

Court No.34.

A.F.R.
Reserved on 3.1.2020
Delivered on 10.2.2020

1. Case :- WRIT - C No. - 31586 of 2016

Petitioner :- Kamal Singh And 3 Ors.

Respondent :- State Of U.P. And Ors.

Counsel for Petitioner :- Sanjay Kumar Mishra

Counsel for Respondent :- C.S.C., Anuj Pratap Singh, Kuldeep Singh Chauhan, Neeraj Kumar Srivastava, Prabhaker Awasthi, Yogesh Kumar

2. Case :- WRIT - C No. - 52602 of 2011

Petitioner :- Kailash Chandra Sharma And Others

Respondent :- State of U.P. and Others

Counsel for Petitioner :- Madan G. Sharma, Prem Kumar Chaurasia, Uttar Kumar Goswami

Counsel for Respondent :- C.S.C.

3. Case :- WRIT - C No.- 59955 of 2012

Petitioner :- Gopal Das And Others

Respondent :- State Of U.P. Thru Special Secy. And Others

Counsel for Petitioner :- Madan G. Sharma, Prem Kumar Chaurasia, Uttar Kumar Goswami

Counsel for Respondent :- C.S.C., Kuldeep Singh Chauhan, Sudhanshu Srivastava

4. Case :- WRIT - C No. - 59958 of 2012

Petitioner :- Prem Pal And Others

Respondent :- State Of U.P. Thru Special Secy. And Others

Counsel for Petitioner :- Madan G. Sharma, Prem Kumar Chaurasia, Uttar Kumar Goswami

Counsel for Respondent :- C.S.C., Kuldeep Singh Chauhan

5. Case :- WRIT - C No. - 59962 of 2012

Petitioner :- Bhagwan Singh And Others

Respondent :- State Of U.P. Thru Special Secy. And Others

Counsel for Petitioner :- Madan G. Sharma, Prem Kumar Chaurasia

Counsel for Respondent :- C.S.C.

6. Case :- WRIT- C No.- 59964 of 2012

Petitioner :- Ram Babu Singh And Others

Respondent :- State Of U.P. Thru Special Secy. And Others

Counsel for Petitioner :- Madan G. Sharma, Prem Kumar Chaurasia, Uttar Kumar Goswami

Counsel for Respondent :- C.S.C., Adarsh Bhushan

7. Case :- WRIT - C No. - 47504 of 2017

Petitioner :- Ravi Shankar

Respondent :- State Of U.P. And 6 Others

Counsel for Petitioner :- Shiv Kant Mishra, Sanjay Kumar Mishra

Counsel for Respondent :- C.S.C., Anuj Pratap Singh, Prabhakar Awasthi, Saurabh Srivastava, Sudhanshu Srivastava

8. Case :- WRIT - C No. - 50821 of 2017

Petitioner :- Hari Om Singh

Respondent :- State Of U.P. And 6 Others

Counsel for Petitioner :- Sanjay Kumar Mishra

Counsel for Respondent :- C.S.C., A.S.G.I., Anuj Pratap Singh, Prabhakar Awasthy, Rajesh Tripathi

9. Case :- WRIT - C No. - 50824 of 2017

Petitioner :- Rahul Kumar And 3 Others

Respondent :- State Of U.P. And 6 Others

Counsel for Petitioner :- Sanjay Kumar Mishra

Counsel for Respondent :- C.S.C., A.S.G.I., Anuj Pratap Singh, Rajesh Tripathi, Sunil Kumar Mishra

10. Case :- WRIT - C No. - 51857 of 2017

Petitioner :- Ram Pratap Singh And Another

Respondent :- State Of U.P. And 6 Others

Counsel for Petitioner :- Sanjay Kumar Mishra

Counsel for Respondent :- C.S.C., A.S.G.I., Anuj Pratap Singh, Rajesh Tripathi, S.K. Misra, Sudhanshu Srivastava

11. Case :- WRIT - C No. - 57562 of 2017

Petitioner :- Dori Lal

Respondent :- State Of U.P. And 6 Others

Counsel for Petitioner :- Sanjay Kumar Mishra

Counsel for Respondent :- C.S.C., A.S.G.I., Anuj Pratap Singh, Prabhakar Awasthi, Sudeep Hakauli, Sudhanshu Srivastava

Hon'ble Sudhir Agarwal, J.

Hon'ble Saurabh Shyam Shamsbery, J.

(Delivered by Saurabh Shyam Shamsbery, J)

1. The facts which led to filing of the present bunch of writ petitions are as follows:

2. A notification under Section 4(1) read with Section 17 of Land Acquisition Act, 1894 (hereinafter referred to as 'Act, 1894') was published on 13.2.1991 to acquire a total 969.023 acres of land in four villages namely: Dashahra Kherli, Rukanpur, Jahanpur and Naifal alias Unchagaon, Pargana and Tehsil: Bulandshahr, Uttar Pradesh.

3. The acquisition of land was initiated at the instance of U.P. State Industrial Development Corporation, Kanpur (hereinafter referred to as 'UPSIDC') for the purpose of establishing Growth Centre at district Bulandshahr. Declaration under Section 6(1) read with Section 17 of Act, 1894 was made on 23.3.1991. Possession of land was taken on 7.10.1993, 8.10.1993, 13.10.1993 and 16.10.1993. Special Land Acquisition Officer (hereinafter referred to as 'SLAO') made award determining compensation in respect to the land acquired on 15.10.1993, 16.10.1993, 22.10.1993 and 31.3.1995.

4. The SLAO determined compensation of total Rs.2,87,14,996.53. Certain land owners who were not satisfied with determination of compensation by SLAO got Reference made under Section 18 of Act, 1894. Reference Court increased amount of compensation and fixed at a total of Rs.7,13,37,504/-.

5. After Reference, certain amount of compensation was disbursed and balance amount was deposited as revenue deposit in the Treasury, Bulandshahr, Uttar Pradesh.

6. U.P.S.I.D.C. made various complaints that though compensation has been paid and possession has been taken, still some farmers have not vacated their part of land which was creating obstruction in the development activities. In further development, UPSIDC entered into an agreement (Memorandum of Understanding) on 14.12.2013 with the Tehri Hyrro Development Corporation India

Limited (hereinafter referred to as “THDCIL”) to establish 1320 Megawatt Super Thermal Power Project on the said land and for that purpose land was sought to be transferred by UPSIDC to THDCIL. The further development in the present case was that district authorities, UPSIDC and THDCIL decided to pay more compensation beyond the compensation fixed by Reference Court in order to settle with the villagers so that UPSIDC took actual possession of land acquired. After certain negotiations with the villagers it was decided to pay compensation at the rate of Rs.721/- per square metre. The said additional compensation was termed as ‘ex gratia payment’. The total compensation was increased from Rs.7,13,37,504/- to Rs. 3,87,17,71,833/- i.e. on enhancement of about 380 Crores.

7. The main reliefs sought in the bunch of the writ petitions are briefly as follows:

a) Writ Petition No.31586 of 2016, the petitioners have sought for the relief which is as under:

(i) To issue a writ, order or direction in the nature of MANDAMUS commanding to Respondent no.3 to release the compensation in respect of petitioners’ land comprising of Khata No.162 Plot No.270, 288, 522Sa, 549, 550, 591, 593, 686, 710, 735, 790, 802, 809 and 811 total area 5.391 Hectare situated in village Dashara Kherli, Pargana and Tehsil Khurja, district bulandshahr.”

b) Writ Petition Nos. 52602 of 2011, 59955 of 2012, 59958 of 2012, 59962 of 2012 and 59964 of 2012:- in all these writ petitions, a common relief has been sought by the petitioners which is as under:

“(i) A writ, order or direction in the nature of certiorari quashing the impugned notifications dated 13.2.1991 and dated 23.3.1991 issued by respondent no.1 (Annex.Nos.1 and 2).”

8. In **Writ Petition Nos.47504 of 2017, 50821 of 2017, 50824 of 2017, 51857 of 2017 and 57562 of 2017**, petitioners have sought declaration of lapse of acquisition under Section 24 (2) of Right to Fair Compensation and Transparency in land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred as the Act, 2013).

9. When the matter was listed before this Court, after exchange of pleadings, a detailed order dated 29.8.2016 was passed whereby a serious note was taken about the huge payment of 'ex-gratia amount' over and above the compensation determined by the authorities under Act, 1894 and a direction was passed to enquire into the matter by a High Powered Enquiry Committee to be constituted by Chief Secretary of Uttar Pradesh. The said Committee was to be headed by a Judicial Officer. It was also directed to examine the facts, (i) Where land acquired and compensation determined and paid under Act, 1894, whether it is permissible for authorities to again pay compensation from public exchequer to erstwhile land owners at an exorbitant rate and that too at a rate which is applicable after more than two decades from acquisition notification under Section 4 of Act, 1894 was issued; (ii) Whether acquired land had market value for the purpose of compensation at Rs.721/- per square metre on the date when notification under Section 4 of Act, 1894 was issued particularly when in this regard awards by District Judge under Section 18 of Act, 1894 have already been made determining much lesser value; (iii) If possession was taken over of acquired land in 1993, why District Administration did not take any effective steps to dispossess unauthorized occupants, and (iv) Who are the persons/authorities responsible to permit continued unauthorized possession of erstwhile tenure holders over acquired land and thereby creating a situation where Farmers re-entered the land and Administration found itself handicapped to dispossess them without accepting their demand.

10. The relevant part of the order is also reproduced hereinafter:

“31. Acquisition which commenced in 1990, SLAO made awards at the rate is less than Rs.2/- per square yard, enhanced to some extent by District Judge, Bulandshahr in some references, the rate has now been increased to several hundred times. Further, on acquisition finalized by SLAO or District Judge with regard to compensation and possession of land was also taken by parties in 1993, for the same land, again compensation is sought to be paid and the total amount which was earlier less than three crores is now increased to 275 crores and above. This is something fantastic and mind-blowing.

32. In our view, facts are self-speaking and smacks of something scammish somewhere. Initially, we intended to have the matter enquired by a Special Investigation Team, headed by a Judicial Officer, or by Central Bureau of Investigation but then it appears to us that authorities at District level and officials of UPSIDC and THDCIL, among themselves, have colluded to extract a huge money from public exchequer in the name of distribution of compensation to Farmers but these facts in entirety were not made known to Government, hence, we require Chief Secretary, U.P., Lucknow to constitute a High Powered Inquiry Committee headed by a Judicial Officer of the rank of not less than Additional Legal Remembrancer. It shall also have as Members, a Senior Official of Revenue Department and a competent Senior Police Official, who would conduct an indepth inquiry in the matter and submit report as to how all this has happened and who are the persons responsible.

