulation) Act, 1976 - Section 10(3)
- Land Acquisition Act, 1870 - Section 54

Hon'ble Judges: Goutam Bhaduri, J

Bench: Single Bench

Advocate: Ashish Shrivastava, Animesh Verma, Alok Bakshi, Sanjay Patel

Final Decision: Dismissed

Judgement

1. The issue involved in this case is about the denotification made under Section 48 of the Land Acquisition Act 1894 (hereinafter referred to as the

Act, 1894) and thereafter the review made by impugned order dated 27.01.2005 which is under challenge. The legality and propriety of such review

order calling back orders and denotification order u/s 48 of the Act of 1894 are subject matters of adjudication.

2. The facts, as pleaded, are that on 12.06.1989 a proposal was sent by the Executive Engineer of the M.P. Housing Board, Raipur (as it was the then

erstwhile Madhya Pradesh) for acquisition of land ad- measuring 35.034 hectares situated at village Sondongri. The subject land in this case is Khasra

No.613/128 & 613/163 ad- measuring 1.190 hectares & 0.118 hectares respectively. In respect of part and parcel of such land subject of acquisition,

on 11.1.1990, the original owner Hitendra Kothari executed a sale of land bearing Kh. No.613/163 in favour of petitioner No.4 Smt. Meena Dholakia.

Likewise on 02.02.1990, a registered sale deed was executed by Smt. Daksha Kothari in favour of petitioner No.3 Smt. Kalpana Dholakia of Kh. No.

613/128. Subsequent to such purchase made, the Housing Board proposed to acquire the land and on 25.04.1990, the Commissioner Raipur Division

granted permission to invoke section 17(1) of the Land Acquisition Act, 1894 for acquisition of huge part of land including the aforesaid Khasra

numbers. Consequent thereto, a notification on 25.05.1990 u/s 4(1) of the Act, 1894 and the declaration u/s 6 read with notification 17(1) of the Act

1894 was published. The said notifications were published in the daily newspaper Amrit Sandesh on 08.06.1990 and 09.06.1990 respectively.

Thereafter, the publication of advertisement was made under section 9 (1) & (2) of the Act, 1894 and the objections were invited. The petitioners

submitted their objections on 27.8.1990, however, eventually the award was passed on 05.08.1991 (Annexure P-4).

3. The petitioners contend that though the award was passed on 05.08.1991 but the actual physical possessions of the lands were not taken from

them. It is stated that the petitioners had raised the superstructure over the land and when the Housing Board on 13.05.1999 tried to demolish the

boundary wall made over the land, it led to filing of FIR on 30.05.1999 and the possession was eventually not surrendered. Subsequently, an

application was filed u/s 48 of the Land Acquisition Act by Petitioners 3 & 4. Thereafter, nothing transpired on the application and in the meanwhile

on 01.11.2000, the State of Chhattisgarh came into being. Subsequently on 27.12.2000 vide Annexure P-8, a report was submitted by the Tahsildar in

a revenue case. It is pleaded that the Tahsildar affirmed the fact that the physical possession of the land is held by the Petitioners 3 & 4. It is on this

back ground, again a fresh application under section 48 of the Land Acquisition Act was filed by the petitioners on 05.03.2001. Since no decision was

rendered on repeated application filed u/s 48 of the Act, it led to filing of W.P.No.1089 of 2001 before High Court and the High Court thereafter vide

order dated 09.4.2003 (Annexure P-12) directed the State of Chhattisgarh to decide the application filed u/s 48 of the Act. which was pending

consideration.

4. Thereafter, the spot inspection was made and the report was submitted by the SDO wherein it was stated that the Petitioners 3 & 4 are in

possession of the land in dispute. Consequent thereto, on 08.07.2004, an order was passed by the Collector vide Annexure P-15 whereby the lands

bearing Kh.No.613/128 & 613/163 at village Sondongri were directed to be released from the Land Acquisition Proceedings and the matter was

referred to Land Acquisition Officer for denotifying the land which is Annexure-15. Thereafter, the State Government on 12.07.2004 vide Annexure

P-16 in the name of Governor issued the de- notification of the land in exercise of the power u/s 48 of the Act, 1894 and on 13.07.2004 (Annexure P-

17), the de-notification was notified by the State Government and was published in the State gazette. Subsequent thereto, â€œNo-Objectionâ€ was

given by the Collector Raipur and mutation of names of Petitioners 3 & 4 were made in the revenue record. Thereafter, on 19.07.2004, the sale deeds

were executed by Petitioners 3 & 4 in favour of petitioners 1 & 2 namely Smt. Kiran Devi Agrawal and Smt. Mitali Agrawal and after purchase, the

names of purchasers were also mutated in the revenue records.

