* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **(1) W.P.(C) 7641/2009 & CM Nos. 3794/2009 & 8937/2009**

**Reserved on: 25th August, 2009**

**Pronounced on: 1st September, 2009**

\# AJAY KUMAR SANGHI ..... Petitioner

! Through: Mr Sandeep Sethi, Sr Adv. with Mr Virender Goswami and Mr Vaibhav Kumar, Advs. for Petitioner No.1, Mr S.Paul, Advocate for Petitioner No.2

Versus

$ DELHI POLICE & ORS. ..... Respondent

^ Through Mr Sanjay Poddar with Mr. N.S. Benipal, Advocates for R-2/LAC Mr Najmi Waziri and Mr Saleem Ahmed, Advs.for R-3 with SHO V.P.Dahiya from P.S. Badarpur Mr Rajesh Mahajan, Adv.for DDA

2. **W.P. (C) no. 10518/2009 & CM 9287/2009**

\# AJAY KUMAR SANGHI ..... Petitioners

! Through Mr Sandeep Sethi, Sr Adv. with Mr Virender Goswami and Mr Vaibhav Kumar, Advs. for Petitioner No.1,Mr S.Paul, Adv.for Petitioner No.2

VERSUS

$ LT. GOVERNOR OF DELHI & ORS. .....Respondents

^ Through: Mr Sanjay Poddar with Mr. N.S. Benipal, Advocates for R-2/LAC

Mr Najmi Waziri and Mr
Saleem Ahmed, Advs.for R-3 with SHO
V.P.Dahiya from P.S. Badarpur.
Mr Rajesh Mahajan, Adv.for R-3/DDA

**CORAM:**

**HON'BLE MR. JUSTICE VIKRAMAJIT SEN**
**HON'BLE MR. JUSTICE V.K. JAIN**

1. Whether Reporters of Local newspapers may be allowed to see the Judgment? YES
2. To be referred to the Reporter or not? YES
3. Whether the Judgment should be reported in the Digest? YES

**V.K.Jain, J.**

By this common Order, we will dispose of both the Petitions referred above.

The brief facts, as stated in the petitions, are as follows: The Petitioners are owners of land comprised in Khasra No.97 of Tajpul Village on Mathura Road, Delhi. Initially, the Petitions were filed only by Shri Ajay Kumar Sanghi, impleading the other co-owners namely, Shri Akshay Kumar Sanghi, Shri Nitin Kumar Sanghi and Shri Ashwin Kumar Sanghi. Since it was admitted before us that the Petitioner and Respondents No.4 to 6, namely,

Shri Akshay Kumar Sanghi, Shri Nitin Kumar Sanghi and Shri Ashwin Kumar Sanghi, claim to be in joint possession of land in question and there was no lis between them as regards this land, we directed transposition of Respondents No.4 to 6 as co-Petitioners. It was alleged in WP(C) 7641/09 that on 7.3.2001, Respondent No.1 Delhi Police entered the property of the Petitioner without any authority of law and refused to vacate the same. From Newspaper Reports, the Petitioner came to know that since Police Station Badarpur needs to be relocated on account of the existing land on which it is situated being required for Commonwealth Games, the Petitioner apprehends that Respondent No.1 intends to erect a Police Station on their property. The prayer made in the Writ Petition No.7641/2009 is to direct Respondent No.1 Delhi Police to vacate the aforesaid property.

2. Vide an interim order dated 20.3.2009, the learned Single Judge restrained the Respondents from disturbing the status quo with regard to the possession of the property and also restrained them from carrying any construction, altering the existing structure or parting with possession.

3. Respondent No.1 filed a Reply, contesting the Petition. It was stated in the Reply that the entire land of Police Station Badarpur is required by National Highway Authority of India for construction of elevated highway at Badarpur and instructions were accordingly issued to Respondent No.1 to shift Police Station Badarpur to an alternative location. On enquiry from concerned Revenue Authority, it was revealed that five and a half bighas of land with Gaon Sabha Tajpul under Section 81 of Delhi Land Reforms Act was, available in Khasra No.97, for a Police Station. A request was accordingly sent to Government of NCT of Delhi, to allocate the aforesaid land to Delhi Police for construction of Police Station Badarpur. Vide letter dated 6.3.2009, the land measuring 5 bighas and 5 biswas, comprised in Khasra No.97 of Village Tajpul, was allotted to Respondent No.1, physical possession of the land was also handed over by the concerned Authority to Delhi Police on 7.3.2009 and, therefore, land in question is in exclusive possession of Delhi Police.

4. During pendency of Writ Petition No.7641/2009, land in question was acquired under the provisions of Land Acquisition Act, which led to filing of W.P.(C) 10518/2009. It has been stated in this Petition that the Petitioners came across Notification published in Hindustan Times dated 7.7.2009, issued under

Sections 6 and 7 of Land Acquisition Act for acquisition of the aforesaid property and they later discovered a Notification dated 19.6.2009 issued under Section 4(1) of the Act notifying that the aforesaid property was likely to be acquired and also notifying dispensing with mandatory provisions of Section 5 of Land Acquisition Act simultaneous with publication of Notification under Section 6 and 7. Respondent No.1 also issued a Notification under Section 9(1) and 17(1) directing Respondent No.2 Land Acquisition Collector to take possession of the aforesaid property within fifteen days from the publication of the Notice.

5. The acquisition has been challenged primarily on the grounds that

(1) The Notification under Section 4 of Land Acquisition Act was not published in accordance with law.