33. The aforesaid Committee, besides other, shall also examine the facts, (i) Where land acquired and compensation determined and paid under Act, 1894, whether it is permissible for authorities to again pay compensation from public exchequer to erstwhile land owners at an exorbitant rate and that too at a rate which is applicable after more than two decades from acquisition notification under Section 4 of Act, 1894 was

issued; (ii) Whether acquired land had market value for the purpose of compensation at Rs.721/- per square metre on the date when notification under Section 4 of Act, 1894 was issued particularly when in this regard awards by District Judge under Section 18 of Act, 1894 have already been made determining much lesser value; (iii) If possession was taken over of acquired land in 1993, why District Administration did not take any effective steps to dispossess unauthorized occupants, and (iv) Who are the persons/authorities responsible to permit continued unauthorized possession of erstwhile tenure holders over acquired land and thereby creating a situation where Farmers re-entered the land and Administration found itself handicapped to dispossess them without accepting their demand.

34. Chief Secretary, U.P., Lucknow while submitting report of Committee shall also file an affidavit stating, if this case is taken to be an example whether this can be treated as a policy of Government that where-ever erstwhile owners of acquired land, if re-enter the land and get possession unauthorizedly instead of taking appropriate action in law for ousting such unauthorized occupants, State would be justified in accepting their demand of compensation again, at an exorbitant rate, on the pretext of maintenance of law and order.

35. The Committee as directed above, shall be constituted within 10 days from today and shall make inquiry and submit report within three months. Such report shall be submitted to this Court with the affidavit of Chief Secretary, as directed above for further action in the matter.”

11. The High Powered Committee consisted of Special Secretary/Additional Legal Remembrancer, Law Department, Deputy Inspector General of Police (Anti Corruption Cell), Lucknow and the Special Secretary, Department of Revenue, State Government submitted their Enquiry Report dated 06.3.2017 which was placed on

record by Chief Secretary along with his affidavit sworn on 09.3.2014.

12. The summary of the conclusions of Committee on the four issues which are mentioned in the order dated 9.10.2017 passed by this Court, are as follows:

*“On the **first issue** as to whether when the land had been acquired and compensation had been determined under the provisions of Land Acquisition Act, 18942, it was permissible for the Authorities to again pay compensation from the public exchequer to the erstwhile land owners at an exorbitant rate and that too at a rate which was applicable after more than two decades of the acquisition, **the finding recorded by the Committee is that it was not permissible to do so and that it was not permissible to subsequently take recourse to the provisions of Section 11(2) of the Act when the award had already been made under Section 11(1) of the Act.***

*Regarding the **second issue** as to whether the market value of the land on the date Section 4(1) of the Act notification was issued was Rs. 721 per sq. mtrs., **the Committee has recorded a finding that Rs. 721/- per sq. mtrs. was not the market rate when Section 4(1) notification was issued on 9 March 1991 and in fact it was the circle rate prevailing in 2014.***

*Regarding the **third issue** as to why the District Administration did not take any effective steps to dispossess the unauthorized occupants when the possession of the land was taken in 1993, **the finding of the Committee is that though the possession of the land was given to UPSIDC in 1993 but as the UPSIDC failed to make use of the land for a substantially long period, it gave an opportunity to the farmers to re-enter the land and do farming and thereby create a situation for them to make an unreasonable demand.***

*In regard to the **fourth issue** as to who are the persons/authorities responsible for permitting the*

erstwhile tenure holders of the acquired land to continue in an unauthorized possession of the land, the Committee has recorded a finding that as since only names of the officers of UPSIDC posted at Head Office UPSIDC, Regional Offices at Ghaziabad, Aligarh, Kanpur and the names of Officers of the Electricity Division, Kanpur, it was not possible to specify the officers responsible because of lack of information supplied by the Department. The Committee has, however, observed that those officers who were posted in UPSIDC for five years after possession was given to UPSIDC 1993, should be held responsible. The Committee has also noted that the officers continued consultation with the farmers for payment of compensation instead of getting the First Appeals filed in the High Court against the award made by the Reference Court decided.”

(Emphasis added)

13. This Court while taking a serious note of the abovementioned conclusions, directed to implead THDCIL vide order dated 09.10.2017. Thereafter, the matter was adjourned on many dates in order to complete the pleadings. In another order dated 31.10.2017 passed by this Court, seven writ petitions were also directed to be connected along with the leading Writ Petition No.31586 of 2016.

14. By another order dated 06.11.2019, after taking note of the Enquiry Report and other developments, the matter was directed to be placed before Hon'ble the Chief Justice with the request to constitute a bench headed by the Judge who had passed earlier order. Accordingly, this bench was constituted to decide the present bunch of writ petitions. In all the writ petitions pleadings have been exchanged.

15. In the leading writ petition, certain affidavits were also filed, latest being supplementary counter affidavit filed by the respondent no.4 on 3.1.2020, which is taken on record.

16. Shri. Raghvendra Singh, learned Advocate General assisted by Shri. Ajeet Singh, Senior Advocate, Additional Advocate General has submitted that due to peculiar circumstances prevailing in the concerned villages, great resentment was shown by villagers and due to their interference, possession of land was not transferred to the beneficiaries. He further vehemently submitted that there was no option left with the State Government except to pay ex-gratia amount to the villagers in order to get land vacated from villagers. He has relied upon a supplementary counter affidavit filed on behalf of respondent no.1 on 06.11.2019 sworn on 05.11.2019. The relevant paragraphs of the said affidavit are reproduced hereinafter:

“That in between years 1993 and 1995, land measuring 392.317 hectare (969.415 Acre) in village Dashara Kherli pargana and Tehsil Khurja, District Bulandshahr and in another village Jahanpur, Naiphal @ Unchagaon and Rukanpur Tehsil Khurja district bulandshahr, was acquired by the State Government for Industrial Development (Growth Centre).

That in the aforesaid villages, after issuance of the Notification under Sections 4 (1)/17 and 6 (1)/17 of Land Acquisition Act, after due publication in the local daily newspapers and after hearing the affected farmers under Section 9 (1) (3), determination of compensation under Section 11 (1) of Land Acquisition Act were done on 22.10.1993, 15.10.1993, 16.10.1993 and 31.10.1993 respectively. The compensation as per the award and in few cases after decision of the court the amount has already been paid to the farmers.

That at the time of declaration of award, the physical possession of acquired land of all the four villages referred to above was transferred to U.P. State Industrial Development Corporation (UPSIDC) and after deleting the names of farmers over the acquired land, the name of U.P. State Industrial Development Corporation (State Government) was also recorded and mutated in revenue records.

That the said land was provided to the UPSIDC, but no development work was done by the UPSIDC on the land for quite some time and thereafter in the year 2011, it was provided to the THDC for setting up Super Thermal Power Plant (2x660 MW). When THDC started work at site, the farmers put resistance and started demanding higher compensation.

That since few days earlier, unfortunate incident of violence had taken place at Bhatta Parsaul, Greater Noida while taking possession on the acquired land, the State Government and other officers of the UPSIDC and Power Corporation took a decision to settle the matter after discussing with the farmers by negotiation in the meeting at district level.

That pursuant to above decision, matter was negotiated by the District Officers, officers of THDC and Power Corporation, wherein THDC agreed to pay some more amount as Ex-gratia at the rate of Rs.721/- per sq. meter. The farmers had also agreed on the same.

That since the amount was to be paid by the THDC, the State Government did not raise any objection.

That the THDC India Ltd. Transferred the amount required for this land including aforementioned Ex-gratia amount after approval of (Ministry Of Power, Government of India) Public Investment Board through RTGS in the account of SLAO, Bulandshahr.

That in the matter of Ex-gratia payment no financial aid by the State Government is given, and role of the State Government/District Magistrate is only to ensure and disburse the payment of Ex-gratia amount to the farmers through RTGS out of Ex-gratia amount made by THDC India Limited.

That Ex-gratia payment deposited by the THDC has also been paid to 1582 farmers and now only 142 farmers are left to whom the Ex-gratia amount has not been paid and only they are creating obstruction in the construction of Thermal Power Project.

That the State Government did not object for the enhanced payment because the matter was settled by the THDC itself and the THDC had also agreed to pay the Ex-gratia payment.

That the THDC is still ready to make payment and rather it has already deposited the amount in the account of Special Land Acquisition Officer, Bulandsahar.”

(Emphasis added)

17. Shri. H.N.Singh, learned Senior Counsel assisted by Shri Prabhakar Awasthi, Advocate appearing on behalf of respondent no.4 forcefully submitted that actual possession was not given to the respondent no.4 on any part of land which remained occupied by the villagers. He has relied upon certain communications in order to show that respondent no.4, repeatedly, intimated authorities to get the land vacated from villagers. However, no action was taken. He has relied upon a supplementary counter affidavit filed on behalf of respondent no.4 sworn on 2.1.2020. The relevant part of the said supplementary counter affidavit is reproduced hereinafter:

“That from the fact stated above it is apparent that it was well informed by the corporation to the Government as well as to the T.H.D.C. India Ltd. And it is also noticed by the Government as well as by the T.H.D.C. that the Corporation has not get the actual physical possession of the acquired land though the land stood recorded with the name of the Corporation in the Government records. The Government of Uttar Pradesh as well as T.H.D.C. India Ltd. knowing fully well that actual possession of the land was not available to the Corporation and there is a Memorandum of Understanding between the T.H.D.C. and the Government of Uttar Pradesh to make available the land of the Corporation to T.H.D.C. India Ltd. and if it is not possible then to acquire land as per the acquisition policies of the State Government and this Memorandum of Understanding was entered on 31.12.2010 without knowing to the Corporation the Government of Uttar Pradesh by its own has proceeded to negotiate in the matter for making available to the land to T.H.D.C. for

the purpose of project and for that purpose to negotiate with the farmers to deliver the possession on agreed rate which was ultimately negotiated @ 721 per Sqa. Meter.

That the Corporation was one of the party at the instance of the Government to negotiate with the farmers as land was originally acquired for the Corporation but virtually in absence of the actual physical possession the provision of Section 48 of the Land Acquisition Act stood attracted and the State Government with the farmers for taking the land under the agreement and that power was exercised by the State Government under Section 11 (2) of the Land Acquisition Act.

