

**(2013) 03 MP CK 0058**

**Madhya Pradesh High Court**

**Case No:** Writ Petition No. 5045 of 1998

Pramod Singh

APPELLANT

Vs

Secretary, Department of  
Housing and Others

RESPONDENT

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**Date of Decision:** March 8, 2013

**Acts Referred:**

- Land Acquisition Act, 1894 - Section 16, 17, 48, 48(1), 6
- Madhya Pradesh Nagar Tatha Gram Nivesh Adhiniyam, 1973 - Section 18, 19, 20, 21, 22

**Citation:** (2013) ILR (MP) 1043 : (2013) 2 MPLJ 185

**Hon'ble Judges:** Rajendra Menon, J

**Bench:** Single Bench

**Advocate:** Anil Khare, with Ms. Namrata Kesharwani, for the Appellant; Samdarshi Tiwari, Government Advocate for Respondent Nos. 1 and 2 and R.N. Singh with Arpan Pawar for Respondent Nos. 5 to 9, for the Respondent

**Final Decision:** Dismissed

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### **Judgement**

@JUDGMENTTAG-ORDER

Rajendra Menon, J.

Even though in this writ petition challenge is made to four orders namely: Annexures P/3, P/4, P/5 and P/14, but during the course of hearing, learned counsel for the petitioner submitted that challenge to order-dated 13-2-1996 - Annexure P/4, in the matter of release of land under the Urban Land Ceiling Act; and, the order-dated 3-8-1998 - Annexure P/14, passed in the revision are not pressed and they are being withdrawn.

That being so, in this petition for the present, challenge is only made to order-dated 29-12-1995 - Annexure P/3, passed by respondent No. 1, whereby land measuring 1.22 Acres situated in Survey No. 1519/2 is released from acquisition in accordance

to the provisions of section 48 of the Land Acquisition Act, 1894 and challenge is also made to an order-dated 17-7-1996 - Annexure P/5, passed by respondent No. 2, whereby sanction for construction of a commercial complex has been granted u/s 30 of the M.P. Nagar Tatha Gram Nivesh Adhiniyam, 1973.

Brief facts, necessary for disposal of this writ petition, are that petitioner claims to be a resident of Bhopal and engaged in the business of establishing Hotels and managing them. It is stated that respondent No. 2 - the Director of Town and Country Planning, formulated a Zoning Plan for Bhopal, which was known as M.P. Nagar, Zone II, and the petitioner on the basis of the said plan purchased a plot bearing No. 256, which was allotted to him by the Bhopal Development Authority. He is said to have constructed a Hotel on the plot which is known as "Hotel Ganpati". It is said that this Hotel is constructed in Plot No. 256 and is in front of the main road. The petitioner is said to have purchased the plot and constructed the hotel on being satisfied with regard to necessary approach road and other infrastructural facilities being available. It is further stated that a Notification was issued on 7-1-1960 by the State Government -Annexure P/1 u/s 6 of the Land Acquisition Act, 1894 for the purpose of acquiring certain land for development of Bhopal. Even though various lands are notified for acquisition in the Notification, for the purpose of the present petition, the land bearing Survey No. 1519/1 area 34.72 acres and land bearing Survey No. 1519/2 area 8.50 acres, are only relevant. The said land belongs to respondent Nos. 5 to 11. The land was acquired and vide Annexure P/2, on 31-8-1967, possession of the land with regard to both these survey numbers, total area 43.22 acres, was taken over by the Government through the Land Acquisition Officer, Bhopal and it was transferred to the Bhopal Improvement Trust. However, while taking over possession of this land as per this possession certificate - Annexure P/2, certain area was left out, which is indicated in the certificate as a petrol pump, a store, cattle shed, residential building. This area i.e. 1.22 acres, is situated in Survey No. 1519/2. The dispute and controversy in this writ petition is with regard to this area measuring 1.22 acres, of which possession is not shown to be taken vide Annexure P/2. Be that as it may, after the possession and acquisition proceedings were held, it is said that exercising the powers available u/s 48(1) of the Land Acquisition Act, an order was passed by the State Government vide Annexure P/3, on 29-12-1994, whereby this land measuring 1.22 acres and consisting of a petrol pump situated in 0.2 acres; two sheds situated in 0.05 acres; a residential house situated in 0.06 acres; and, open land measuring 1.09 acres was denotified and released from acquisition. It was held that possession of this area has not been taken over and, therefore, the denotification was issued and there is withdrawal from acquisition of this area and one of the conditions imposed for denotification was that certain area, which is required for construction of a 62" wide road, shall not be released. It is stated that die respondents 5 to 11 have agreed for this.