(2) Notice as required under Section 9 of Land Acquisition Act was not given to the Petitioners.

(3) Land belonging to the Government and placed on their disposal of Respondent DDA being available in the vicinity, there was no necessity of acquiring land of the Petitioners.

(4) The acquisition was mala fide having been made only with a view to defeat the status quo order passed by this Court in W.P.(C) No.7641/2009.

6. It has also been stated in the Petition that requirement of land for a Police Station is not a public purpose and there was no such urgency, as would justify resort to the urgency provision of Section 17 of Land Acquisition Act. The Petitioner has sought quashing of the Notifications dated 19.6.2009 issued under Section 4 as well as the subsequent Notifications dated 1.7.2009 under Sections 6, 7 and 17 of the Act.

7. In its reply filed in Civil Writ Petition No. 10518 of 2009, respondent No. 3, Delhi Police, besides reiterating the averments made in its reply in Civil Writ Petition 7641/09, has alleged that a joint survey was conducted by Revenue Department and Delhi Police at the sites which were identified as Gaon Sabha lands in village Tajpul. These lands were i) Khasra No. 97 admeasuring 5.5. Bighas, ii) Khasra Nos. 104/2 (0-1), iii) 105/2 (4-11) and iv) 106 (1-14) in Village Tajpul. One land filling site abutting Jaipur Road was also considered. The site abutting Jaitpur Road was found having very deep pits and was far away from the main road. After assessing the sites, their location, nature of the lands,

accessibility, current user and other relevant factors, these lands, except the land under khasra No. 97, were not found suitable by Delhi Police for location of a Police Station. The land falling in khasra No. 97 was found to be more suitable for the Police Station, since it is located on main highway; it would provide the most visibility, besides easy access to citizens and would also facilitate quick response in deployment of police force. The proposed Police Station is required to be near the interstate border for any exigencies, as security concerns demand that minimum time should be lost in deployment of the requisite police force. It has also been stated that some other land belonging to DDA available on Mathura Road were also shown to Delhi Police, amongst which one was behind Kajaria and other one was at Ali Modh. The site behind Kajaria was not suitable to Delhi Police and the site of Ali Modh has already been handed over to DMRC by DDA.

8. In the counter affidavit filed on behalf of respondent No. 1, it has been alleged that land in question is governed by the provisions of Delhi Land Reforms Act and since it was not being used in accordance with the provisions of the Act, Revenue Assistant initiated proceedings under the provisions of Section 81 of the Delhi Land Reforms Act, which culminated in order dated 29.5.1981, whereby the Revenue Assistant directed the petitioner

to repair the damage within three months from the date of the order, failing which the land was directed to be vested in Gaon Sabha. Since the petitioner failed to comply with the directions of the Revenue Assistant, the land in question came to be vested in Gaon Sabha and entry was made accordingly in revenue record. It has been further stated that since land underneath Police Station Badarpur was required by National Highway Authority of India for construction of a six lane elevated highway, the issue of providing alternative site for the Police Station was discussed at the highest level, including by the Cabinet Secretary. The Chief Secretary of Delhi constituted a committee comprising of officers from nine departments of the government to find out a suitable alternative site. Upon inspection of various sites, land in question was found most suitable for a police station. The matter was accordingly placed before the Lieutenant Governor of Delhi, for appropriate order for allotment of the aforesaid land to Police Station, which is a public purpose under the provisions of Delhi Land Reforms Act. The Lieutenant Governor, in exercise of the power conferred upon him under the Delhi Land Reforms Act, directed Gaon Sabha to allot the land in question to the Police Department, for construction of a police station. This decision of the Lt. Governor was conveyed by Director (Panchayat) to the Commissioner of

Police vide letter dated 6.3.2009 and pursuant thereto possession was handed over to Delhi Police, by Revenue Authorities, on 7.3.09. It has been further alleged that since land was urgently required for construction of police station, which has to be shifted from its existing site, and resolution of dispute with regard to title of the petitioner viz-a-viz Gaon Sabha was likely to take some time, the Lt. Governor, in larger public interest, decided to acquire land in question under the provisions of Land Acquisition Act, on payment of compensation to the rightful owner. Permission of the Lt. Governor was obtained on 28.5.09, for initiation of proceedings under Land Acquisition Act and after carrying out necessary survey and verifying the record, the matter was placed before the Lt. Governor, seeking approval for issuing notification under Section 4 read with Section 17(1) of Land Acquisition Act and to dispense with inquiry under Section 5A of the Act, on account of urgency involved in the matter. The Lt. Governor after being satisfied of the requirement of Delhi Police and also about urgency in the matter, passed an order dated 13.6.09 directing issue of requisite notification. It has been further stated in the Reply that notification under Section 4 of Land Acquisition Act, read with Section 17(4) thereof, was issued on 19.6.09 and was published in two newspapers as well as in the locality on 25.6.09. The same

was also published in the official Gazette, thereby complying all the mandatory requirements of the Act regarding the publication of the notification. Thereafter notification under Section 6 of the Act was issued on 1.7.09, declaring the intention of the Government to acquire land in question for a public purpose, namely construction of Police Station, and the same was published in 'The Hindustan Times' on 7.7.09. Another notification was also issued under Section 17(1) of Land Acquisition Act, authorising the Land Acquisition Collector to take possession of the land in question after expiry of 15 days from the date of issue of notice under Section 9 of the Act. However, the Land Acquisition Collector could not take possession of the land on account of interim order passed by this court in CWP No. 7541 of 2009. It has also been stated in the reply that the claim of the petitioner for ownership right in land in question was being resisted by Gaon Sabha on the strength of the order passed by the Revenue Assistant and therefore in order to balance the rival claims and rights of all the parties, it was decided to acquire the land in question and pay current market value to the rightful owner.