That in the entire proceeding the U.P.S.I.D.C. was to get back the amount already paid with interest and all the cost of acquisition with interest if payable and all legal cost was to be paid by the T.H.D.C. India Ltd.

That under Section 4 of the Land Acquisition Act land may be acquired for public purpose or for Company. The public purpose has been defined under Section 3 F of the Land Acquisition Act which include in Clause IV of the land for the Corporation owned or controlled by the State. The Corporation owned and controlled by the Government is defined under Section 3 CC means nobody corporate established by or under the Central Provincial or State Act and includes a Government Company has defined under Section 617 of the Companies Act, 1956.

That U.P. State Industrial Development Corporation is a Government Company registered under the Companies Act, 1956 and is fully owned and controlled by the State Government and as such the acquisition of the land for public purpose or for company includes for the Corporation which is a Company registered under the Companies Act.

That the State Government may acquired for public purpose which includes Corporation owned and controlled by the State Government i.e. Government Companies registered under the Companies Act and once the land is acquired for the Corporation the same will fully vested in the Corporation and the villages of collector/Special Land Officer or other revenue authorities work for taken for acquisition and to deliver the possession and once the land is acquired the same stood vested free from all encumbrances in the

Corporation under Section 16 of the Land Acquisition Act.

That Section 11(2) provided that the land may be acquired and compensation may be paid under the agreement and such agreement is not required to be registered under Section 11 (4). The award is a decree as provided under Section 26(2) of the Land Acquisition Act and as such once the award is made and compensation was paid, possession was taken, no further registration or stamp is required if the acquisition is for public purpose and the Company. Section 50 of the Land Acquisition Act provides that in case of the acquisition on the case of the local authority or being the company may adduce the evidence for the determination of compensation and Section 51 grant exemption from taking of stamp on award or agreement made under the Land Acquisition Act.

That with the acquisition of the land in favour of the Corporation same stood vested in the Corporation and complete title of the land acquired stood transfer and Corporation is full owner and was competent to transfer the subject to getting actual physical possession. The Corporation in detail has entered at various stages to the Government, District Administration and the T.H.D.C. that the Corporation is not in actual physical possession of the complete land and the land may be transferred only after getting the possession from the farmers for which the Government of Uttar Pradesh has accepted to enter into negotiation with the farmers for getting the possession and by the Corporation and so that the Corporation may be in position to transfer the land to T.H.D.C.

That at the instance of the Government of Uttar Pradesh the District Magistrate, Bulandshahar and its authorities have made all effort for holding various meetings with the farmers and ultimately District Administration with the approval of the State Government, entered into an agreement with the farmers for payment of compensation so that the farmers may hand over the possession to the Corporation.

That in entire proceeding Corporation had not at all failed and Corporation has no means of taking forcibly possession and admittedly the District Administration taken of the forcibly possession on the rate of which the

award was passed will create position of the law and order. The Corporation has no objection in transferring the land on the rate awarded by the Court if the State Government is in position to hand over the actual physical possession to the Corporation taking the same from the farmers otherwise the Corporation is to transfer on the rate agreed by the State Government through its agencies with the farmers and the said amount accepted by the T.H.D.C. subject to return all the amount already paid by the Corporation with interest.”

(Emphasis added)

18. We have also heard Shri Sanjay Kumar Mishra, learned counsel for petitioners, Sri M.C. Chaturvedi, learned Additional Advocate General and Sri H.N. Singh, learned Senior Advocate assisted by Sri Prabhaker Awasthi, learned counsel for respondent-4 and Sri Ajeet Singh, learned Chief Standing Counsel assisted by Sri Sudhanshu Srivastava, learned counsel for respondents- 1 and 3 in the leading writ petition as well as in other connected writ petitions.

19. The High Powered Committee constituted in pursuance of the order passed by this Court submitted report on 06.3.2017 which was filed along with the affidavit of Chief Secretary, Government of U.P. sworn on 09.3.2017. It is relevant to note here that the conclusions of enquiry were neither disputed nor challenged by any of the respondents. The report has dealt with all the issues which were referred in the order dated 29.8.2016 passed by this Court. It is essential to mention the conclusion of the Committee on each of the issues which are as follows:

Point no.1

Where land acquired and compensation determined and paid under Act, 1894, whether it is permissible for authorities to again pay compensation from public exchequer to erstwhile land owners at an exorbitant rate and that too at a rate which is

applicable after more than two decades from acquisition notification under Section 4 of Act, 1894 was issued;

"प्रस्तुत प्रकरण में स्थिति पूर्णतः स्पष्ट है कि भूमि अधिग्रहण के सम्बन्ध में अन्तर्गत धारा 11(1) एवार्ड की घोषणा विशेष भूमि अध्याप्ति अधिकारी द्वारा सुनवाई का अवसर प्रदान कर सक्षम स्तर के अनुमोदन से की गयी है और उक्त एवार्ड से असंतुष्ट प्रभावित कृषकों द्वारा अधिनियम के अन्तर्गत अनुमन्य विधिक उपचार अन्तर्गत धारा 18 रेफरेन्स भी सक्षम न्यायालय में योजित किया गया। इसके अतिरिक्त यू०पी०एस०आई०डी०सी० द्वारा रेफरेन्स में निर्णीत एवार्ड के सम्बन्ध में अपील भी मा० उच्च न्यायालय में योजित की गयी है। उक्त से यह भी स्पष्ट है कि प्रकरण में धारा 11(2) के प्राविधान आकर्षित नहीं हैं क्योंकि सम्पूर्ण कार्यवाही अन्तर्गत धारा 11(1) के अन्तर्गत अग्रसारित रही। जहाँ तक उ०प्र० भूमि अर्जन (करार द्वारा प्रतिकर की अवधारणा और अधिनिर्णय की घोषणा) नियमावली 1997 का प्रश्न है तो उक्त नियमावली प्रथमतः अधिसूचना की तिथि 16 सितम्बर 1997 से लागू है और प्रस्तुत प्रकरण में धारा 11(2) के लागू न होने के दृष्टिगत नियमावली के लागू होने का प्रश्न ही नहीं है।

यह भी स्पष्ट है कि जब धारा 4(1) सपठित धारा 17 के अन्तर्गत भूमि अधिग्रहीत की जाती है तब अधिसूचना के दिनांक से आच्छादित भूमि समस्त भागों से मुक्त होकर सरकार में पूर्णतः निहित हो जाती है। तत्पश्चात् मात्र प्रतिकर का उचित निर्धारण का प्रश्न शेष रहता है। जब आपसी सहमति से प्रतिकर निर्धारण नहीं होती है तब प्रतिकर के निर्धारण के लिये अन्तर्गत धारा 11(1) की कार्यवाही भूमि अध्याप्ति अधिकारी द्वारा की जाती है। घोषित एवार्ड से यदि कृषक असंतुष्ट है तो वे धारा 18 के अन्तर्गत जिला न्यायालय में रेफरेन्स कलक्टर के माध्यम से कर सकते हैं एवं यहाँ से भी असंतुष्ट होने पर मा० उच्च न्यायालय एवं मा० उच्चतम न्यायालय की शरण में जा सकते हैं। स्पष्ट है कि इस प्रक्रिया में धारा 11(1) की कार्यवाही के पश्चात् धारा 11(2) के अन्तर्गत अग्रिम कार्यवाही के पश्चात् धारा 11(2) के अन्तर्गत अग्रिम कार्यवाही किये जाने का कोई विकल्प नहीं है। स्पष्ट है कि धारा 11(2) के प्राविधान के अन्तर्गत आपसी सहमति से एवार्ड की घोषणा की जाती है जिसे प्रश्नगत प्रकरण में एवार्ड के स्थान पर एक्स-ग्रेसिया का नाम दिया गया है, जो मान्य नहीं है। अतः उपरोक्त प्रक्रिया से विचलित होकर एक बार प्रतिकर के निर्धारण के उपरान्त पुनः प्रतिकर का निर्धारण विधिक नहीं माना जा सकता है।"

Point No.2.

Whether acquired land had market value for the purpose of compensation at Rs.721/- per square meter on the date when notification under Section 4 of Act, 1894 was issued particularly when in this regard awards by district Judge under Section 18 of Act, 1894 have already been made determining much lesser value;

“प्रकरण में टी०एच०डी०सी० के आने के उपरान्त विभिन्न वार्ताओं के पश्चात् दिनांक 12-8-2014 को यू०पी०एस०आई०डी०सी० के प्रबन्ध निदेशक, श्री मनोज कुमार सिंह के पत्र संख्या 132/एसआईडीसी /आर०एम० सूरजपुर कैम्प द्वारा जिलाधिकारी बुलन्दशहर को अवगत कराया गया कि काश्तकारों से वार्ता के पश्चात् रु० 721/- प्रति वर्ग मीटर की दर से आम सहमति बनी है एवं इस धनराशि को टी०एच०डी०सी० से प्राप्त कर एक्सग्रैसिया के रूप में वितरित किया जाना है।

जिलाधिकारी, बुलन्दशहर द्वारा तथ्यात्मक आख्या में उल्लिखित किया गया है कि ग्राम दशहरा खेरली व रूकनपुर की अर्जित भूमि राष्ट्रीय राजमार्ग जी०टी० रोड के दोनों ओर स्थित है तथा इन ग्रामों में सड़क के किनारे की भूमि का समझौते के समय रूपये 1120/- प्रति वर्गमीटर तथा ग्राम जहाँनपुर एवं नायफल उर्फ ऊँचागाँव में 800/- रूपये प्रति वर्गमीटर के स्टाम्प दर कृषि उपयोग के लिए निर्धारित था। निर्धारित स्टाम्प दर से कम दर रूपये 721/- प्रति वर्ग मीटर पर ही कृषकों से सहमति प्राप्त की गई। उक्त से स्पष्ट है कि अधिग्रहीत भूमि बाजार मूल्य रूपये 721/- प्रति वर्गमीटर की दर अन्तर्गत धारा-4 अधिसूचना की तिथि पर नहीं था। उपरोक्त से स्पष्ट है कि रु० 721/- की दर वर्ष 2014 की है न कि अधिसूचना के प्रकाशन दिनांक 09.03.1991 की।”

Point No.3

If possession was taken over of acquired land in 1993, why District Administration did not take any effective steps to dispossess unauthorized occupants.