5. On 12.01.2005 vide Annexure P-20, a review application was filed by the C.G. Housing Board after six months of the order dated 08.07.2004

passed by the Collector and on 27.01.2005 by Annexure P-25 the impugned order was passed by the Collector and the review of the Housing Board

was allowed whereby the de- notification was annulled which is subject of challenge in this petition.

6. Mr. Ashish Shrivastava, learned counsel for the petitioners would submit that the State Government has exercised its power u/s 48 of the Land

Acquisition Act for the reason that physical possession of the land was never handed over to the Housing Board. He would further submit that the

super-structure was existing over the land and in order to avoid the compensation to the extent of the value of the land with superstructure, on wrong

facts, the Housing Board tried to take over the possession of land, which was objected. It is further contended that the application u/s 48 of the Land

Acquisition Act, 1894 was allowed especially considering the fact that the possession of the land was not handed over to the Housing Board. He went

through the order of de-notification and would submit that the notification subsequent to the order of the Collector was made on 12.07.2004 by the

State Government in the name of Governor and the denotification having been made on 13.07.2004 and published in the gazette, in order to acquire the

land, again the entire process of Land acquisition Act should have been followed. Learned counsel would submit that the order of denotification

passed u/s 48 of the Act records the fact that the Panchnama was prepared about the physical possession of the land wherein it was found that the

petitioners are in possession of the land and the land was not physically taken over. It is further submitted that after lapse of period of six months, the

review order has been passed by the Collector on the application of Housing Board which is completely erroneous. It is contended that the date of

knowledge of the order having been known to the Housing Board, the review application could not have been allowed after lapse of 9 months.

7. Referring to a case law reported in (2009) 2 SCC 480 , counsel would submit that once the denotification is made and publication is made, the land

comes out of acquisition as the denotification was also necessary. Therefore, the denotification having been done, the land cannot be taken back

without resorting to the Land Acquisition Act. It is stated that even at the time of review, no new documents were placed on record to show that on

earlier occasion, the collector has failed to take into account any document of the like nature which was ignored. It is stated that only a symbolic

possession was taken by the Housing Board whereas the physical possession remained with the petitioners. Referring to the FIR he would submit that

when the Housing Board tried to demolish the superstructure, it led to filing of the FIR and the said incident itself would show that the petitioners were

in actual possession of the land. He referred to case laws reported in (2009) 15 SCC 705; (1976) 1 SCC 700 & (2012) 11 SCC 370 and would submit

that the object of sections 4 & 6 of the Act of 1894 is otherwise than in the manner the same was exercised in this case. It is stated that once the

State Government has withdrawn from acquisition under Section 48 of the Act of 1894 and notified, the Land Acquisition Officer cannot review the

same.

8. Shri Sanjay Patel, learned counsel appearing for the Housing Board would submit that on 25.04.1992 vide Annexure R-4, the compensations for the

lands were deposited pursuant to the award dated 05.08.1991 (Annexure P-4). It is further contended that on 18.05.1992, the petitioners moved an

application to enhance the compensation and in the application it was categorically stated that they need a plot and enhancement of compensation

meaning thereby the petitioners had accepted the award. Referring to Annexure R-1, it is submitted that the possession of land was handed over to

the Board. Consequently, as per section 16 of the Land Acquisition Act, the compensation having been paid and the possession having been taken, the

land vested with the State. With reference to the taking over the possession of the land of like nature, the reliance is made on AIR 2010 S.C. Weekly

707 and would submit that the land being agricultural land, by preparation of Panchnama, the possession was taken.