9. In his counter affidavit, respondent No. 2, the Land Acquisition Collector has taken stand, identical to the stand taken in the counter affidavit filed on behalf of respondent No. 1. It has

also been stated in his counter affidavit that Land Acquisition Collector issued individual notice under Section 9 of the Act to the recorded owner, besides issuing a public notice under Section 10 of the Act, asking the persons interested to file their claims before him and pursuant thereto the petitioner has also filed his claim before the Land Acquisition Collector.

10. The first arguments advanced before us by the learned Senior Counsel for the petitioner was that the notification purporting to be issued under Section 4 of the Land Acquisition Act was not published in the prescribed manner. Section 4(1) of Land Acquisition Act requires the notification to be published in the official Gazette and in two daily newspapers circulating in the locality of which one has to be in the regional language. The Collector is also required to cause the public notice of the substance of such notification to be given at convenient places in the locality. The learned counsel for respondents No. 1 and 2 has placed before us the file relating to acquisition of land in question. On perusal of the file, we find that the notification dated 19.6.09, issued under Section 4 of the Land Acquisition Act, was published in 'The Times of India' as well as in 'Rashtriya Sahara' both dated 25th June, 2009. Newspaper 'Rashtriya Sahara' being a Hindi newspaper, the notification was published in it in Hindi which is

the regional language of Delhi. We also find that the notification dated 19th June, 2009, was also sent for publication in Part-IV of Delhi Extraordinary Gazette. A perusal of the endorsement made on the same day, on the notification dated 19.6.09 would show that its copy was forwarded to ADM/LAC (South), M.B. Road, Saket with the request that necessary publicity be also made in the village. Therefore, we find no merit in the contention that notification issued under Section 4 of Land Acquisition Act was not published properly.

11. The publication of declaration/notification dated 1.7.09 issued under Section 6 of the Land Acquisition Act, in newspapers, has been admitted in the petition. The file produced for our perusal also shows that the notification / declaration was duly published in English in newspaper 'The Hindustan Times' and in Hindi in 'Navbharat Times' dated July 7, 2009. A perusal of the file shows that notification dated 1.7.2009 was sent for publication in Part-IV of Delhi Extraordinary Gazette and a copy of the same was also endorsed to ADM/LAC (South) with a request that necessary publicity may also be made in the village. Copies of all the newspapers are available in the file of the respondents, produced for perusal of the court. Therefore, we are satisfied that the notification dated 1.7.09 was also duly published. Another

notification dated 1.7.09 was also published in newspaper whereby, in exercise of the power conferred upon him under Section 17 of the Land Acquisition Act, the Ld. Governor directed the Land Acquisition Collector to take possession of land in question on expiry of 15 days from the date of publication. This notification was also sent for publication in Part-IV of Delhi Extraordinary Gazette. Thus, there was due compliance of legal requirements, in the matter of publication of notifications.

12. Now we come to the contention that the acquisition was bad for want of issue of notice to the petitioner under Section 9 of Land Acquisition Act, Section 17(1) of the Land Acquisition Act reads as under:

> *"Section 17(1): In case of urgency, whenever the [appropriate Government], so directs, the Collector, though no such award has been made, may, on the expiration of fifteen days from the publication of the notice mentioned in Section 9, sub-section (1), [take possession of any land needed for a public purpose]. Such land shall thereupon [vest absolutely in the [Government]], free from all encumbrances."*

It is quite clear from a bare perusal of the above referred provision that if the Govt. invokes urgency provisions, the possession can be taken on expiry of 15 days from the publication

of notice mentioned in Section 9(1), and thereupon the land shall vest absolutely in the Government, free from all encumbrances. Notice under Section 9(3) is not required to be given before taking possession, in exercise of emergency powers under Section 17(1) of the Act.

13. In the present case, if the land in question is already in possession of the respondent Delhi Police as is claimed by them, though the case of the petitioners is that they are not as yet ousted from possession of the entire land, public notice envisaged under Section 9(1) of the Land Acquisition Act would not be necessary. Moreover, as is evident from the acquisition file produced before us, a notice was published in newspaper on 7th July, 2009 informing the public at large that the Lt. Governor was pleased to direct Land Acquisition Collector (South) to take possession of the land, the specifications of which were given in Notification No. F.9(62)/09/L&B/LA/3130 dated 19.6.09 under Section 4 and Notification No. F.9(62)/09/L&B/LA/3815 dated 1.7.09 under Section 6 of the Act, on expiry of 15 days from publication of the notice under Sub Section 1 of Section 9 of the Act. The copy of the newspapers, in which Notification dated 1.7.09 was published on 7th July, 2009, has also been placed on record by the respondent. A perusal of the endorsement made on the Notification dated

1.7.09 shows that its copy was also forwarded to ADM / LAC (South) with the request that necessary publicity may also be made in the village.