“समिति ने स्थानीय प्रशासन, यू०पी० एस०आई०डी०सी० व टी०एच०डी०सी० द्वारा उपलब्ध कराये गये समस्त सुसंगत अभिलेखों के सम्यक परिशीलन से यह स्थापित पाया है कि वस्तुतः अन्तर्गत धारा-17 अर्जेंसी क्लाज में अधिग्रहण के उपरान्त भी यू०पी० एस०आई०डी०सी० का रवैया अधिग्रहीत भूमि के तात्कालिक उपयोग/उपभोग के सम्बन्ध में उदासीन रहा। जिलाधिकारी, बुलन्दशहर की आख्या दिनांक 12-06-1997 में भी उल्लेख है कि संदर्भित भूमि का कब्जा यद्यपि क्रमशः 15-10-93, 16-10-93, 08-10-93 व 07-10-93 को विधिक रूप से स्थानांतरित किया जा चुका है परन्तु भूमि का

उपयोग यू० पी०एस०आई०डी०सी० द्वारा गत लम्बे समय से न करने के कारण किसान मौके पर खेती कर रहे हैं।

यू० पी० एस० आई० डी० सी० के असकारात्मक खैये के कारण अधिग्रहीत भूमि पर 1993 में ही कब्जा प्राप्त करने के उपरान्त कोई कार्यवाही नहीं करने से परभावित किसानों को अवसर प्राप्त हुआ कि वह अधिग्रहीत भूमि पर पुनः प्रवेश कर सकें और भविष्य में परिस्थियाँ इतनी प्रतिकूल हो गई कि बिना उनके अनुचित माँग को स्वीकार किये उक्त अधिग्रहित भूमि का उपयोग/उपभोग यू०पी०एस०आई०डी०सी० द्वारा किया जाना सम्भव नहीं हो पाया।

उपरोक्त की गयी कार्यवाही से विदित होता है कि अनधिकृत कृषकों को अधिग्रहित भूमि से हटाने के लिये मात्र कागज पर पत्राचार किया गया। इस अवधि में यू०पी०एस०आई०डी०सी० की तरफ से भूमि पर कार्य आरम्भ कराने की दृढ़ ईच्छा-शक्ति का अभाव परिलक्षित हुआ।”

Point No.4

Who are the persons/authorities responsible to permit continued unauthorized possession of erstwhile tenure holders over acquired land and thereby creating a situation where Farmers re-entered the land and Administration found itself handicapped to dispossess them without accepting their demand.

“इस समिति की अनुग्रह राशि की दर निर्धारण सम्बन्धी बैठक नहीं हुई और न ही अनुग्रह राशि के निर्धारण/वितरण के सम्बन्ध में निर्णय लिया गया। ऊर्जा मंत्रालय भारत सरकार के अपर सचिव श्री देवेन्द्र चौधरी द्वारा जिलाधिकारी बुलन्दशहर को किसानों के साथ नेगोशियेशन करने के लिये कहा गया (बैठक दिनांक 29-01-2014 की प्रतिलिपि संलग्न V)। इसके उपरान्त जिलाधिकारी बुलन्दशहर द्वारा स्थानीय महत्वपूर्ण व्यक्तियों एवं कृषकों के प्रतिनिधियों के साथ वार्ता कर दर का निर्धारण कर प्रबन्ध निदेशक यू०पी०एस०आई०डी०सी० को सूचित किया गया। अन्ततः अनुग्रह राशि की दर का निर्धारण यू०पी०एस०आई०डी०सी० के प्रबन्ध निदेशक द्वारा किया गया। अतः अनुग्रह राशि की दर निर्धारित करने में टी०एच०डी०सी० की कोई भूमिका नहीं है।”

“प्रश्नगत प्रकरण के सम्बन्ध में सुसंगत है कि जिला प्रशासन द्वारा यू०पी०एस०आई०डी०सी० के अनुरोध पर तहसील खुर्जा जनपद बुलन्दशहर में ग्रोथ सेन्टर हेतु 392.32 हेक्टेयर भूमि, भूमि अर्जन अधिनियम 1894 की धारा 4(1)/17 के अन्तर्गत

अर्जित की गयी। धारा 4(1)/17 की अधिसूचना का प्रकाशन दिनांक 9-3-1991 को, धारा 6(1)/17 की अधिसूचना का प्रकाशन दिनांक 30-3-2011 को करने के उपरान्त दिनांक 16-10-1993 तक यू०पी०एस०आई०डी०सी० को कब्जा प्रदान करते हुए उनका नाम खतौनी में दर्ज किया गया। इस प्रकार आपातिक स्थित (Emergency clauses) दर्शाते हुए भूमि का अधिग्रहण किया गया किन्तु कब्जा प्राप्त करने के पश्चात् तत्काल प्रभाव से निर्माण कार्य न करने के कारण ऐसी स्थिति उत्पन्न हुई जिससे कृषक अपनी भूमि पर पुनः प्रवेश कर काश्तकारी करते रहे। यू०पी०एस०आई०डी०सी० का यह कर्तव्य था कि जब उनके द्वारा आपातिक स्थिति (Emergency clauses) के अन्तर्गत भूमि का अधिग्रहण किया गया था तो वे भूमि की बाउण्डरी का निर्माण कराते एवं ग्रोथ सेन्टर के निर्माण करने की कार्यवाही आरम्भ करते और इसका विरोध करने पर स्थानीय प्रशासन से प्रभावी आवश्यक कार्यवाही करने का अनुरोध करते। अभिलेखों से स्पष्ट है कि वर्ष 1997 में ग्रोथ सेन्टर की बाउण्डरी के निर्माण हेतु निविदा स्वीकार की गयी। इस प्रकार 4 वर्षों तक इस भूमि का प्रभावी उपयोग नहीं किया गया और यह भूमि बगैर देख-रेख के पड़ी रही अर्थात् जिसको देखने वाला कोई नहीं था। इस कारण कृषक भूमि अर्जन के उपरान्त भी काश्तकारी करते रहे। वर्ष 1997 के माह सितम्बर में करार नियमावली का प्राख्यापन हुआ एवं जब यह जानकारी उन काश्तकारों को मिली जो अपनी भूमि पर अधिग्रहण के पश्चात् भी काश्तकारी कर रहे थे तब उन्होने अपनी जमीन के अवैध कब्जे को छोड़ने के स्थान पर उग्र आन्दोलन आरम्भ कर दिया। अभिलेखों से स्पष्ट है कि आपातिक स्थित (Emergency clauses) को दर्शाते हुए जो भूमि का अधिग्रहण किया गया वह किसी भी स्तर से आवश्यक एवं उचित नहीं ठहराया जा सकता क्योंकि जिस भूमि का अधिग्रहण किया गया उस पर विकास/निर्माण कार्य कभी प्रारम्भ ही नहीं हुआ और 18 वर्ष पश्चात् ग्रोथ सेन्टर बनाने के स्थान पर टी०एच०डी०सी० की तापीय विद्युत परियोजना को दे दिया गया।"

(Emphasis added)

20. There is no dispute that in the name of ex-gratia payment, the total compensation amount was increased many folds. Payment of 'Ex-gratia amount' was made without any legal basis. High Powered Committee also came to the specific conclusion that there was no provision of granting 'ex-gratia' payment in Act, 1894 and there was absolutely no justification for 'ex-gratia' payment. However, High Powered Committee has restrained themselves from naming the persons responsible for doing such illegal act, which has ultimately caused huge loss to public exchequer.

21. The High Powered Committee had deprecated conduct of U.P.S.I.D.C. It was also critical to government authorities. The State Officials, cannot absolve themselves by contending that 'since the amount was to be paid by the T.H.D.C., the State Government did not raise any objection.' The amount paid by T.H.D.C. is also a public money. The State has miserably failed to place on record what was the actual condition of the land? Whether any attempt was undertaken to remove the encroachers? Why State authorities surrendered before encroachers? Who were the Officers responsible for knowingly taking illegal decision and why not recovery be effected from erring officials of such illegal payment in the name of 'ex-gratia amount'? These are the questions among others which remained unanswered.

22. The above-mentioned facts are self speaking and smacks of something scammish and in order to unearth the conspiracy behind such illegal decision, a proper investigation is warranted. Since number of government officials including senior officials belong to administrative cadre like I.A.S., P. C.S., are likely to be involved in this matter, it is not advisable to direct investigation to be conducted by State Police Administration. In order to unearth the conspiracy of payment of illegal 'ex-gratia amount' it is necessary to have fair, honest and complete investigation.

23. In ***Common Cause, A Registered Society Vs. Union of India & Ors. (1999) 6 SCC 667***, Court held in paras 174, 176 and 177 that:

"174. The other direction, namely, the direction to the C.B.I. to investigate "any other offence" is wholly erroneous and cannot be sustained. Obviously, direction for investigation can be given only if an offence is, prima facie, found to have been committed or a person's involvement is prima facie established, but a direction to the C.B.I. to investigate whether any person has committed an offence or not cannot be legally given. Such a direction would be contrary to the concept and philosophy of "LIFE" and "LIBERTY" guaranteed to

a person under Article 21 of the Constitution. This direction is in complete negation of various decisions of this Court in which the concept of "LIFE" has been explained in a manner which has infused "LIFE" into the letters of Article 21."

"176. A man has, therefore, to be left alone to enjoy "LIFE" without fetters. He cannot be hounded out by the Police or C.B.I. merely to find out whether he has committed any offence or is living as a law-abiding citizen. Even under Article 142 of the Constitution, such a direction cannot be issued. While passing an order under Article 142 of the Constitution, this Court cannot ignore the substantive provision of law much less the constitutional rights available to a person. (See : Supreme Court Bar Association vs. Union of India, (1998) 4 SCC 409; AIR 1998 SC 1895).

"177. Mr. Gopal Subramaniam contended that the Court has itself taken care to say that the C.B.I. in the matter of investigation, would not be influenced by any observation made in the Judgment and that it would independently hold the investigation into the offence of criminal breach of trust or any other offence. To this, there is a vehement reply from Mr. Parasaran and we think he is right. It is contended by him that this Court having recorded a finding that the petitioner on being appointed as a Minister in the Central Cabinet, held a trust on behalf of the people and further that he cannot be permitted to commit breach of the trust reposed in him by the people and still further that the petitioner had deliberately acted in a wholly arbitrary and unjust manner and that the allotments made by him were wholly mala fide and for extraneous consideration, the direction to the CBI not to be influenced by any observations made by this Court in the Judgment, is in the nature of palliative. The CBI has been directed to register a case against the petitioner in respect of the allegations dealt with and findings reached by this Court in the Judgment under review. Once the findings are directed to be treated as part of the First Information Report, the further direction that the CBI shall not be influenced by any observations made by this Court or the findings recorded by it, is mere lullaby. "

24. In *Secretary, Minor Irrigation & Rural Engineering Services, U.P. and Others Vs. Sahngoo Ram Arya & Anr. (2002) 5 SCC 521*, Court held in paras 5 and 6 that:

“5. While none can dispute the power of the High Court under Article 226 to direct an inquiry by the CBI, the said power can be exercised only in cases where there is sufficient material to come to a prima facie conclusion that there is a need for such inquiry. It is not sufficient to have such material in the pleadings. On the contrary, there is a need for the High Court on consideration of such pleadings to come to the conclusion that the material before it is sufficient to direct such an inquiry by the CBI.