2. After release of this area, it is said that respondents 5 to 11 prepared a scheme for construction of a commercial complex and submitted their plan/map, in accordance to the provisions of section 30 of the M.P. Nagar Tatha Gram Nivesh Adhiniyam, 1973, their map has been sanctioned vide Annexure P/5 dated 17-7-1996. It is averred by the petitioner that for constructing the commercial complex, respondents 5 to 11 started digging the road, as a result the 12 meter road, which was existing in front of the petitioner's hotel is being reduced to a 8 meter road and, therefore, this writ petition is filed challenging the denotification - Annexure P/3, the permission granted for construction -Annexure P/5 and a direction is sought to respondents 1 to 5 either to restore the width of the road to 12 meters or to make arrangement for appropriate approach to the petitioner.

3. Shri Anil Khare, learned Senior Advocate, ably assisted by Ms. Namrata Kesharwani, took me through the documents and other material available on record, invited my attention to a document filed during the pendency of the writ petition along with I.A. No. 1910-W/2003, and submitted that vide Annexure P/26, which is filed along with this application, possession of the petrol pump, store, cattle shed and residential area, which forms 1.22 acres of land denotified, was taken over on 1-9-1967 by the Land Acquisition Officer, Bhopal and as the possession of this area is taken over immediately after acquisition on 1-9-1967, the first and foremost argument is that the land of which possession has been taken cannot be denotified by exercising the powers conferred u/s 48(1) of the Land Acquisition Act.

4. Inviting my attention to the first possession certificate - Annexure P/2 dated 31-8-1967; the second possession certificate - Annexure P/26, as indicated hereinabove, issued on the next day i.e. 1-9-1967 and further referring to certain communications available on record, particularly, a letter dated 8-3-1982 -Annexure P/19 issued by the Chairman, Bhopal Vikas Pradhikaran and a document - Annexure P/20 - a reply, which was given in the floor of the Vidhan Sabha, learned Senior Advocate tried to emphasize that these documents go to show that possession of the land was taken over and once possession is taken over, it is argued that the denotification u/s 48 is not permissible. It was emphasized by Shri Anil Khare, learned Senior Advocate, and Ms. Namrata Kesharwani, that the documents - Annexures P/2 and P/26, do establish that possession was taken over and the contention of the respondents that possession is not taken over is refuted by them mainly by referring to the documents. It was submitted by them that there is no specific mode of taking over of possession laid down under the Land Acquisition Act and, therefore, if possession is taken over by making of a Panchnama, even without the presence of the land owners, the possession is deemed to have been taken over and once the possession is taken over, no further denotification u/s 48 of the Land Acquisition Act is permissible.

5. It is argued by learned counsel for the petitioner on the basis of certain judgments relied upon by them, that it is a settled principle that one of the accepted

mode of taking possession of an acquired land is by recording a memorandum or Panchnama by the Land Acquisition Officer in the presence of witnesses, it would be impossible always to take physical possession of the acquired land and, therefore, taking over of possession by Panchnama is the appropriate mode. Accordingly, contending that the documents and material available on record in this case does show that the possession has been taken over and placing reliance on the following four judgments, it was argued that once possession is taken over, as is apparent in the present case, the action for denotification u/s 48(1) is not permissible. The judgments relied upon by learned counsel for the petitioner are: [Thayyil Mammo and Another Vs. Kottiath Ramunni and Others](#), [State of Tamil Nadu and another Vs. Mahalakshmi Ammal and others](#), [Mandir Shree Sitaramji alias Shree Sitaram Bhandar Vs. Land Acquisition Collector and Others](#), and, [Banda Development Authority, Banda Vs. Moti Lal Agarwal and Others](#),