14. Even if we assume that no notice as envisaged under Section 9(1) of Land Acquisition Act was given by the respondents, that by itself will not vitiate acquisition as it has a bearing only on the quantum of compensation. This question came up consideration before a Division Bench of this court in *Deepak Resorts & Hotels P. Ltd & Anr. V. Union of India & Ors., 2008 V AD (DELHI) 466.* The contention before Division Bench was that taking over of possession, even when authorized in terms of an order passed under Section 17(1) was possible only if the requirement of Section 9 of the Act were strictly complied with and failure to do so had the effect of rendering the entire process illegal including the notification issued earlier. Repelling the contention the Division Bench inter alia held as under:

> *"6. A conjoint reading of Section 9(1) and Section 17(1) supra would leave no manner of doubt that the very purpose underlying the issue of a public notice is to invite claims for payment of compensation to all those interested in the same. The purpose behind the issue of such a public notice is not to hear objections as to whether*

*possession of the land should or should not be taken over by the Collector. The purpose simply is to invite claims for payment of compensation for all interests held in the land under acquisition.*

*"It was next argued by learned counsel for the petitioners that even a notice under Section 9(1) of the Act had not been issued. This according to them has the effect of vitiating the acquisition proceedings. We do not think so for two precise reasons. Firstly because the official record produced by Mr. Poddar shows that a notice under Section 9(1) was in fact issued by the Collector 15 days before the possession of the land was taken by him on the 5th December, 2007. Secondly because the failure of a notice under Section 9(1) does not have the effect of vitiating the acquisition proceedings themselves as was argued on behalf of the petitioners. That is because the purpose underlying the issue of the notice is simply to invite claims for payment of compensation for the land under acquisition. The non-issue of a public notice in terms of Section 9(1) of the Act may be an irregularity but the same does not have the effect of nullifying the acquisition proceedings themselves. The purpose underlying that notice is as well served by a notice to the occupier and the persons interested under Section 9(3) of the Act. It is not the case of the petitioners that the Collector has made an award without inviting claims as*

*required under Section 9(3). The argument on the contrary was that no award has been made by the Collector hence, there was no occasion for him to tender 80% of the compensation payable for the land in question. We shall presently deal with the later limb of the argument. Suffice it to say that so long as the occupier or the owner of the land or any person interested in the land is given a notice under Section 9(3) before the making of the award and so long as any such owner, occupier or person interested has an opportunity to make a claim for payment of compensation before the making of the award, the absence of a public notice under Section 9(1) would not invalidate the proceedings. We are supported in that view by a Division Bench decision of this Court in Shyam Lal CWP No. 4260/1998 decided on 10th February, 2003, where the Court observed:-*

> *"By notice under Section (1) the Government did authorize the Collector Land Acquisition to take over possession and obviously mandate was to take possession after expiration of period of 15 days on publication of notice under sub-section (1) of Section 9 but non-compliance of this requirement of issuing notice under sub-section (1) of Section 9 will not vitiate the act of taking over possession by the Collector. It is merely an irregularity and will not make the action of*

*the Collector as void or non-est since he had authorisation of the Government to take over possession of the land sought to be acquired, which pre-supposed the satisfaction of the Government of the urgency. It is not shown that any prejudice has been caused to the petitioner due to non-compliance, since compensation has yet to be paid and the petitioner has already laid a claim, may be by this very petition."*

15. As regards the contention that in addition to notice under Section 9(1), the respondents were also required to give notice to the occupier under Section ((3) of the Act, we find the same to be devoid of any merit. This issue was also examined by the Division Bench in the case of Deepak Resorts & Hotels P Ltd. & Anr. (Supra). Rejecting the contention, the Division Bench held as under:

*"Mr.Lekhi however argued that not only should a notice be issued under Section 9(1) before possession can be taken over by the Collector, but a notice under Section 9(3) to the occupier of the land and on all such persons known or believed to be interested therein is also a mandatory condition precedent. He urged that the failure of the Collector to issue notice in terms of Section 9(3)*

*was tantamount to a fatal procedural infirmity which would vitiate the entire acquisition proceedings. There is, in our opinion, no merit in that contention whatsoever. Section 17(1) of the Act is specific and refers only to notice under Section 9(1) of the Act as a requirement before possession can be taken by the Collector in exercise of the special powers vested in the Government. Section 17(1) does not in terms or by implication howsoever far fetched required the Collector to wait till a notice is served by him upon the occupier of the land or persons interested in the same within the comprehension of Section ((3) of the Act. Accepting the submissions made by Mr.Lekhi that a notice under Section 9(3) is also essential for taking possession under Section 17(1) would amount to re-writing the Statute. There is, in our view, no juristic or any other rational basis for the interpretation suggested by learned counsel for the petitioners. The prayer for a declaration made by the petitioners that a notice under sub-section 3 of Section 9 of the Act is a sine qua non for taking over actual physical possession must therefore fail and is accordingly rejected."*

16. The Division Bench also referred to the following observations of a Full Bench of this Court in *Roshnara Begum v. Union of India, 61(1996) DLT 206*.