This is a requirement which is clearly deducible from the judgment of this Court in the case of Common Cause, (1999) 6 SCC 667. This Court in the said judgment at paragraph 174 of the report has held thus: (SCC p.750, para 174)

"174. The other direction, namely, the direction to CBI to investigate 'any other offence' is wholly erroneous and cannot be sustained. Obviously, direction for investigation can be given only if an offence is, prima facie, found to have been committed or a person's involvement is prima facie established, but a direction to CBI to investigate whether any person has committed an offence or not cannot be legally given. Such a direction would be contrary to the concept and philosophy of 'LIFE' and 'LIBERTY' guaranteed to a person under Article 21 of the Constitution. This direction is in complete negation of various decisions of this Court in which the concept of 'LIFE' has been explained in a manner which has infused 'LIFE' into the letters of Article 21."

*6. It is seen from the above decision of this Court that the right to life under Article 21 includes the right of a person to live without being hounded by the Police or the CBI to find out whether he has committed any offence or is living as a law-abiding citizen. **Therefore, it is clear that a***

decision to direct an inquiry by the CBI against a person can only be done if the High Court after considering the material on record comes to a conclusion that such material does disclose a prima facie case calling for an investigation by the CBI or any other similar agency, and the same cannot be done as a matter of routine or merely because a party makes some such allegations. In the instant case, we see that the High Court without coming to a definite conclusion that there is a prima facie case established to direct an inquiry has proceeded on the basis of “ifs” and “buts” and thought it appropriate that the inquiry should be made by the CBI. With respect, we think that this is not what is required by the law as laid down by this Court in the case of Common Cause, (1999) 6 SCC 667.”

(Emphasis added)

25. In *State of West Bengal and Others Vs. Committee for protection of Democratic Rights, West Bengal & Ors. (2010) 3 SCC 571*, Court in paras 68, 69 and 70 held that:

“68. Thus, having examined the rival contentions in the context of the Constitutional Scheme, we conclude as follows:

(i) The fundamental rights, enshrined in Part III of the Constitution, are inherent and cannot be extinguished by any Constitutional or Statutory provision. Any law that abrogates or abridges such rights would be violative of the basic structure doctrine. The actual effect and impact of the law on the rights guaranteed under Part III has to be taken into account in determining whether or not it destroys the basic structure.

(ii) Article 21 of the Constitution in its broad perspective seeks to protect the persons of their lives and personal liberties except according to the procedure established by law. The said Article in its broad application not only takes within its fold enforcement of the rights of an accused but also the rights of the victim. The State has a duty to enforce the human rights of a citizen providing for fair and impartial investigation against any person accused of commission of a cognizable offence, which may include its

own officers. In certain situations even a witness to the crime may seek for and shall be granted protection by the State.

(iii) In view of the constitutional scheme and the jurisdiction conferred on this Court under Article 32 and on the High Courts under Article 226 of the Constitution the power of judicial review being an integral part of the basic structure of the Constitution, no Act of Parliament can exclude or curtail the powers of the Constitutional Courts with regard to the enforcement of fundamental rights. As a matter of fact, such a power is essential to give practicable content to the objectives of the Constitution embodied in Part III and other parts of the Constitution. Moreover, in a federal constitution, the distribution of legislative powers between the Parliament and the State Legislature involves limitation on legislative powers and, therefore, this requires an authority other than the Parliament to ascertain whether such limitations are transgressed. Judicial review acts as the final arbiter not only to give effect to the distribution of legislative powers between the Parliament and the State Legislatures, it is also necessary to show any transgression by each entity. Therefore, to borrow the words of Lord Steyn, judicial review is justified by combination of "the principles of separation of powers, rule of law, the principle of constitutionality and the reach of judicial review".

(iv) If the federal structure is violated by any legislative action, the Constitution takes care to protect the federal structure by ensuring that Courts act as guardians and interpreters of the Constitution and provide remedy under Articles 32 and 226, whenever there is an attempted violation. In the circumstances, any direction by the Supreme Court or the High Court in exercise of power under Article 32 or 226 to uphold the Constitution and maintain the rule of law cannot be termed as violating the federal structure.

(v) Restriction on the Parliament by the Constitution and restriction on the Executive by Parliament under an

enactment, do not amount to restriction on the power of the Judiciary under Article 32 and 226 of the Constitution.

(vi) If in terms of Entry 2 of List II of The Seventh Schedule on the one hand and Entry 2-A and Entry 80 of List I on the other, an investigation by another agency is permissible subject to grant of consent by the State concerned, there is no reason as to why, in an exceptional situation, court would be precluded from exercising the same power which the Union could exercise in terms of the provisions of the Statute. In our opinion, exercise of such power by the constitutional courts would not violate the doctrine of separation of powers. In fact, if in such a situation the court fails to grant relief, it would be failing in its constitutional duty.

(vii) When the Special Police Act itself provides that subject to the consent by the State, the CBI can take up investigation in relation to the crime which was otherwise within the jurisdiction of the State Police, the court can also exercise its constitutional power of judicial review and direct the CBI to take up the investigation within the jurisdiction of the State. The power of the High Court under Article 226 of the Constitution cannot be taken away, curtailed or diluted by Section 6 of the Special Police Act. Irrespective of there being any statutory provision acting as a restriction on the powers of the Courts, the restriction imposed by Section 6 of the Special Police Act on the powers of the Union, cannot be read as restriction on the powers of the Constitutional Courts. Therefore, exercise of power of judicial review by the High Court, in our opinion, would not amount to infringement of either the doctrine of separation of power or the federal structure.

69. In the final analysis, our answer to the question referred is that a direction by the High Court, in exercise of its jurisdiction under Article 226 of the Constitution, to the CBI to investigate a cognizable offence alleged to have been committed within the territory of a State without the consent of that State will neither impinge upon the federal structure of the Constitution nor violate the doctrine of

separation of power and shall be valid in law. Being the protectors of civil liberties of the citizens, this Court and the High Courts have not only the power and jurisdiction but also an obligation to protect the fundamental rights, guaranteed by Part III in general and under Article 21 of the Constitution in particular, zealously and vigilantly.

*70. Before parting with the case, we deem it necessary to emphasise that despite wide powers conferred by Articles 32 and 226 of the Constitution, while passing any order, the Courts must bear in mind certain self-imposed limitations on the exercise of these Constitutional powers. The very plenitude of the power under the said Articles requires great caution in its exercise. In so far as the question of issuing a direction to the CBI to conduct investigation in a case is concerned, although no inflexible guidelines can be laid down to decide whether or not such power should be exercised but time and again it has been reiterated that such an order is not to be passed as a matter of routine or merely because a party has levelled some allegations against the local police. **This extra-ordinary power must be exercised sparingly, cautiously and in exceptional situations where it becomes necessary to provide credibility and instil confidence in investigations** or where the incident may have national and international ramifications or where such an order may be necessary for doing complete justice and enforcing the fundamental rights. Otherwise the CBI would be flooded with a large number of cases and with limited resources, may find it difficult to properly investigate even serious cases and in the process lose its credibility and purpose with unsatisfactory investigations.”*

(Emphasis added)

26. In *K.V. Rajendran Vs. Superintendent of Police CBCID South Zone, Chennai & Ors, (2013) 12 SCC 480*, Court held in paras 13 and 17 that:

“13. The issue involved herein, is no more res integra. This Court has time and again dealt with the issue under what circumstances the investigation can be transferred from the State investigating agency to any other independent investigating agency like CBI.

It has been held that the power of transferring such investigation must be in rare and exceptional cases where the court finds it necessary in order to do justice between the parties and to instil confidence in the public mind, or where investigation by the State police lacks credibility and it is necessary for having “a fair, honest and complete investigation”, and particularly, when it is imperative to retain public confidence in the impartial working of the State agencies. Where the investigation has already been completed and charge sheet has been filed, ordinarily superior courts should not reopen the investigation and it should be left open to the court, where the charge sheet has been filed, to proceed with the matter in accordance with law. Under no circumstances, should the court make any expression of its opinion on merit relating to any accusation against any individual. (Vide: Gudulare M.J. Cherian v. Union of India, (1992) 1 SCC 397; R.S.Sodhi v. State of U.P., AIR 1994 SC 38; Punjab and Haryana High Court Bar Assn, v. State of Punjab, AIR 1994 SC 1023; Vineet Narain v. Union of India, (1996) 2 SCC 199; Union of India v. Sushil Kumar Modi., AIR 1997 SC 314; Disha v. State of Gujarat., AIR 2011 SC 3168; Rajendrer Singh Pathania v. State (NCT of Delhi), (2011) 13 SCC 329; and State of Punjab v. Devender Pal Singh Bhullar, AIR 2012 SC 364).

*17. In view of the above, the law can be summarised to the effect that the **Court could exercise its Constitutional powers for transferring an investigation from the State investigating agency to any other independent investigating agency like CBI only in rare and exceptional cases. Such as where high officials of State authorities are involved, or the accusation itself is against the top officials of the investigating agency thereby allowing them to influence the investigation, and further that it is so necessary to do justice and to instil confidence***

in the investigation or where the investigation is prima facie found to be tainted/biased.”

(Emphasis added)

27. In ***Dharam Pal Vs. State of Haryana & Ors, (2016) 4 SCC 160***, Court in paras 24 and 25 held that:

“24. Be it noted here that the constitutional courts can direct for further investigation or investigation by some other investigating agency. The purpose is, there has to be a fair investigation and a fair trial. The fair trial may be quite difficult unless there is a fair investigation. We are absolutely conscious that direction for further investigation by another agency has to be very sparingly issued but the facts depicted in this case compel us to exercise the said power. We are disposed to think that purpose of justice commands that the cause of the victim, the husband of the deceased, deserves to be answered so that miscarriage of justice is avoided. Therefore, in this case the stage of the case cannot be the governing factor.