6. Thereafter, with regard to permitting the respondents to make construction of the commercial complex and granting them liberty to do so by sanction accorded u/s 30, it is argued that a Zoning Plan for the area in question has been issued, maps have been filed to show that in the Zoning Plan, the area is reserved for certain activities like green belt, widening of road etc. and as the sanction accorded for construction by the respondents is contrary to the Zoning Plan, the same is unsustainable. It is submitted that the sanction for construction of commercial complex to the respondents is contrary to the requirement of section 53, of the M.P. Nagar Tatha Gram Nivesh Adhiniyam, 1973, which prohibits and restricts land use and development once a scheme and Zoning Plan is approved and contending that contrary to the statutory provisions, the sanction is accorded, it is argued that issuance of sanction vide Annexure P/5 u/s 30 is unsustainable. In support thereof reliance is placed on the case reported in [Chairman, Indore Vikas Pradhikaran Vs. Pure Industrial Cock and Chem. Ltd. and Others](#),

7. Shri Samdarshi Tiwari, learned Government Advocate appearing for the State, has produced the entire original record pertaining to the acquisition process and taking over possession and by taking me through the award, it is argued by him that in paragraph 28 of the award, it is specifically mentioned that no compensation has been assessed or paid for the land in question i.e. with regard to the area where petrol pump, store, cattle shed, residential building is situated. It is submitted by learned counsel for the State Government that for this area measuring 1.22 acres no compensation is assessed. Learned counsel thereafter referred to certain reports of the Revenue Inspector and the Collector to submit that possession of this area measuring 1.22 acres is not taken over and as possession is not taken over the action taken u/s 48(1) is proper. As far as the possession certificate - Annexure P/26 dated 1-9-1967 is concerned, Shri Samdarshi Tiwari refers to the note-sheet available, prepared by Collector, Bhopal to say that the Collector has categorically stated that no such document of taking over possession is available on record and the finding recorded is that even on the date when the note-sheet is prepared, just

before according permission for denotification on 29-12-1994, it is found that the possession is with the land owners. Accordingly, Shri Samdarshi Tiwari submits that possession has not been taken over and, therefore, the action taken is proper.

8. As far as sanction of the map and the action taken for granting permission u/s 30 of the M.P. Nagar Tatha Gram Nivesh Adhiniyam, 1973 - Annexure P/5 is concerned, Shri Samdarshi Tiwari submits that no Zoning Plan as contended is sanctioned, petitioner has not filed any such Zoning Plan with regard to the area in question and merely by referring to a lay-out map filed as Annexure, it cannot be said that the indication shown in this lay-out map is the Zoning Plan. It is argued that the lay-out plan was only a proposal, it was not converted into any statutory scheme or Zoning Plan after following the requirement, statutory in nature, as contemplated under the M.P. Nagar Tatha Gram Nivesh Adhiniyam, 1973 and, therefore, in the absence of any statutory Zoning Plan, there is no illegality in according sanction u/s 30, of the Act of 1973.

9. Shri R.N. Singh, learned Senior Advocate appearing for respondent Nos. 5 to 9, apart from adopting the submissions already made by Shri Samdarshi Tiwari, took me through the documents available on record - Annexure P/14, Annexure P/2 and Annexure P/26, and vehemently argued that possession has not been taken over. Learned Senior Advocate invited my attention to the report submitted by the Collector dated 23-3-1990, filed along with I.A. No. 5999/2010. The report of the Revenue Inspector - Annexure B dated 19-7-1990 also filed along with I.A. No. 599/2010; the documents Annexure P/19 and P/20, relied upon by Shri Anil Khare, and tried to demonstrate before this Court that the contentions of taking over of possession is not correct, the document itself did not establish taking over of possession and as possession has not been taken over, in accordance to the requirement of law, and as no compensation is paid, learned Senior Advocate appearing for the respondents argues that the petitioner cannot have any grievance. That apart, with regard to taking over of possession, learned Senior Advocate submits that actual physical possession has to be taken over and even if for a moment it is assumed that Annexure P/26 is the document evidencing taking over of possession, but as actual physical possession is not taken and it is only a paper arrangement, the same cannot be accepted.