> "*In some of the cases, the plea taken was that notices under Sections 9 & 10 have not been served and thus the acquisition proceedings have become void. In the case of Jatan Singh the Supreme Court has held that even if there has been no service of notices under Sections 9 and 10 which are meant only for taking proceedings for determining compensation even then the same would not affect the acquisition proceedings. (para 113).*
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> *..... A large number of judgements lay down that non-service of notices under Sections 9, 10 or under Section 12 of the Act do not vitiate the acquisition proceedings (See Ezra Vs. Secretary of State (supra), Kasturi Pillai Vs. Municipal Council, AIR 1920 Madras 417, Shivdev Singh Vs. State of Bihar & Others, AIR 1963 Patna 201, Prasanna Kumar Dass & Others Vs. State of Orissa, 1956 Orissa 114, Yousuf Begam Vs. State of Andhra Pradesh & Others, AIR 1969 AP 10, P. K. Shaikh Vs. State of West Bengal & Others, AIR 1976 Calcutta*

*149, Lakhbir Chand Vs. Land Acquisition Collector, Delhi & Others, AIR 1979 Delhi 53, State of Punjab Vs. Gurdial Singh & Another, AIR 1984 P&H 1, Manakchand Sarupchand Lunavat & Others V. State of Maharashtra & Others, AIR 1989 Bombay 339 and Dr. G.H. Grant Vs. State of Bihar, AIR 1966 SC 237. (para 121)"*

17. In view of the decision of the Full Bench of this court in the case of Roshnara Begum (supra), even if it is assumed that the notices envisaged u/s 9 of Land Acquisition Act were not issued by the Collector, that by itself would not vitiate the acquisition proceedings since the objective of such a notice is to enable the persons interested in the land to submit their claims for compensation and acquisition proceedings cannot be challenged in response to the notice issued u/s 9 of Land Acquisition Act. In any case, as far as present case is concerned, the affidavit of respondent No.2 would show that Land Acquisition Collector has issued individual notice u/s 9 of the Act to the recorded owner and has also issued a public notice u/s 10 of the Act asking the persons interested to file their claims before him. It has also been stated in the counter affidavit of respondent No.2 that pursuant to these notices, the petitioner has also filed his claim before the Land Acquisition Collector.

18. We, therefore, need not go into the question as to whether notices under Section 9(3) of Land Acquisition Act were to be issued to the petitioners, who claim to be in physical possession of a part of land in question, or to Gaon Sabha, which is the recorded owner of land in question as per Revenue Record, or to both of them. We would, however, like to note that though physical possession of the petitioners, prior to 7.3.09 is indicated by the letter whereby this property was de-sealed, this is also a fact that in last more than 10 years, the petitioners have not taken recourse to legal proceedings, to get the mutation in the name of Gaon Sabha, cancelled in Revenue Record.

19. The third contention of the learned senior counsel appearing for the petitioner was that the acquisition of land in question was not necessary as sufficient land of DDA which is available in this very area could have been used for construction of police station. The argument is that there was no good reason to acquire the land of the petitioner instead of using other land available in the area for this purpose. We find no merit in the contention. As stated in the counter affidavit of the respondents, a committee comprising officers from nine departments of the government was constituted, to identify a suitable alternative site for police station Badarpur. The other lands available in the locality, including the land

comprised in khasra No. 97 admeasuring 5.5. Bighas, ii) Khasra Nos. 104/2 (0-1), iii) 105/2 (4-11) and iv) 106 (1-14) in Village Tajpul and land fill site abutting Taitpur Road were inspected in the process of identifying a suitable land for housing the police station. However, it was the land in question which was found most suitable for housing the police station, keeping in view the fact that it is located on main Delhi – Mathura Highway. It cannot be disputed that if the police station is located on the main highway, not only will it be easily accessible to the citizens, it would also facilitate better and quick response to meet any law and order problem and carry out other police activities. No fault can be found with the requirement to locate a police station near interstate border so as to have stricter vigil on the movement of people and transport from one state to other. If a police station is located in the interior, it would be difficult for everyone including a common citizen to locate it and then access it. As regards the land belonging to DDA, the affidavits of the respondents disclose that the piece of land which is situated behind the factory of Kajaria is not suitable whereas the land at Ali Modh has already been handed over by DDA to DMRC. No material has been placed before us to show that any other site available for housing police

station, Mathura Road is better or even equally suited for constructions of Police Station Badarpur.

20. It is for the authorities concerned including Delhi Police, to decide which land, out of those available for the purpose, is most suitable for construction of a police station. It is not the function of the court, while exercising jurisdiction under Article 226 of the Constitution, to go into area , location and local conditions of various lands and take upon itself the task of deciding as to which of them is most suitable for construction of a police station. This function is in the domain of the Executive Authorities and has to be left to them. It has to be appreciated that a Writ Court does not sit in appeal over the administrative decions of the court. In judicial review of administrative decisions, the court would not interfere with the decision taken by the Executive Authorities, unless it is shown that it was arbitrary, illegal malafide, or without jurisdiction. The petitioner has not placed any material before us which would justify drawing an inference that the decision taken by respondents, in the matter of selection of suitable site for construction of police station Badarpur, was arbitrary, illegal or malafide. In fact, the averments made in the counter affidavits would show that the selection of site was made after due consideration of all relevant factors including inspection of all

available sites. Therefore, we find no fault with the decision taken by the respondents in this regard.