*25. We may further elucidate. **The power to order fresh, de-novo or re-investigation being vested with the Constitutional Courts, the commencement of a trial and examination of some witnesses cannot be an absolute impediment for exercising the said constitutional power which is meant to ensure a fair and just investigation.** It can never be forgotten that as the great ocean has only one test, the test of salt, so does justice has one flavour, the flavour of answering to the distress of the people without any discrimination. We may hasten to add that the democratic setup has the potentiality of ruination if a citizen feels, the truth uttered by a poor man is seldom listened to. Not for nothing it has been said that sun rises and sun sets, light and darkness, winter and spring come and go, even the course of time is playful but truth remains and sparkles when justice is done. It is the bounden duty of a Court of law to*

uphold the truth and truth means absence of deceit, absence of fraud and in a criminal investigation a real and fair investigation, not an investigation that reveals itself as a sham one. It is not acceptable. It has to be kept uppermost in mind that impartial and truthful investigation is imperative. If there is indentation or concavity in the investigation, can the "faith" in investigation be regarded as the gospel truth? Will it have the sanctity or the purity of a genuine investigation? If a grave suspicion arises with regard to the investigation, should a Constitutional Court close its hands and accept the proposition that as the trial has commenced, the matter is beyond it? That is the "tour de force" of the prosecution and if we allow ourselves to say so it has become "idee fixe" but in our view the imperium of the Constitutional Courts cannot be stifled or smothered by bon mot or polemic. Of course, the suspicion must have some sort of base and foundation and not a figment of one's wild imagination. One may think an impartial investigation would be a nostrum but not doing so would be like playing possum. As has been stated earlier, facts are self-evident and the grieved protagonist, a person belonging to the lower strata. He should not harbour the feeling that he is an "orphan under law".

(Emphasis added)

28. In ***Bimal Gurung Vs. Union of India & Ors, (2018) 15 SCC 480***, Court in paras 27 and 29 held that:

*"27. Before we advert to the facts of the present case and prayers made in the writ petition, it is useful to recall necessary principles as enumerated by this Court while exercising jurisdiction by this Court under Article 32 or the High Court under Article 226 for transferring investigation of a criminal case to a Central Agency. The Constitution Bench of this Court in *State of West Bengal Vs. Committee for Protection of Democratic Rights, (2010) 3 SCC 571*, has authoritatively laid down that the High Court under Article 226 and this Court*

under Article 32 can issue direction to CBI to investigate a cognizable offence within the State without consent of that State. The Constitution Bench also in the above context has held that although this Court has implied power and jurisdiction to direct for the transfer to CBI to investigate a cognizable offence but also has obligation to exercise the said power with great caution which must be exercised sparingly, cautiously and in exceptional situations. In paragraph 70 with regard to exercise of such power following has been laid down by the Constitution Bench:

“70. Before parting with the case, we deem it necessary to emphasise that despite wide powers conferred by Articles 32 and 226 of the Constitution, while passing any order, the Courts must bear in mind certain self-imposed limitations on the exercise of these constitutional powers. The very plenitude of the power under the said articles requires great caution in its exercise. Insofar as the question of issuing a direction to CBI to conduct investigation in a case is concerned, although no inflexible guidelines can be laid down to decide whether or not such power should be exercised but time and again it has been reiterated that such an order is not to be passed as a matter of routine or merely because a party has levelled some allegations against the local police. This extraordinary power must be exercised sparingly, cautiously and in exceptional situations where it becomes necessary to provide credibility and instil confidence in investigations or where the incident may have national and international ramifications or where such an order may be necessary for doing complete justice and enforcing the fundamental rights. Otherwise CBI would be flooded with a large number of cases and with limited resources, may find it difficult to properly investigate even serious cases and in the process lose its credibility and purpose with unsatisfactory investigations.”

29. The law is thus well settled that power of transferring investigation to other investigating agency must be exercised in rare and exceptional cases where the Court finds it necessary in order to do justice between the parties to instil confidence in the public mind, or where investigation by the

State Police lacks credibility. Such power has to be exercised in rare and exceptional cases. In K.V. Rajendran vs. Supt. Of Police, (2013) 12 SCC 480, this Court has noted few circumstances where the Court could exercise its constitutional power to transfer of investigation from State Police to CBI such as: (i) where high officials of State authorities are involved, or (ii) where the accusation itself is against the top officials of the investigating agency thereby allowing them to influence the investigation, or (iii) where investigation prima facie is found to be tainted/biased.”

(Emphasis added)

29. In ***E. Sivakumar Vs. Union of India & Ors, (2018) 7 SCC 365***, Court in paras 12, 13, 14 and 16 held that:

*“12. The third contention urged by the petitioner, that neither special reasons have been recorded nor the status report of the investigation already done by the Vigilance Commission has been considered, also does not commend us. As noted earlier, the High Court in the impugned judgment has exhaustively analysed all aspects of the matter as can be discerned from paragraphs 84 to 87, 91 to 97, 100 to 107; and again in paragraphs 141-144 which have been extracted hitherto. In our opinion, in the peculiar facts of the present case, the High Court has justly transferred the investigation to CBI after due consideration of all the relevant aspects, which approach is consistent with the settled legal position expounded in the decisions adverted to in the impugned judgment, including the decision in *Subrata Chatteraj Vs. Union of India, (2014) 8 SCC 768*, which predicates that transfer of investigation to CBI does not depend on the inadequacy of inquiry/investigation carried out by the State police. We agree with the High Court that the facts of the present case and the nature of crime being investigated warrants CBI investigation.*

*13. In *Dharam Pal Vs. State of Haryana (2016) 4 SCC 160*, this Court has underscored the imperativeness of ensuring a fair and impartial investigation against any person accused of commission of cognizable offence as the primary emphasis is on instilling faith in public at large and the investigating agency. The dictum in paragraph 24 and 25 of this reported decision is quite instructive which read thus:*

“24. Be it noted here that the constitutional courts can direct for further investigation or investigation by some other investigating agency. The purpose is, there has to be a fair investigation and a fair trial. The fair trial may be quite difficult unless there is a fair investigation. We are absolutely conscious that direction for further investigation by another agency has to be very sparingly issued but the facts depicted in this case compel us to exercise the said power. We are disposed to think that purpose of justice commands that the cause of the victim, the husband of the deceased, deserves to be answered so that miscarriage of justice is avoided. Therefore, in this case the stage of the case cannot be the governing factor.

25. We may further elucidate. The power to order fresh, de novo or reinvestigation being vested with the constitutional courts, the commencement of a trial and examination of some witnesses cannot be an absolute impediment for exercising the said constitutional power which is meant to ensure a fair and just investigation. It can never be forgotten that as the great ocean has only one test, the test of salt, so does justice has one flavour, the flavour of answering to the distress of the people without any discrimination. We may hasten to add that the democratic set-up has the potentiality of ruination if a citizen feels, the truth uttered by a poor man is seldom listened to. Not for nothing it has been said that sun rises and sun sets, light and darkness, winter and spring come and go, even the course of time is playful but truth remains and sparkles when justice is done. It is the bounden duty of a court of law to uphold the truth and truth means absence of deceit, absence of fraud and in a criminal investigation a real and fair investigation, not an investigation that reveals itself as a sham one. It is not acceptable. It has to be kept uppermost in mind that impartial and truthful investigation is imperative. If there is indentation or concavity in the investigation, can the “faith” in investigation be regarded as the gospel truth? Will it have the sanctity or the purity of a genuine investigation? If a grave suspicion arises with regard to the investigation, should a constitutional court close its

hands and accept the proposition that as the trial has commenced, the matter is beyond it? That is the “tour de force” of the prosecution and if we allow ourselves to say so it has become “idée fixe” but in our view the imperium of the constitutional courts cannot be stifled or smothered by bon mot or polemic. Of course, the suspicion must have some sort of base and foundation and not a figment of one’s wild imagination. One may think an impartial investigation would be a nostrum but not doing so would be like playing possum. As has been stated earlier, facts are self-evident and the grieved protagonist, a person belonging to the lower strata. He should not harbour the feeling that he is an “orphan under law”.

14. Suffice it to observe that we do not intend to deviate from the conclusion reached by the High Court that in the peculiar facts and circumstances of the case, it is but appropriate that investigation of the crime in question must be entrusted to CBI.

16. While parting, we may restate the observations made by the High Court in para 144 of the impugned judgment to clarify that the transfer of investigation of the crime in question to CBI is no reflection on the efficiency or efficacy of the investigation done by the State Vigilance Commission. We reiterate that position.”

(Emphasis added)

30. In ***Shree Shree Ram Janki Asthan Tapovan Mandir And Another Vs. State of Jharkhand and Ors, (2019) 6 SCC 777***, Court has held in paras 12,14 and 22 that:

*“12. The question as to whether the High Court could direct CBI to take over investigation in the facts of the present case needs to be examined. The Constitution Bench in its judgment *State of W.B. Vs. Committee for Protection of Democratic Rights, (2010) 3 SCC 571* has examined the question as to the rights of CBI to investigate a criminal offence in a State without its consent. This Court examined Entry 2 of List II of VII Schedule of the Constitution. It was held that the legislative power of the Union to provide for the regular police force of one State to*

*exercise power and jurisdiction in any area outside the State can only be exercised with the consent of the Government of that particular State in which such area is situated. The Court held that though the Court had wide powers conferred by Articles 32 and 226 of the Constitution, but it must bear in mind certain self-imposed limitations on the exercise of these constitutional powers. **This extraordinary power must be exercised sparingly, cautiously and in exceptional situations where it becomes necessary to provide credibility and instil confidence in investigation or where the incident may have national or international ramifications or where such an order is necessary for doing complete justice and enforcing fundamental rights.** 14. The Court approved earlier two Judge Bench Judgment *Minor Irrigation & Rural Engg. Services vs. Sahngoo Ram Arya* (2002) 5 SCC 521, wherein it was held that the High Court under Article 226 of the Constitution can direct inquiry to be conducted by CBI but such power can be exercised only in cases where there is sufficient material to come to a prima facie conclusion that there is need for such inquiry. It was held that it is not sufficient to have such material in the pleadings. The Court also held that the right to live under Article 21 include the right of a person to live without being hounded by the police or CBI to find out whether he has committed any offence or is living as a law-abiding citizen.*

*22. It may be kept in mind that the public order (Entry 1) and the police (Entry 2) is a State subject falling in List II of the VII Schedule of the Constitution. It is a primary responsibility of the investigating agency of the State Police to investigate all offences which are committed within its jurisdiction. **The investigations can be entrusted to Central Bureau of Investigation on satisfaction of the conditions as specified therein only in exceptional circumstances as laid down in *State of W.B. Vs. Committee for Protection of Democratic Right*, (2010) 3 SCC 571 case. Such power cannot and should not be exercised in a routine manner without examining the complexities, nature of offence and some time the tardy progress in the investigations***

involving high officials of the State investigating agency itself.”