10. It is submitted by learned Senior Advocate for the respondents that the word "possession" as used in section 48 of the Land Acquisition Act has a very narrow meaning and concept, therefore, actual permanent and physical possession is required to be taken. In support thereof, learned counsel invites my attention to the judgment of the Punjab and Haryana High Court in the case of [Agya Ram Vs. State of Haryana and Others](#), Supreme Court judgment in the case of [Balwant Narayan Bhagde Vs. M.D. Bhagwat and Others](#), to say that the possession as referred to u/s 48(1) is actual physical possession and not symbolic possession. Further reliance in this regard is placed on a judgment of the Gujarat High Court in the case of [Trustees](#)

of Bai Smarth Jain Shvetambar Murtipujak Gyanoddhaya Trust and Others Vs. State of Gujarat and Another,

11. That apart, Shri R.N. Singh raised a preliminary objection with regard to the locus standi and right of the petitioner to file this writ petition. It was argued by learned Senior Advocate that petitioner is a stranger to the entire proceeding for acquisition and as he is a stranger to the acquisition proceedings, he does not have any right to file this writ petition. In support of the aforesaid contention, learned counsel invites my attention to the judgment rendered in the case of [Coats Viyella India Ltd. Vs. India Cement Ltd. and Another](#), and argues that when the land belonging to the respondents are acquired and when it is notified, a person like the petitioner, who is a stranger, has no right to challenge the action taken u/s 48(1).

12. As far as granting sanction u/s 30 of the M.P. Nagar Tatha Gram Nivesh Adhiniyam, 1973 is concerned, it is submitted by Shri R.N. Singh, learned Senior Advocate, that there is no statutory scheme or Zoning Plan either filed by the petitioner or shown to be existing and, therefore, in the absence of the same, no interference can be made. Apart from relying on the judgments as indicated hereinabove, learned Senior Advocate also placed reliance on the following judgments in support of his contentions: [Special Land Acquisition Officer, Bombay and Others Vs. Godrej and Boyce](#), and, [State of Uttar Pradesh and Others Vs. L.J. Johnson and Others](#),

13. Ms. Namrata Kesharwani refuted the contention with regard to locus standi of the petitioner to file the writ petition and submits that when the petitioner purchased the plot and constructed the Hotel, he was made to believe that the Zoning Plan available will be given effect to, but now when it is being violated, there is breach of the promise made to him, which amounts to promissory estoppel and, therefore, in the light of the law laid down by the Supreme Court in the case of [Mahindra and Mahindra Ltd. Vs. Union of India \(UOI\) and Another](#), , argued that the petitioner has a right to challenge the Act. As far as issuance of the document - Annexure P/26 with regard to possession is concerned, it is submitted by her that the contention of Shri Samdarshi Tiwari that no such document is available is wholly incorrect, because reference to these documents are made in Annexures P/19 and P/20. She refers to Annexure P/19, a communication made by the Chairman, Bhopal Vikas Pradhikaran on 3-3-1982, wherein reference is made to this document; and, certain queries and answers in the floor of the Vidhan Sabha - Annexure P/20, to refute the contentions of Shri Samdarshi Tiwari to the effect that possession is not taken over. Accordingly, learned counsel seeks for interference into the matter.

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

15. Section 48 of the Land Acquisition Act permits withdrawal from an acquisition already undertaken but the withdrawal is subject to the condition that possession of the acquired land has not been taken. In this regard, the words used in the statute

are "withdrawal from the acquisition of any land of which possession has not been taken".

16. In this case admittedly the State Government has passed the impugned order - Annexure P/3, on 29-12-1994, and by this order there is withdrawal from acquisition so far as land measuring 1.22 acres situated in Survey No. 1519/2 is concerned. The question, therefore, would be as to whether possession of this area has been taken over after acquisition. If possession is taken over, withdrawal is not permissible and, therefore, the moot question for consideration is as to whether possession of the area in question has been taken over or not?