21. Now, we come to the last contention raised by the learned senior counsel for the petitioner, that the acquisition is malafide, having been resorted to in order to circumvent the order of status quo passed by Learned Single Judge in CWP No. 7641 of 2009 on 20.3.2009. As noted earlier, the case of the respondents in this regard is that since there was dispute between the petitioner, who is claiming ownership and possession of land in question on one hand, and Gaon Sabha, which is claiming vesting in it under Section 81 of the Delhi Land Reforms Act, in terms of the order passed by the Revenue Assistant dated 29.5.81, on the other hand, they decided to acquire the land in question, on payment of compensation to the rightful claimant, under Section 23 of the Land Acquisition Act. The decision to acquire land has to be viewed in the context of the urgency to start construction of a building for housing Police Station Badarpur, which has to be immediately shifted from its existing site, so as to make it available to National Highway Authority of India (NHAI) for construction of six lane elevated highway, which is required to be completed before the commencement of Commonwealth Games 2010. The apprehension of the respondents was that final adjudication of

disputes between the petitioner and the Gaon Sabha Tajpul as regards the title of the land in question, was not likely in near future. The respondents could reasonably apprehend that the decision, if taken in CWP No. 7641/09 on the issue of title of land in question might take considerable time to come and even if the decision were to be in their favour, it was likely to be challenged before superior court. They could not have been sure that the final decision in CWP No. 7641/09 and in appeals that could arise from the orders passed in that petition would come soon enough. Therefore, their anxiety to have unfettered possession of the land and to commence construction of police station building, which can brook no delay, is quite understandable and has to be recognized. They probably were left with no better option in the facts and circumstances of the case.

22. In any case, the law recognises the power of the state to acquire land in order to release itself, of its obligation under an adverse decree or judgment, in wider public interest.

23. In *State of UP & Anr. v. Keshav Prasad Singh,* 1995 (5) SCC 587, it was found that PWD had built a compounding wall on the land which had not been validly acquired. The civil court directed demolition of the boundary wall and restoration of the land to the

owner. Thereupon the government issued fresh acquisition, acquiring the land. The acquisition proceedings were challenged by the owners before the High Court which held the acquisition to be mala fide, holding that the power to acquire had been exercised for extraneous reasons. Reversing the decision of the High Court, the Hon'ble Supreme Court observed as under:-

> *"Having considered the respective contentions, we are of the considered view that the conclusion of the High Court was clearly illegal. It is seen that the land acquired was for a public purpose. Admittedly, the same land was acquired in the year 1963 for building a PWD office and after construction a compound wall was also constructed to protect the building. As found by the civil court, on adducing evidence in a suit that the Department had encroached upon the respondent's land which was directed to be demolished and delivery of possession to be given. It is seen that when that land was needed for a public purpose, i.e., as part of public office, the State is entitled to exercise its power of eminent domain and would be justified to acquire the land according to law. Section 4(1) was, therefore, correctly invoked to acquire the land in dispute..... It can neither be said to be colourable exercise of power nor an arbitrary exercise of power."*

24. In *First Land Acquisition Collector and Ors. V. Nirodhi Prakash Gangoli and Anr.,* 2002 (4) SCC 160, the government lost litigation and was directed by court to deliver physical possession of land in question. The acquisition proceedings initiated by the State in respect of that land were quashed by the High Court on the ground that exercise of power vested in the State was mala fide. The decision of the High Court was set aside by the Hon'ble Supreme Court observing that when the acquisition of the land is challenged on the ground that it was mala fide, the court is to find out whether the purpose for which the acquisition was being made was the real purpose or a camouflage and that exercise of power of acquisition cannot be said to be mala fide so long as the purpose of acquisition continued to be a public purpose. By no stretch of imagination the exercise of power for acquisition can be held to be malafide, so long as the purpose of acquisition continues.

25. In *State of A.P. V. Goverdhanlal Pitti* 2003(4) SCC 739, the government was tenant in respect of a school building. The landlord sought eviction of the government from the school building on the ground that it had become dilapidated and required reconstruction. Eviction order was passed against the government and in the course of a writ petition filed by the owner, seeking early eviction of the State, the government was directed to

vacate and hand over possession of the school building to the owner within a specified period. An undertaking was also given by the State to deliver the possession by a specified date. Thereupon land was acquired under the provisions of Land Acquisition Act. A writ petition was filed challenging the acquisition, which was allowed by a Single Judge on the ground that exercise of power u/s 4(1) of Land Acquisition Act was not fair and was only to scuttle a valid decree passed by the civil court which amounted to "malice of law". The Division Bench agreed with the Single Bench and concluded that the acquisition suffered from land of bona fide and was an attempt to undo the consequences of the judicial decision. The decision was reversed by the Hon'ble Court.

During the course of the judgment, the Hon'ble Supreme Court noted as under:-

> "*12. The legal meaning of malice is "ill-will or spite towards a party and any indirect or improper motive in taking an action". This is sometimes described as "malice in fact". "Legal malice" or "malice in law" means "something done without lawful excuse". In other words, "it is an act done wrongfully and wilfully without reasonable or probable cause, and not necessarily an act done*

*from ill feeling and spite. It is a deliberate act in disregard of the rights of others".*

*"13. Where malice is attributed to the State, it can never be a case of personal ill-will or spite on the part of the State. If at all it is malice in legal sense, it can be described as an act which is taken with an oblique or indirect object. Prof. Wade in his authoritative work on Administrative Law (8th Edn., at p. 414) based on English decisions and in the context of alleged illegal acquisition proceedings, explains that an action by the State can be described mala fide if it seeks to "acquire land" "for a purpose not authorised by the Act". The State, if it wishes to acquire land, should exercise its power bona fide for the statutory purpose and for none other."*

*"14. Legal malice, therefore, on the part of the State as attributed to it should be understood to mean that the action of the State is not taken bona fide for the purpose of the Land Acquisition Act and it has been taken only to frustrate the favourable decisions obtained by the owner of the property against the State in the eviction and writ proceedings."*

26. In *State of Bihar v. Maharajadhiraja Sir Kameshwar Singh of Darbhanga*, AIR 1952 SC 252 the Hon'ble Supreme Court recognised the right of the State of "eminent domain" i.e. the right

of compulsory acquisition of any private property. This power of eminent domain of the State is sovereign power, over powers and rights of private persons to properties.