(Emphasis added)

31. From the above mentioned judgments, it is evident that High Court under Article 226 of the Constitution can issue direction to C.B.I. to investigate a case. However, Court must bear self imposed limitations on the exercise of the constitutional power. This power must be exercised to provide credibility and instil confidence in the investigation. Few circumstances where High Court could exercise such power is where higher officials of State authorities are involved. In the present case all the facts are glaring. The top officials on their own had decided to pay ex-gratia compensation, which was known to them to be illegal. In this case, State police would not be able to investigate fairly and we are of the considered view that in order to unearth truth, present matter should be referred to C.B.I. for investigation.

32. In these peculiar facts and circumstances, we have no other option but to direct Central Bureau of Investigation to conduct a preliminary inquiry and to register a First Information Report to unearth the scam and to submit the status report of investigation to this Court in a sealed cover after three months. Let a certified copy of this order along with entire record be sent to the Director, C.B.I. New Delhi for compliance of the order. Registrar General of High Court is directed to take appropriate steps to comply the order.

33. With regard to **Writ Petition No.31586 of 2016**, the prayer made therein was regarding payment of compensation. We have not stopped the process of granting ex-gratia compensation, therefore, petitioners may be paid compensation, but it would be subject to ultimate result of the writ petition.

34. The petitioners of **Writ Petition Nos.52602 of 2011, 59955 of 2012, 59958 of 2012, 59962 of 2012 and 59964 of 2012**, have prayed

for quashing of the notifications dated 13.2.1991 and 23.3.1991. All these writ petitions were filed in the year 2011 and 2012, after a period of about two decades of issuance of impugned notifications.

35. We have gone through the contents of all these writ petitions and found that there is not a single averment to explain such huge delay.

36. Learned counsel appearing on behalf of the State submitted that these writ petitions may be dismissed on the ground of delay and laches.

37. This issue has been dealt with by the Apex Court in various judgments.

38. In *Aflatoon Vs. Lt. Governor of Delhi, 1975 (4) SCC 285*, Constitution Bench held in paras 9, 10 and 11 that:

*“9. Assuming for the moment that the public purpose was not sufficiently specified in the notification, did the appellants make a grievance of it at the appropriate time? If the appellants had really been prejudiced by the non- specification of the public purpose for which the plots in which they were interested were needed, they should have taken steps to have the notification quashed on that ground within a reasonable time. They did not move in the matter even after the declaration under Section 6 was published in 1966. They approached the High Court with their writ petitions only in 1970 when the notices under Section 9 were issued to them. In the concluding portion of the judgment in *Munshi Singh v. Union of India (supra)*, it was observed: [SCC p.344 para 10] :*

"In matters of this nature we would have taken due notice of laches on the part of the appellants while granting the above relief but we are satisfied that so far as the present appellants are concerned they have not been guilty of laches, delay or acquiescence, at any stage."

We do not think that the appellants were vigilant.

10. That apart, the appellants did not contend before the High Court that as the particulars of the public purpose were not specified in the notification issued under Section 4, they were prejudiced in that they could not effectively exercise their right under Section 5A. As the plea was not raised by the appellants in the writ petitions filed before the High Court, we do not think that the appellants are entitled to have the plea considered in these appeals.

11. Nor do we think that the petitioners in the writ petitions should be allowed to raise this plea in view of their conduct in not challenging the validity of the notification even after the publication of the declaration under Section 6 in 1966. Of the two writ petitions, one is filed by one of the appellants. There was apparently no reason why the writ petitioners should have waited till 1972 to come to this Court for challenging the validity of the notification issued in 1959 on the ground that the particulars of the public purpose were not specified. A valid notification under Section 4 is a sine qua non for initiation of proceedings for acquisition of property. To have sat on the fence and allowed the Government to complete the acquisition proceedings on the basis that the notification under Section 4 and the declaration under Section 6 were valid and then to attack the notification on grounds which were available to them at the time when the notification was published would be a putting premium on dilatory tactics. The writ petitions are liable to be dismissed on the ground of laches and delay on the part of the petitioners (see *Tilokchand Motichand v. H.B. Munshi* (1969) 1 SCC 110 and *Rabindranath Bose v. Union of India*, (1970) 1 SCC 84.)”

39. In ***P. Chinnanna & Ors Vs. State of A.P. & Ors***, (1994) 5 SCC 486, Court held in para 11 that:

“11.In fact, in relation to acquisition proceeding involving acquisition of land for public purposes, the court concerned must be averse to entertain writ petitions involving the challenge to such acquisition where there is avoidable delay or laches since such acquisition, if set aside, would not only involve enormous loss of public money but also cause undue delay in carrying out projects meant for general public good.”

40. In ***State of T.N. & Ors Vs. L. Krishnan & Ors***, (1996) 1 SCC 250, Court held in paras 40 and 41 that:

“40. There is yet another and a very strong factor militating against the writ petitioners. Not only did they fail to file any objections in the enquiries held under Section 5-A, they also failed to act soon after the declarations under Section 6 were made. As stated above, the declarations under Section 6 were made in the year 1978 and the present writ petitions were filed only sometime in the year 1982-83 when the awards were about to be passed. It has been pointed out in Aflatoon (1975) 4 SCC 285 that laches of this nature are fatal. Having held that the public purpose specified in the notification concerned therein is not vague, Mathew, J. made the following observations: (SCC pp.290-91 paras 9-12)

“Assuming for the moment that the public purpose was not sufficiently specified in the notification, did the appellants make a grievance of it at the appropriate time? If the appellants had really been prejudiced by the non-specification of the public purpose for which the plots in which they were interested were needed, they should have taken steps to have the notification quashed on that ground within a reasonable time. They did not move in the matter even after the declaration under Section 6 was published in 1966. They approached the High Court with their writ petitions only in 1970 when the notices under Section 9 were issued to them.

x x x

Nor do we think that the petitioners in the writ petitions should be allowed to raise this plea in view of their conduct in not challenging the validity of the notification even after the publication of the declaration under Section 6 in 1966. Of the two writ petitions, one is filed by one of the appellants. There was apparently no reason why the writ petitioners should have waited till 1972 to come to this Court for challenging the validity of the notification issued in 1959 on the ground that the particulars of the public purpose were not specified. A valid notification under Section 4 is a sine qua non for initiation of proceedings for acquisition of property. To have sat on the fence and allowed the Government to complete the acquisition proceedings on the basis that

the notification under Section 4 and the declaration under Section 6 were valid and then to attack the notification on grounds which were available to them at the time when the notification was published would be putting a premium on dilatory tactics. The writ petitions are liable to be dismissed on the ground of laches and delay on the part of the petitioners (See Tilokchand Motichand v. H.B. Munshi (1969) 1 SCC 110 and Rabindranath Bose v. Union of India (1970) 1 SCC 84).

From the counter affidavit filed on behalf of the Government, it is clear that the Government have allotted a large portion of the land after the acquisition proceedings were finalised to cooperative housing societies. To quash the notification at this stage would disturb the rights of third parties who are not before the Court.”

41. The above observations speak for themselves - and are fatal to the writ petitioners.”

41. In ***Urban Improvement Trust, Udaipur Vs. Bheru Lal & Ors, (2002) 7 SCC 712***, Court held in para 21 that:

“21. Further, learned counsel for the appellant rightly submitted that on the ground of delay and laches in filing the writ petitions, the Court ought to have dismissed the same. In the present case, as stated above, the Notification under Section 6 was published in the Official Gazette on 24.5.1994. The writ petitions are virtually filed after two years. In a case where land is needed for a public purpose, that too for a scheme framed under the Urban Development Act, the Court ought to have taken care in not entertaining the same on the ground of delay as it is likely to cause serious prejudice to the persons for whose benefit the Housing Scheme is framed under the Urban Development Act and also in having planned development of the area. The law on this point is well settled. (Reliance Petroleum Ltd. v. Zaver Chand Popatlal Sumaira (1996) 4 SCC 579 and Hari Singh v. State of U.P. (1984) 2 SCC 624).”

42. *In Swaika Properties (P) Ltd. & Anr. Vs. State of Rajasthan & Ors, (2008) 4 SCC 695*, Court held in paras 16, 17 and 18 that:

"16. This Court has repeatedly held that a writ petition challenging the notification for acquisition of land, if filed after the possession having been taken, is not maintainable. In Municipal Corpn. of Greater Bombay v. Industrial Development Investment Co. (P) Ltd.(1996) 11 SCC 501 where K. Ramaswamy, J. speaking for a Bench consisting of His Lordship and S.B. Majmudar, J. held : (SCC p.520,para 29)

"29. It is thus well-settled law that when there is inordinate delay in filing the writ petition and when all steps taken in the acquisition proceedings have become final, the Court should be loath to quash the notifications. The High Court has, no doubt, discretionary powers under Article 226 of the Constitution to quash the notification under Section 4 (1) and declaration under Section 6. But it should be exercised taking all relevant factors into pragmatic consideration. When the award was passed and possession was taken, the Court should not have exercised its power to quash the award which is a material factor to be taken into consideration before exercising the power under Article 226. The fact that no third party rights were created in the case is hardly a ground for interference. The Division Bench of the High Court was not right in interfering with the discretion exercised by the learned Single Judge dismissing the writ petition on the ground of laches."

In the concurring judgment, S.B. Majmudar, J. held as under:(Industrial Development Investment case (1996) 11 SCC 501 SCC pp 522-23, para 35)

"35..... Such a belated writ petition, therefore, was rightly rejected by the learned Single Judge on the ground of gross delay and laches. The respondent-writ petitioners can be said to have waived their objections to the acquisition on the ground of extinction of public purpose by their own inaction, lethargy and indolent conduct. The Division Bench of the High Court had taken the view that

because of their inaction no vested rights of third parties are created. That finding is obviously incorrect for the simple reason that because of the indolent conduct of the writ petitioners land got acquired, award was passed, compensation was handed over to various claimants including the landlord. Reference applications came to be filed for larger compensation by claimants including writ petitioners themselves. The acquired land got vested in the State Government and the Municipal Corporation free from all encumbrances as enjoined by Section 16 of the Land Acquisition Act. Thus right to get more compensation got vested in diverse claimants by passing of the award, as well as vested right was created in favour of the Bombay Municipal Corporation by virtue of the vesting of the land in the State Government for being handed over to the Corporation. All these events could not be wished away by observing that no third party rights were created by them. The writ petition came to be filed after all these events had taken place. Such a writ petition was clearly stillborn due to gross delay and laches."