17. After the land has been acquired, it is seen that possession was taken over, on 31-8-1967, possession certificate in this regard is Annexure P/2 and this possession certificate shows that on behalf of the Bhopal Improvement Trust one Shri K.N.S. Iyengar, Trust Engineer, was handed over possession and the Land Acquisition Officer Shri D.N. Singh took over the possession and then handed over the possession to the Bhopal Development Trust, the possession certificate - Annexure P/2 bears the signature of both Shri K.N.S. Iyengar and Shri D.N. Singh, it is attested by two witnesses and it speaks of taking over of possession of land bearing 43.22 acres situated in village Bhopal, Tehsil Huzur bearing Khasra No. 1519/1 and 1519/2. However, it is also indicated in this possession certificate that possession is taken except of petrol pump, store, cattle shed (situated just near road side) and residential building. It is, therefore, clear that when initially possession was taken over on 31-8-1967, possession of the area in question measuring 1.22 acres is not taken over and according to the petitioner, it is taken over vide Annexure P/26 on 1-9-1967. This possession certificate is not filed along with the writ petition. It does not form part of the petition nor is it part of the pleadings in the writ petition. The writ petition was filed on 15-10-1998 and in the averments made in the writ petition, there is no mention of this possession certificate dated 1-9-1967 nor is it stated that possession of this area was taken over by this possession certificate. Infact this document is brought on record vide I.A. No. 1912-W/2003, an application for taking document on record, which is filed on 6-11-2000 along with affidavit of the petitioner. Even though it is shown to be certified copy issued from the Collectorate, Bhopal there is no averment made in the writ petition as to how and in what manner this document came into possession of the petitioner and why it was not filed along with the petition. Be it as it may be, this possession certificate - Annexure P/26 is of the very next date after possession was taken over on 31-8-1967. It is executed on 1-9-1967 at 11.10 A.M. and it only says that on behalf of the Government of Madhya Pradesh Shri D.N. Singh, the Land Acquisition Officer, has taken possession of the land and he refers to the award which has been passed in Case No. 109/LA/59 to say that he is taking over possession for which the award has been passed. Surprisingly, this possession is not taken over in the presence of the witnesses who were present on the previous day when Annexure P/2 was issued nor is the possession handed over by Shri D.N. Singh to the Bhopal Improvement Trust

or its representative as was done on the previous day. Therefore, the question is as to whether possession was actually taken over as indicated in the certificate or this certificate is a manufactured document, which does not exist as canvassed by the respondents.

18. According to the return filed by the respondents namely - the State Government, the Bhopal Development Authority and the Director of Town and Country Planning, no such document is available and no such taking over of possession is recorded. Even in the original records produced by Shri Samdarshi Tiwari and in the award itself, it is indicated that the award is passed with regard to the land acquired, but it is not with regard to the petrol pump, store, cattle shed and the residential building. It is, therefore, clear that the award passed does not relate to this area of which possession is said to be taken over by this document -Annexure P/26. On the contrary, the overwhelming note-sheets and other documents available in the original file prepared in the office of the Collector, Bhopal goes to show that no such document of taking over of possession is available. The note-sheet consists of the report dated 1-6-1997, spot inspection and various other documents and it also refers to award passed to say that even in the award this area is not included. That apart, in the documents available on record - Annexures A and B, filed along with I.A. No. 5999/2010 by the respondents, it is seen that the Collector Bhopal was directed to conduct an inquiry and in his report submitted to the Secretary, Government of M.P., Revenue Department on 23-3-1990 and again on 19-7-1990, the report is that in the award passed, this area is not included, no compensation for this area is paid and the possession is not even taken over. It is specifically mentioned in this report that a spot inspection has been done of the area and it is found on such inspection that in this area a petrol pump is still in existence, it is functioning; a building is available where occupants are staying; a shed and a Godown and certain area are available, which are in the physical possession of the owners. Both these reports - Annexures A and B, submitted by the Collector clearly shows that possession is not taken over.

19. Petitioner tries to refute these findings in the original file and the documents - Annexures A and B, by relying on Annexures P/19 and P/20. Apart from the aforesaid, there is nothing in rebuttal produced by the petitioner. As far as Annexure P/19 is concerned, it is a communication made on 3-3-1982 by the Chairman, Bhopal Development Authority, Bhopal to the Additional Director, Chief Town Planner, Town and Country Planning Department, Bhopal and the subject of the communication is release of the land in question, reference is made to a letter dated 3-9-1981 and in paragraph 1 of the letter, the Chairman says that total 43.22 acres of land, which was acquired from Shri Sajjad Hussain by the State Government and was transferred to the Bhopal Vikas Pradhikaran through the Collector, Bhopal. Thereafter, he says as under:



....except the area covered by the petrol pump, store and cattle shed (situated just near road side) and residential building only, vide the possession certificate enclosed herewith.