9. It is further stated that after lapse of 7 years, an application was filed u/s 48 of the Act in the year 1999 whereas the award was passed in the year

1991. He has stated that once the proceedings having been culminated by taking-over the possession, the land would vest u/s 16, consequently the

subsequent proceedings which took place before the Collector/the land acquisition Officer would be bad in law as the power to exercise u/s 48 of the

Land Acquisition Act was not existing. Reliance is placed in (2010) 8 SCC 467 and it is submitted that the vesting of land was made when the

Panchnama of the land was prepared. Therefore, since the collector had passed a wrong order of denotification and was without jurisdiction, has

corrected the same by review order. The reliance is placed on a recent decision of the Supreme Court in Vinay Housing House Building Cooperative

Society v. State of Karanataka of Civil Appeal No.3600/2011 and would submit that once the vesting u/s 16 is complete, the same cannot be reopened

by virtue of section 48 of the Act.

10. Learned Additional Advocate General Shri Alok Bakshi would submit that the petitioners in this case have not challenged the land acquisition.

Only the objection was about the possession of the land was not taken. It is stated that as per the documents on record, it shows that the possession of

the land was taken over by the Housing Board. Consequently reliance was placed in 1994 MPLJ 303 and stated that once the acquisition is made, no

authority has right to go back. He submitted that the wrong having been corrected, the same is within the power to review, therefore, the petition is

devoid of merits and is liable to be dismissed.

11. I have heard learned counsel for the parties at length and have also perused the records.

12. The entire controversy revolves around the exercise of power under section 48 of the Land Acquisition Act, 1894 and subsequent review. In this

case, initially the power under section 48 was exercised by the Collector on 08.07.2004 (Annexure P-15) whereby the land acquired by the Housing

Board was denotified. The said order of the de-notification was subsequently reviewed on the application of the Housing Board by order dt. 27th

January, 2005 (Annexure P-25) and the order dated 08.07.2004 was set aside and the land was renotified. It was held that in earlier round of litigation

while the order of denotification was passed, only possession on paper was obtained by the Housing Board after acquisition. In the subsequent order it

was held that the power under Section 48 was wrongly exercised by the Collector, thereby the denotification order was set aside. Section 48 of the

LA Act, 1894 which is relevant for this case and the nucleus of the matter is reproduced hereunder :

48. Completion of acquisition not compulsory, but compensation to be awarded when not completed.-- (1) 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.

(2) Whenever the Government withdraws from any such acquisition, the Collector shall determine the amount of compensation due for the damage

suffered by the owner in consequence of the notice or of any proceedings thereunder, and shall pay such amount to the person interested, together

with all costs reasonably incurred by him in the prosecution of the proceedings under this Act relating to the said land.

(3) The provisions of Part III of this Act shall apply, so far as may be, to the determination of the compensation payable under this section.

13. The Supreme Court in a recent judgment rendered in Vinayak House Building Cooperative Society Ltd. Vs. State of Karnataka in Civil Appeal

No.3600 of 2011 decided on 26th August 2019 had examined the relevancy to discuss the introduction of section 48 in the Act of 1894. It was

observed at Para 21 that section 48 of the Land Acquisition Act corresponds to Section 54 of the Old Act of 1870. For the sake of ready reference,

section 54 of the old Act is reproduced below :

â€œ54. Except in the case provided for in S.44, nothing in this Act shall be taken to compel the Government to complete the acquisition of any land

unless an award shall have been made or a reference directed under the provisions hereinbefore contained.

But whenever the Govt. declines to complete any acquisition, the Collector shall determine the amount of compensation due for the damage (if any),

done to such land under Section 4 or Section 8 and not already paid for under Section 5, and shall pay such amount to the person injuredâ€■.

14. Further the relevant Para 23 of the aforesaid judgment is reproduced herein below :

â€œ23. The select committee in its second report dated 23rd March, 1893 had given certain clarifications, which are as under :

â€œWe have altered the terms of the first clause of S.48, which gives certain powers to Govt. to withdraw from a contemplated acquisition of land so

as to make it clear that this withdrawal may be made at any time before possession is taken but not afterwards. Instances were quoted in our

Preliminary Report in which the Collector was proved by the Judge's award to have been seriously misled as to the value of the land and in which the

Govt., would not have acquired the land had it received a correct appraisement. We think, that a Govt. which provides compensation from the taxes of

the Empire should have larger powers of withdrawal than are given by the present Act, but we are of opinion that no such power should be given after

possession has once been taken and that each local Govt., must protect itself by executive instructions to Collectors to refrain from taking possession

until after the award of the Judge, in every case in which there is a material difference between the Collector and the owner as to the value of the

propertyâ€■.