17. Similarly, in *State of Rajasthan v. D.R. Laxmi*, (1996) 6 SCC 445 following the decision of this Court in *Municipal Corporation of Greater Bombay* (1996) 11 SCC 501 it was held : (*D.R. Laxmi case*, (1996) 6 SCC 445 SCC p 452, para 9)

"9.... When the award was passed and possession was taken, the Court should not have exercised its power to quash the award which is a material factor to be taken into consideration before exercising the power under Article 226. The fact that no third party rights were created in the case, is hardly a ground for interference. The Division Bench of the High Court was not right in interfering with the discretion exercised by the learned Single Judge dismissing the writ petition on the ground of laches."

18. To the similar effect is the judgment of this Court in *Municipal Council, Ahmednagar v. Shah Hyder Beig* (2000) 2 SCC 48 wherein this Court, following the decision of this Court in *C.Padma v. Dy. Secy. To the Govt of T.N.* (1997) 2

SCC 627 held : (Shah Hyder case (2000) 2 SCC 48, SCC p.55,para 17)

"17.In any event, after the award is passed no writ petition can be filed challenging the acquisition notice or against any proceeding thereunder. This has been the consistent view taken by this Court and in one of the recent cases (C.Padma v. Dy. Secy. To the Govt of T.N. (1997) 2 SCC 627)"

43. In ***Banda Development Authority Vs. Motilal Agarwal (2011) 5 SCC 394*** this Court held in paras 17, 18, 19, 20, 21, 22, 23,24 and 25 that:

"17.It is true that no limitation has been prescribed for filing a petition under Article 226 of the Constitution but one of the several rules of self imposed restraint evolved by the superior courts is that the High Court will not entertain petitions filed after long lapse of time because that may adversely affect the settled/crystallized rights of the parties. If the writ petition is filed beyond the period of limitation prescribed for filing a civil suit for similar cause, the High Court will treat the delay unreasonable and decline to entertain the grievance of the petitioner on merits.

18. In State of Madhya Pradesh v. Bhailal Bhai, AIR 1964 SC 1006, the Constitution Bench considered the effect of delay in filing writ petition under Article 226 of the Constitution and held: (AIR pp 1011-12 paras 17 and 21)

"17....It has been made clear more than once that the power to give relief under Article 226 is a discretionary power. This is specially true in the case of power to issue writs in the nature of mandamus. Among the several matters which the High Courts rightly take into consideration in the exercise of that discretion is the delay made by the aggrieved party in seeking this special remedy and what excuse there is for it.....It is not easy nor is it desirable to lay down any rule for universal application. It may however be stated as a general rule that if there has been unreasonable delay the

court ought not ordinarily to lend its aid to a party by this extraordinary remedy of mandamus.

21.....Learned counsel is right in his submission that the provisions of the Limitation Act do not as such apply to the granting of relief under Article 226. It appears to us however that the maximum period fixed by the legislature as the time within which the relief by a suit in a Civil Court must be brought may ordinarily be taken to be a reasonable standard by which delay in seeking remedy under Article 226 can be measured. This Court may consider the delay unreasonable even if it is less than the period of limitation prescribed for a civil action for the remedy but where the delay is more than this period, it will almost always be proper for the court to hold that it is unreasonable."

19. In matters involving challenge to the acquisition of land for public purpose, this Court has consistently held that delay in filing the writ petition should be viewed seriously and relief denied to the petitioner if he fails to offer plausible explanation for the delay. The Court has also held that the delay of even few years would be fatal to the cause of the petitioner, if the acquired land has been partly or wholly utilised for the public purpose.

20. In Ajodhya Bhagat v. State of Bihar (1974) 2 SCC 501, this Court approved dismissal by the High Court of the writ petition filed by the appellant for quashing the acquisition of his land and observed: (SCC p.506,para 23)

"23. The High Court held that the appellants were guilty of delay and laches. The High Court relied on two important facts. First, that there was delivery of possession. The appellants alleged that it was a paper transaction. The High Court rightly rejected that contention. Secondly, the High Court said that the Trust invested several lakhs of rupees for the construction of roads and material for development purposes. The appellants were in full knowledge of the same. The appellants did not take any steps. The High Court rightly said that to allow this type of

challenge to an acquisition of large block of land piecemeal by the owners of some of the plots in succession would not be proper. If this type of challenge is encouraged the various owners of small plots will come up with writ petitions and hold up the acquisition proceedings for more than a generation. The High Court rightly exercised discretion against the appellants. We do not see any reason to take a contrary view to the discretion exercised by the High Court."

21. *In State of Rajasthan v. D.R.Laxmi (1996) 6 SCC 445, this Court referred to Administrative Law H.W.R. Wade (7th Ed.) at pages 342-43 and observed: (SCC p.453, para 10)*

"10. The order or action, if ultra vires the power, becomes void and it does not confer any right. But the action need not necessarily be set at naught in all events. Though the order may be void, if the party does not approach the Court within reasonable time, which is always a question of fact and have the order invalidated or acquiesced or waived, the discretion of the Court has to be exercised in a reasonable manner. When the discretion has been conferred on the Court, the Court may in appropriate case decline to grant the relief, even if it holds that the order was void. The net result is that extraordinary jurisdiction of the Court may not be exercised in such circumstances."

22. *In Girdharan Prasad Missir v. State of Bihar (1980) 2 SCC 83, the delay of 17 months was considered as a good ground for declining relief to the petitioner.*

In Municipal Corpn. of Greater Bombay v. Industrial Development Investment Co. (P) Ltd. (1996) 11 SCC 501, this Court held: (SCC p 452, para 9)

"9.It is thus well-settled law that when there is inordinate delay in filing the writ petition and when all steps taken in the acquisition proceedings have become final, the Court should be loath to quash the notifications. The High Court has, no doubt, discretionary powers under Article 226 of the

Constitution to quash the notification under Section 4 (1) and declaration under Section 6. But it should be exercised taking all relevant factors into pragmatic consideration. When the award was passed and possession was taken, the Court should not have exercised its power to quash the award which is a material factor to be taken into consideration before exercising the power under Article 226. The fact that no third party rights were created in the case is hardly a ground for interference. The Division Bench of the High Court was not right in interfering with the discretion exercised by the learned Single Judge dismissing the writ petition on the ground of laches."

23. *In Urban Improvement Trust v. Bheru Lal (2002) 7 SCC 712, this Court reversed the order of the Rajasthan High Court and held that the writ petition filed for quashing of acquisition of land for a residential scheme framed by the appellant-Urban Improvement Trust was liable to be dismissed on the ground that the same was filed after two years.*

24. *In Ganpatibai v. State of M.P. (2006) 7 SCC 508, the delay of 5 years was considered unreasonable and the order passed by the High Court refusing to entertain the writ petition was confirmed. In that case also the petitioner had initially filed suit challenging the acquisition of land. The suit was dismissed in 2001. Thereafter, the writ petition was filed. This Court referred to an earlier judgment in State of Bihar v. Dharendra Kumar (1995) 4 SCC 229 and observed: (Ganpatibai v. State of M.P. (2006) 7 SCC 508, SCC p.510, para 9)*

"9. In State of Bihar v. Dharendra Kumar (1995) 4 SCC 229 this Court had observed that civil suit was not maintainable and the remedy to question notification under Section 4 and the declaration under Section 6 of the Act was by filing a writ petition. Even thereafter the appellant, as noted above, pursued the suit in the civil court. The stand that five years after the filing of the suit, the decision was rendered does not in any way help the appellant. Even after the decision of this Court, the appellant continued to prosecute the suit till 2001, when

the decision of this Court in 1995 had held that suit was not maintainable."

25. *In Swaran Lata v. State of Haryana (2010) 4 SCC 532, the dismissal of writ petition filed after seven years of the publication of declaration and five years of the award passed by the Collector was upheld by the Court and it was observed: (SCC p.535 para 11)*

"11. In the instant case, it is not the case of the petitioners that they had not been aware of the acquisition proceedings as the only ground taken in the writ petition has been that substance of the notification under Section 4 and declaration under Section 6 of the 1894 Act had been published in the newspapers having no wide circulation. Even if the submission made by the petitioners is accepted, it cannot be presumed that they could not be aware of the acquisition proceedings for the reason that a very huge chunk of land belonging to a large number of tenure-holders had been notified for acquisition. Therefore, it should have been the talk of the town. Thus, it cannot be presumed that the petitioners could not have knowledge of the acquisition proceedings."

44. From the above mentioned judgments, it is clear that there is a consistent view that in case there is an inordinate delay in approaching the Court and when all steps taken in the acquisition proceedings have become final, the Court should be loath to quash the proceedings.

45. In the present case, the notifications are of the year 1991, whereas the writ petitions were filed in the year 2011 and 2012, after a period of more than 20 years. Averments of the writ petitions are silent on the issue of any explanation of gross delay in approaching this Court.

46. Admittedly, the possession of the land was taken away back in the year 1993. The special land Acquisition Officer had made award

in the year 1993 and 1995 and as such entire proceedings of acquisition was completed wayback in the year 1995.

47. In view of above discussions, we dismiss the **Writ Petition Nos.52602 of 2011, 59955 of 2012, 59958 of 2012, 59962 of 2012 and 59964 of 2012** on the ground of gross delay and laches.

48. So far as the prayers made in the **Writ Petition Nos.47504 of 2017, 50821 of 2017, 50824 of 2017, 51857 of 2017 and 57562 of 2017** are concerned, as the matter is seized with the Hon'ble Supreme Court and there is a request to High Court for not to deal with such cases relating to the interpretation of or concerning Section 24 of Act of 2013. (**State of Haryana Vs. M/s. G.D. Goenka Tourism Corporation Ltd: (2018) 3 SCC 585**). Accordingly, we are not passing any order on these petitions at this stage.

49. Registrar General of this Court is directed to take appropriate steps to comply with the directions made in paragraph 32 of this judgment regarding direction to Central Bureau of Investigation to conduct preliminary enquiry and register First Information Report.

50. List leading Writ Petition i.e. 31586 of 2016 on 11.5.2020.

Order Date :- 10.2.2020

SB

(Saurabh Shyam Shamsbery,J)

(Sudhir Agarwal,J.)