27. In *Jagat Singh and Ors. Vs. UOI & Ors.,* 2008(103) DRJ 651, a Division Bench of this court passed a decree against the respondents directing it to remove the tin shed in which a school was being run by the respondents. On being approached by Directorate of Education and DDA, the government initiated fresh proceedings for acquisition of the suit land taking recourse to Section 4 and 17 of Land Acquisition Act. The acquisition was challenged on the ground that invocation of the provisions of Land Acquisition Act for defeating the purpose of the decree was not permissible in law. Repelling the contention, the Division Bench held that once the directions of civil court for removal of the boundary wall was received, the respondents had no option but to either vacate the area as directed or to validly acquire the same. Inasmuch as there was litigation between the parties in which the land was held to be in the ownership of the petitioners and not validly acquired by the respondents, the same did not mean that any attempt at acquiring the said land by following the procedure established by law would be mala fide.

28. In *Saroj Bhatnagar & Ors. Vs. Union of India & Ors.;* 2008 (103) DRJ 429 (DB), a decree for possession was passed by the court of Civil Judge, Delhi, against MCD in respect of land which was being used for running a veterinary hospital and MCD store. Thereupon land was acquired invoking the provisions of Land Acquisition Act. Acquisition was challenged being mala fide exercise of power, on account of MCD having lost a legal battle in a suit for possession. It was held that under the Statute, discretion vests with the government to acquire any land and under the circumstances, it could not be said that acquisition was a colourable/mala fide exercise.

29. It was also contended by the learned counsel for the petitioners that the respondents were required to tender 80% of estimated compensation to the petitioners before taking possession of land in question, as required by Section 17(3A) of Land Acquisition Act. It would be appropriate at this stage to examine the order dated 29th May, 1981 passed by the revenue assistant u/s 81 of Delhi Land Reforms Act in case No.87/RA/80. A perusal of the order shows that a report was received by the Revenue Assistant from Halka Patwari regarding using of land in question for non-agricultural purposes. Thereupon notice was issued to the respondents to appear before the Revenue Assistant.

Since they did not turn up despite service of notice, the matter was taken ex-parte against them. The Revenue Assistant held that the respondents had violated the provisions of Section 81 of Delhi Land Reforms Act and ordered their eviction from land in question. It was further directed that the decree shall not be executed if the respondents repair the damage within 3 months and that if they do not do so, land in question shall stand vested in the Gaon Sabha from after 3 months after the date of decree/order. It was contended by the learned counsel for the petitioner that the notice mentioned in the order of the Revenue Assistant was never served upon the petitioners as it was sent at the address of 7, Hanuman Road where none of them was residing and in fact only one of them was residing at 7, Humayun Road, New Delhi. It was also his contention that the land did not vest in Gaon Sabha as the petitioners were not ejected from the land in question despite order passed by the Revenue Assistant on 29th May, 1981. In our view, the question as to whether the notice mentioned in the order of the Revenue Assistant was served or not cannot be assailed in these proceedings. If the petitioners are aggrieved from the ejectment order passed by the Revenue Assistant u/s 81 of the Delhi Land Reforms Act, they have to take recourse to the remedy provided in the Act. In these proceedings, the petitioners cannot

assail the order of the Revenue Assistant on the ground that the notice mentioned in the order of the Revenue Assistant was not actually served upon the petitioners. So long as the order passed by the Revenue Assistant on 29th May, 1981 stands, it remains binding on the petitioners. Though, there is no specific provision in Delhi Land Reforms Act to the effect that on passing of ejectment order u/s 81 of Delhi Land Reforms Act, the land, subject matter of the ejectment order would vest in Gaon Sabha, the scheme of the Act, in our view, indicates such an effect. It cannot be accepted that even after passing of ejectment order, the person against whom ejectment order is passed continues to enjoy the status of a Bhumidar or an Aasami, as the case may be. In fact the order of the Revenue Assistant, which has not been challenged so far in appropriate proceedings expressly directs that if the respondents do not repair the damage within 3 months from the date of order, the land shall stand vested in Gaon Sabha after 3 months from the date of the order. It is also not in dispute that pursuant to the order passed by the revenue assistant, land in question was entered in the name of Gaon Sabha, in the revenue records. The respondents have placed copies of Khatoni for the year 1988-89 which shows that the land comprised in Khasra No.97 of Village Tajpul stands mutated in the name of Gaon Sabha

u/s 81 of Delhi Land Reforms Act. It cannot be said that even if the land in question vested in Gaon Sabha, Tajpul, in view of the order of the Revenue Assistant, the 80% of the estimated compensation envisaged in Section 3(A) of Land Acquisition Act was required to be tendered only to the petitioners, and not to Gaon Sabha.