(emphasis supplied)

15. It was held that the change was effected in the year 1894 by enacting Section 48 of the Land Acquisition Act as under the previous Act, the

Government could not withdraw from the acquisition after the award is made or a reference is directed. Since it turned out to be more valuable than

the acquisition was worth, as such, to remove the difficulty, section 48 was introduced wherein primarily it was observed that when possession of the

land u/s 16 of the Land Acquisition Act is not taken, the Government can withdraw from the acquisition and the person interested would be entitled to

compensation for the damage suffered in consequence of the acquisition proceedings and also to such costs of proceeding as reasonably incurred by

him. It was further held that Section 48, however, will have no application when once the land has vested in the government under Section 16 of the

L.A. Act.

16. While examining the denotification process under the Act of 1894, the Supreme Court in M/s. Vinayak House Building Cooperative Society Ltd.

Vs. State of Karnataka (Supra) at paras 38 & 48 held thus :

38. We are of the considered view that the government should refrain from de-notifying or dropping any land being acquired for the formation of a

layout, under Section 48 of the L.A. Act or under any other law. The courts should also be very strict while considering the plea of the landowners

seeking de- notification of the lands which are being acquired or quashing of the notification on the ground of lapsing of the scheme or on any other

grounds in respect of the acquired lands for the formation of the layout. It has to be kept in mind that private interest always stands subordinated to the

public good.

â€œ48. We have also noticed that the State Government has been denotifying the lands under section 48(1) of the Act for the past 10-15 years and

allegations have been made that these orders have been passed with ulterior motives. We are of the view that the state Governmetn has to reconsider

all these orders and take corrective steps in case it is found that such orders have been passed in violation of the law. Perpetuation of illegality has to

be ceased, desisted and deterred at any costâ€■.

17. Under this background and the principles enunciated, the validity of the two orders (i) denotification order dated 08.7.2004 i.e., and (ii) review

order dated 27.1.2015 is evaluated. I have examined the order of denotification dated 08.07.2004 wherein it was held that only paper possession was

obtained by the Housing Board. The question also arises whether this Court can go back to such fact and examine the issue of possession whether

was handed over or not or whether would confine to examine that Land Acquisition Officer was not vested with jurisdiction to review the order

passed u/s 48 of the Act 1894 for denotification. In my considered view, the issue in this case is interlinked. Therefore, the legality of the order passed

u/s 48 is necessary to be examined. It cannot be confined only to the review of the denotification order passed.

18. The Supreme Court in Bangalore Development Authority v. M/s. Vijaya Leasing Ltd., AIR 2013 S.C. 241 7while laying down the power under

Article 226 of the Constitution held thus:

14. To appreciate the legal position we only wish to refer to two of the decisions of this Court reported in Dwarakanath v. Income Tax Officer 1965

(2) SCJ 298 : (AIR 1966 SC 81) and Gujarat Steel Tubes Ltd & ors v. Gujarat Steel Tubes Mazdoor Sabha & ors., 1980 (2) SCC 593 : (AIR 1980 SC

1896). In Dwarakanath case, the Supreme Court stated as under:

â€œThis Article is couched incomprehensive phraseology and it ex facie confers a wide power on the High Courts to reach injustice wherever it is

found. The Constitution designedly used a wide language in describing the nature of the power, the purpose for which and the person or authority

against whom it can be exercised. It can issue writs in the nature of prerogative writs as understood in England; but the scope of those writs also is

widened by the use of the expression 'nature', for the said expression does not equate the writs that can be only draws an analogy from them. That

apart, High Courts can also issue directions, orders or writs other than the prerogative writs. It enables the High Courts to mould the reliefs to meet

the peculiar and complicated requirements of this country. Any attempt to equate the scope of the power of the High Court under Article 226 of

Constitution with that of the English Courts to issue prerogative writs is to introduce the unnecessary procedural restrictions grown over the years in a

comparatively small country like England with a unitary form of Government to a vast country like India functioning under a federal structure. Such a

construction defeats the purpose of the Article itself.â€■ (Emphasis added)