Thereafter, he says that possession of the property situated above has been taken over by the Land Acquisition Officer on behalf of the State Government on 1-9-67, copy of certificate enclosed. Thereafter, he again goes to say in paragraph 3 that since Pradhikaran has not taken over possession of these structures, they have been excluded, he has no objection if denotification is done and the layout plan approved by the department.

A complete reading of this document goes to show that Chairman, Bhopal Vikas Pradhikaran refers to taking over of possession of total 43.22 acres of land and he specifically says that the area consisting of petrol pump, store, cattle shed, residential building etc. is not included in the possession certificate. Merely because he is referring to copy of a certificate enclosed as 1-9-1967, without the enclosure being there and without any other material to show that this certificate is the same certificate - Annexure P/26, I am not inclined to accept the contention of the petitioner. The communication - Annexure P/19 relied upon does not show that the possession of the present area was given to the Bhopal Vikas Pradhikaran. On the contrary, in paragraph 1 of the said communication, as quoted hereinabove, it specifically says that possession of this area was not taken and Bhopal Vikas Pradhikaran has no objection if layout plan for this area is sanctioned.

20. As far as Annexure P/20 - the question and answer submitted in the Vidhan Sabha is concerned, this is a typed document, it does not bear the signature of anybody, it is not known as to who has issued it, it is neither a certified nor signed as an authentic true copy or a certified copy, it is only a typed material in a plain paper without any particulars and this cannot be used for the purpose of holding that possession is taken over. If the overwhelming evidence and documents available on record, as indicated hereinabove, is taken note of, it would be clear that in the case in hand taking over of possession is not established. On the contrary it is a case where possession of the area is found to be still with the land owners and, therefore, as the possession of the area is not taken over, I see no reason to hold that the area cannot be denotified.

21. Once such a finding is recorded, it is not necessary now to go into the question of actual possession, physical possession or the manner of taking possession as canvassed by Shri Anil Khare, learned Senior Advocate, as on a close scrutiny of the documents as discussed hereinabove, this Court is satisfied that possession of the area in question, which has been denotified vide Annexure P/3 has not been taken over and, therefore, if for the area possession of which is not taken over is released from acquisition or the Government withdraws from the acquisition, no error is committed warranting interference. However, as parties made detailed submission during the course of hearing with regard to the fact that actual possession is not

taken over, I deem it appropriate to consider this question also as an alternate submission made by the parties.

22. The matter can also be considered in the light of the submissions made by the parties with regard to actual possession being taken over or the effect of only taking symbolic possession in a matter of withdrawal from acquisition u/s 48(1). Learned counsel for the petitioner says by relying upon various judgments as are indicated hereinabove that possession of the land can be taken over by any manner even by recording of a Panchnama by the Land Acquisition Officer and no specific procedure for this is laid down. That being so, if for a moment it is assumed that Annexure P/26 is the document by which possession is taken over, the question would be, in the facts and circumstances of the present case whether it can be said that actual physical possession in the case has been taken over.

23. Even though in the judgments relied upon by Shri Anil Khare, learned Senior Advocate, and Ms. Namrata Kesharwani, it is held that possession can be taken over and for the same no specific procedure or rule is laid down, but when it comes to considering the question of possession as is contemplated u/s 48 of the Land Acquisition Act, the High Court of Punjab and Haryana and the High Court of Gujarat have dealt with the matter.

24. The Punjab and Haryana High Court has dealt with the matter in the case of Agya Ram (supra) and has held that the word "possession" as is used in section 48 does not mean only symbolic taking over of possession, but it means actual taking over of possession. It is held that the word "possession" used in section 48 has a narrower concept and its meaning is "permanent actual physical possession" of the land. Mere deprivation of use of the land for a particular purpose by a landowner does not mean that he is dispossessed.