15. Similarly in Gujarat Steel Tubes Case (supra), the relevant principles can be culled out from paragraphs 73 and 81.

â€œ73. While the remedy under Article 226 is extraordinary and is of Anglo-Saxon vintage, it is not a carbon copy of English processes. Article 226 is

a sparing surgery but the lancet operates where injustice suppurates. While traditional restraints like availability of alternative remedy hold back the

court, and judicial power should not ordinarily rush in where the other two branches fear to tread, judicial daring is not daunted where glaring injustice

demands even affirmative action. The wide words of Article 226 are designed for service of the lowly numbers in their grievances if the subject

belongs to the court's province and the remedy is appropriate to the judicial process. There is a native hue about Article 226, without being anglophilic

or anglophobic in attitude. Viewed from this jurisprudential perspective, we have to be cautious both in not overstepping as if Article 226 were as large

as an appeal and not failing to intervene where a grave error has crept in. Moreover, we sit here in appeal over the High Court's judgment. And an

appellate power interferes not when the order appealed is not right but only when it is clearly wrong. The difference is real, though fine.

81..... Broadly stated, the principles of law is that the jurisdiction of the High Court under Article 226 of the Constitution is limited to holding

the judicial or quasi-judicial tribunals or administrative bodies exercising the quasi-judicial powers within the leading strings of legality and to see that

they do not exceed their statutory jurisdiction and correctly administer the law laid down by the statute under which they act. So long as the hierarchy

of officers and appellate authorities created by the statute function within their ambit the manner in which they do so can be no ground for

interference â€■

19. A perusal of the above text shows that the vast and wide powers are conferred under Article 226 of the Constitution for reddressal of grievances

if the subject belongs to the court's province and the remedy is appropriate to the judicial process. It further enables the High Court to also issue

directions, orders or writs other than the prerogative writ and examine the facts. It also enables the High Courts to mould the reliefs to meet the

peculiar and complicated requirements of this country. Therefore, keeping in mind the aforesaid principle, the order dated 08.07.2004 (Annexure P-15)

of denotification too is examined.

20. The events would show that the land acquisition order was passed on 05.08.1991 (Annexure P-4). The document Annexure P-5 is an application

filed u/s 11 of the Land Acquisition Act by the land owner after the award dated 18.05.1992. In such application, the prayer was made to enhance the

compensation and plot also demanded. The subsequent document Annexure P-7 comes as FIR was lodged by Ram Bhagat Agrawal, Power of

Attorney Holder, on behalf of Meena Dholakia and Kalpana Dholakia is dated 13.05.1999. Therefore, there is nothing on record to show that what

transpired till the period of 7 years and it is for the first time the petitioner came out with an FIR that the Housing Board is trying to take-over the

possession and was trying to cause damage to the property. This fact cannot be ignored that it was after 7 years and no objection was made till such

long time as against this immediately after the award was made petitioners asked to enhance the amount of compensation and demanded plot. Those

conduct on behalf of petitioners would be relevant and is outcome of natural consequences. Whereas the Document Annexure R-1 is a Panchnama,

which purports that the possession of entire land of 80.29 acres which includes the land of petitioners was handed over to the Housing Board, which is

signed by the Tahsildar, Revenue Inspector and Patwari and also the officers of the Housing Board. The said application is dated 24.11.1992. The

document (Annexure R-2) would show that compensation of Rs.89,95,650/- was deposited by the Housing Board in 1992.

21. The application by the petitioners under section 48 was filed in the year 1999 (Annexure P-9) and repeated application was filed in the year 2001

and thereafter by order of this Court passed in W.P. No. 1089/2001 on 09.04.2003 whereby the proceedings u/s 48 of the Land Acquisition Act was

directed to be decided on its own merits. The proceeding u/s 48 of the Act commenced in the year 2003. The order sheet also contains the fact that

during the pendency, the physical inspection was made and according to the order of the SDO, it was reported that actual possession has not been

obtained. Therefore, the question which falls for consideration that whether the actual possession of the land was obtained or not along-with the fact

whether the Panchnama (Annexure R-1) which purports that possession of the entire land was handed over to the Housing Board was wrong ?

22. Earlier in a similar situation with respect to decide the possession, the Supreme Court in Sita Ram Bhandar Society, New Delhi v. Lt. Governor,

Govt. of NCT, Delhi AIR 2010 S.C. Weekly 707 reiterated the fact that once the possession is taken by the Collector, then the relief cannot be

granted u/s 48 of the Act as the liberty to withdraw only lies from acquisition of land of which the possession has not been taken. After discussion, the

Court held that taking symbolic and notional possession is not envisaged under the Act but the manner in which possession is taken must of necessarily

depend upon the facts of each case. Following the said case law, the Court observed in Tamilnadu Housing Board Versus Viswam (D) by LRs AIR

1996 S.C. 3377 that while taking possession of large area of land, a pragmatic and realistic approach has to be taken. The Court further observed that

while taking possession of a large area of land with large number of owners, it would be impossible for the Collector or the Revenue Official to enter

each bigha or biswas and to take possession thereof and that a pragmatic approach has to be adopted by the Court. The Court further held that it is

also clear that one of the methods of taking possession and handing it over to the beneficiary department is recording of a Panchnama, which can in

itself constitute evidence of the fact that possession had been taken and the land had vested absolutely in the Government.

23. In the instant case, the petitioners contended that the possession of the land remained with them and the statement of Kotwar and finding of

Tahsildar (Annexure P-8) have been relied on. The Statements of Kotwar Horidas and Sarpanch Lakan Lal Sahu have also been referred to. The

said statements were recorded in the year 1999 whereas the Panchnama taking over the possession is of the year 1992. According to the order of

Tahsildar (Annexure P- 8), the dispute started when the FIR was lodged on 30.05.1999. Though the petitioners claim as per the application u/s 11 of

the Act (Annexure P-5) that the house was existing but except such oral submission on the paper, no additional documents i.e., either the map of

house or any other evidence including the photographs of superstructure have not been placed on record to show that the houses were existing in

reality. This conduct of petitioners cannot be ignored that after the award was made, the application filed was confined to enhance the compensation

together with a request for plot. In the application (Annexure P-5) it was written that the house was already existing but except such statement,

nothing was proved on record like diversion of land, map of house, electricity connection etc., were not placed. Therefore, the bald statement alone in

absence of supporting proof that house was really existing cannot be allowed to sustain and it cannot be presumed so.

24. The order of the de-notification records the finding that according to the report of the SDO few small rooms exist on the spot. However, no roof

exists. The said averments also appear to be after thought. The existence of house without any roof shows that the statements were cooked up and

fabricated. It is only the oral statements of the Sarpanch and Kotwar were relied upon, but the primary fact that the acquisition order was made in

1991 and the denotification effort on basis of possession started after 7 years on the ground that the construction was existing in the year 1991 makes

the conduct of the petitioners doubtful. As against this, the Panchnama which was of the year 1992 shows the possession was given to the Housing

Board. Nothing on record in this case has been placed on record to show that during the acquisition proceeding, the same grounds were taken by the

petitioners that on the land the super structure exists. Therefore, only on the basis of oral submission, the petitioners tried to establish the fact that the

possession of land was not acquired since the superstructure was existing over the same.

25. Therefore, by mere oral statement, the petitioner cannot succeed as against the Panchnama/possession to establish the fact that the possession of

land was not taken. The petitioners further contended that once the gazette denotification (Annexure P-7) was made by the State in the name of

Governor, therefore, the same cannot be turned down. As against this, as has been held, that Panchnama (Annexure R-1) which shows that the

possession of land was handed over to the Housing Board would supersede the oral evidence led by the petitioner. Then under these circumstances, if

the possession was not with the petitioners then invoking section 48 of the Act itself would be a nullity. The denotification (Annexure P-17) is based

on the order of the Collector dated 08.07.2004. Therefore, if the order of Collector dated 08.07.2004 itself was illegal, any subsequent notification on

the basis of the same would also be illegal as the illegality cannot be perpetuated.

26. Reliance was placed by the petitioners in Rajinder Singh Bhatti Vs. State of Haryana) (2009) 11 SCC 48 0which purports that the denotification

u/s 48 of the Act also requires to be published in official gazette, the said legal proposition is not in conflict. Like wise in Ramdhari Jindal Memorial

Trust Vs. Union of India (2012) 11 SCC 370 it has been laid down that for the residential scheme, section 17 (1) & (4) of the Land Acquisition Act

cannot be set into motion as it takes considerable time. This proposition also is not in conflict. Further reliance placed in Devenra Singh Vs. State of

U.P (2011) 9 SCC 551 is also not the subject issue of the case in hand.