25. The Supreme Court has also considered the matter in the case of Balwana Narayan Bhagde (supra), and after taking note of the provisions of sections 16, 17 and 48 of the Land Acquisition Act, it was held that when the government proposes to take possession of the land acquired under the Land Acquisition Act, it must take actual possession of the land since an interest in the land is sought to be acquired by it. The Supreme Court says that there is no question of taking symbolic possession as understood by various judicial decisions under the Code of Civil Procedure, nor would possession merely on paper be enough. It is held by the Supreme Court in the aforesaid case that what the Land Acquisition Act contemplates as a necessary condition of vesting of land in the government is the taking of actual possession of the land and such possession would have to be taken as the nature of land admits of. The Supreme Court says that there cannot be any hard and fast rule with regard to the procedure to be followed after taking over possession, but actual physical possession should be taken and mere symbolic possession is not enough.

26. If the aforesaid judgments in the cases, as relied upon and referred to hereinabove, are applied in the facts and circumstances of the present case, it would be seen that in this case only a symbolic possession is seen to have been taken vide the Land Acquisition Officer vide Annexure P/26, because in spite of the same having been taken over on 1-9-1967, the overwhelming document and reports available on record, do show that the petrol pump is still functioning, the cattle shed and the store are occupied by the owners namely the respondents and possession of the area is still with the original owners. If that be so, it is a case where even if the document - Annexure P/26 is admitted, it only indicates taking over of symbolic possession, but as actual physical possession is not taken over as is evident from the documents available on record and the discussions made hereinabove, it is a case where this Court has to hold that for the purpose of section 48 in this case, possession has not been taken over and, therefore, the government can still withdraw from acquisition.

27. As for granting permission to make construction and sanction of the layout plan for constructing a commercial complex u/s 30 of the M.P. Nagar Tatha Gram Nivesh Adhiniyam, 1973 is concerned, records indicate that against the aforesaid, petitioner did not file any appeal, but a revision was filed u/s 32 and this revision has been dismissed vide Annexure P/9 with a slight modification that the sanction accorded is subject to the condition that a 8 meter wide road is left open.

28. Contention of the petitioner is that this sanction is contrary to the Zoning Plan and, therefore, it is illegal. However, no Zoning Plan or documents to show that an approved and duly notified Zoning Plan in accordance to law is available. Only some maps are filed, which are nothing, but a proposed layout maps/plans.

29. A Zoning Plan is prepared in accordance to the requirement of section 20 of the M.P. Nagar Tatha Gram Nivesh Adhiniyam, 1973. It is contemplated in this provision that the local authority may on its own motion and after publication of a development plan or thereafter if so required, prepare a Zoning Plan. The contents of the Zoning Plan has to be as contemplated u/s 21, thereafter it is held in section 22 that for the purpose of preparing, publication approval and bringing into operation a Zoning Plan, the provisions of sections 18 and 19 would apply. Sections 18 and 19 contemplate a detailed provision for preparation, sanction and publication of a development plan and these contemplates publication in the Gazette, inviting objections, sanction etc. The detailed procedure for publication of the draft approved, sanction and Gazette Notification is contemplated under sections 18 and 19. Nothing is brought to the notice of this Court to show that in the matter of preparation of the Zoning Plan, which is said to have been violated in sanctioning the commercial complex vide Annexure P/5. In the absence of any material or document available to show that a Zoning Plan as required under the statute has been published and in force, I am not inclined to interfere into the matter as statutory violation of a Zoning Plan is not made out. Even existence of a

Zoning Plan is not borne out from the material available on record.

30. Taking note of the totality of the circumstances and the material available on record, I see no reason to interfere into the matter.

31. Before parting, it may be indicated that Shri Umesh Trivedi, Advocate, appeared and submitted that he is appearing for certain interveners, who have filed an application for intervention being I.A. No. 9311/2009. This application is filed on 7-9-2009 i.e. after 11 years of filing of this writ petition. This application has not been allowed and there is nothing to show as to how and in what manner the interveners are aggrieved. However, the fact remains that the interveners are trying to challenging the Notification dated 29-12-1994. They have slept over the matter for more than 15 years and now their intervention at this stage cannot be permitted. Therefore, the interveners were not heard. Accordingly, finding no ground to interfere into the matter, the petition stands dismissed. No order as to costs.