27. The aforesaid dicta are on different issue. Instead while analyzing section 48, the Supreme Court in Sulochana Chandrakant Galande Versus Pune

Municipal Transport (2010) 8 SCC 467 has interpreted the word 'vesting' with reference sections 16 & 17 of the Act 1894. The Court at Paras 12, 13,

15 & 16 held thus:

â€œ12. The provisions of section 10(3) of the 1976 Act are analogous to Section 16 of the Land Acquisition Act, 1894 (hereinafter called â€œthe

1894 Act:). Acquisition proceedings cannot be withdrawn/abandoned in exercise of the powers under Section 48 of the 1894 Act or Section 21 of the

General Clauses Act, 1897 once the possession of the land has been taken. [Vide State of M.P. v. Vishnu Prasad Sharma AIR 1966 SC 1593; Lt.

Governor of H.P. v. Avinash Sharma (1970) 2 SCC 149 : AIR 1970 SC 1576 ;Pratap v. State of Rajasthan (1996) 3 SCC 1; Mandir Shree Sita Ramji

v. Collector (L.A) (2005) 6 SCC 745 : AIR 2005 SC 358;1 Bangalore Development Authority v. R. Hanumaiah (2005) 12 SCC 508; and Hari Ram v.

State of Haryana (2010) 3 SCC 621.

13. The meaning of the word â€œvestingâ€ has been considered by this Court time and again. In fruit & Vegetable Merchants Union v. Delhi

Improvement Trust (AIR 1957 SC 344 this Court held that the meaning of the word â€œvestingâ€ varies as per the context of the statute in which the

property vests. While considering the case under Sections 16 & 17 of the 1894 Act, the Court held as under :

â€œ19.... the property acquired becomes the property of Government without any conditions or limitations either as to title or possession. The

legislature has made it clear that the vesting of the property is not for any limited purpose or limited duration.â€■

(emphasis added)

14. â€œEncumbranceâ€ actually means the burden caused by an act or omission of man and not that created by nature. It means a burden or charge

upon property or a claim or lien on the land. It means a legal liability on property. Thus, it constitutes a burden on the title which diminishes the value of

the land. It may be a mortgage or a deed of trust or a lien of an easement. An encumbrance, thus, must be a charge on the property. It must run with

the property. (Vide Collector of Bombay v. Nusserwanji Rattanji Mistri AIR 1955 SC 29;8 H.P. SEB v. Shiv K. Sharma (2005) 2 SCC 164 : AIR

2005 SC 954 and AI Champdany Industries Ltd v. Official Liquidator (2009) 4 SCC 486.

15. In State of H.P. v. Tarsem Singh (2001) 8 SCC 104, this Court held that the terminology â€œfree from all encumbrancesâ€used in Section 16 of

the 1894 Act, is wholly unqualified and would encompass the extinguishing of â€œall rights, title and interests including easementary rightsâ€ when the

title vests in the State.

16. Thus, â€œfree from encumbrancesâ€ means vesting of land in the State without any charge or burden in it. Thus, the State has absolute

title/ownership over it.â€■

28. In the instant case, since it has been observed that the possession of land was given to the Housing Board in the year 1992 by preparation of

Panchnama vide Annexure R-1 and because of the fact it is a vast land, a pragmatic approach has to be adopted and conduct of parties would be

relevant. In view of the above position of law and considering the conduct of the petitioners as the objection by the petitioners was made in the year

1999 i.e., after 7 years and the ground was projected that the superstructure existed over the land and it was in possession of the petitioners cannot be

accepted, With the time as has elapsed and the entire oral evidence which led by the petitioners cannot supersede the fact that the possession was

taken by way of Panchnama, by the Housing Board which too was recorded and signed by the Government Officials. If the petitioners were agile of

their right, they cannot be expected to remain dormant for a long period 7 years when their lands were acquired way back in the year 1992.

Therefore, the collective evaluation of facts on record would show that the land vested in the State was free from all encumbrances and the petitioner

would become a persona non-grata once the land vested in the State and they will have only right to get compensation for the same. Consequently the

petitioners cannot claim any right of restoration of land on any ground whatsoever.

29. In the result, the order of the review passed by the Collector wherein he has held that he did not have jurisdiction to exercise power u/s 48 of the

Act 1894 as the land vested in the State cannot be faulted. Accordingly, the petition fails and is dismissed.