30. Be that as it may, even if there was non-compliance of the provisions of the Section 17(3A) of Land Acquisition Act that by itself would not invalidate the acquisition proceedings. In the case of *Satendra Prasad Jain and Others Vs. State of U.P. and Others,* (1993) 4 SCC 369, it was contended before the Hon'ble Supreme Court that requirement of Section 17 (3A), namely, the tender of 80% of the estimated compensation for the land having not been complied with, the taking of possession of the land from the appellants was illegal and, therefore, there was no vesting of land in the government. Rejecting the contention, the Hon'ble Supreme Court, *inter alia*, held as under:-

> *"In the instant case, even that 80 per cent of the estimated compensation was not paid to the appellants although Section 17(3A) required that it should have been paid before possession of the said land was taken but that*

*does not mean that the possession was taken illegally or that the said land did not thereupon vest in the first respondent."*

31. This question also came up for consideration before a Division Bench of this court in the case of Deepak Resorts & Hotels P. Ltd. & Anr. (Supra) and the Division Bench held as under:-

> *"It was next argued by Mr. Lekhi that tender of 80% of the compensation payable for the land in terms of Section 17(3A) was a mandatory requirement, the failure whereof would render the taking over of possession as also the acquisition proceedings legally bad. It was contended that even when the term ''compensation'' used in the Act has not been defined, the term must be given the same meaning wherever it appears in the entire enactment. Viewed thus, the payment of compensation referred to in Section 17(3A), argued Mr. Lekhi, must necessarily mean compensation which is found to be payable upon the making of an award by the Collector under Section 11 of the Act. This, according to Mr. Lekhi, would lead us to the conclusion that possession under Section 17(1) cannot be taken over by the Collector so long as the Collector has not made an award under Section 11 of the Act, 80% whereof must then be offered to the*

*land owner before the possession can be taken over from him. That contention appears to us to be totally fallacious and is based on a complete misreading of the provisions contained in Section 17. We say so for three distinct reasons. Firstly because Section 17(1) itself provides that the appropriate Government may direct the Collector to take over possession of the land in question even though no award has been made by him. The words "though no such award has been made" are significant and imply that taking over of possession by the Collector is a process that is not in the least dependent upon the making of an award. Secondly because compensation referred to in sub-section 3A of Section 17 is the estimated amount of compensation and not the amount eventually determined as payable under the Award. This is evident from the use of the words "tender payment of 80% of the compensation for such land as estimated by him". The difference between compensation payable in terms of the award and that payable under Section 17(3A) is that while compensation determined by the award attains finality qua the Collector in view of the provisions of Section 12, compensation payable under Section 3A is only an estimate which the Collector makes, out of which 80% has to be tendered to the owner before taking possession. Indeed if the interpretation offered by Mr. Lekhi were to be*

*accepted and making of a final award taken as a condition precedent for dispossession of the owner, there would be no rationale behind withholding 20% compensation from him once the said compensation has been determined. That is particularly so when Section 31 of the Act obliges the Collector to tender the payment of compensation awarded by him to the persons interested thereto according to the award and to pay it to them unless prevented by someone or more of the contingencies mentioned in sub-section 2 thereof. Suffice it to say that payment of only 80% of the compensation is provided for by the Act only because what is being paid is only an estimate made at a point of time when the award has yet to be made and published by the Collector.*

*Thirdly because in terms of sub-section 3B of Section 17, the amount paid or deposited under Section 3A has to be taken into account for determining the amount of compensation required to be tendered under Section 31. The provision clearly envisages recovery of the excess, if any, paid as arrears of land revenue unless the same is refunded by the person who has received the same . The question of receiving excess or refunding would not arise if the payment under Section 17 (3A) is a payment strictly in accordance with the award made under Section 11. The scheme of the Act and in particular Section 17 is that payment of*

*80% estimated compensation is what is required as a condition precedent for taking of possession and not the compensation finally held payable under the award."*

32. In that case, Land Acquisition Collector stated that in fact the amount of compensation was tendered to the land owners. The petitioners, however, denied receipt of any such letter. Dealing with the legal issue, the Division Bench held as under:-

*"Although Mr. Lekhi denied the receipt of any such letter, the same need not halt us in answering the question raised by Mr. Lekhi on the legal principles that now stand settled by the decision of the Supreme Court in Satendra Prasad Jain v. State of U.P. (1993) 4 SCC 369. One of the issues that fell for consideration in that case was whether failure on the part of the authorities to tender 80% of the estimated compensation for the land would vitiate the acquisition proceedings or render illegal the process of taking over of possession. Answering the question in the negative, their Lordships observed:*

*"16. Further, Section 17(3-A) postulates that the owner will be offered an amount equivalent to 80 per cent of the estimated compensation for the land before the Government takes possession of it*

*under Section 17(1). Section 11-A cannot be so construed as to leave the Government holding title to the land without the obligation to determine compensation, make an award and pay to the owner the difference between the amount of the award and the amount of 80 per cent of the estimated compensation.*

*17. In the instant case, even that 80 per cent of the estimated compensation was not paid to the appellants although Section 17(3-A) required that it should have been paid before possession of the said land was taken but that does not mean that the possession was taken illegally or that the said land did not thereupon vest in the Ist respondent. It is, at any rate, not open to the third respondent, who, as the letter of the Special Land Acquisition Officer dated 27th June, 1990 shows, failed to make the necessary monies available and who has been in occupation of the said land ever since its possession was taken, to urge that the possession was taken illegally and that, therefore, the said land has not vested in the first respondent and the first respondent is under no obligation to make an award."*

*15.From the above, it is evident that if the amount of compensation is not paid or deposited on or before taking possession of the land, the consequence that follows is in the nature of a liability to pay interest. That consequence cannot,*

*in our opinion, be enlarged on any juristic principles to render the taking of possession itself to be illegal especially in a case like the present where the validity of the acquisition proceedings has been examined by this Court and upheld."*

33. In the case of Jagat Singh (Supra), also it was contended by the petitioners that the respondents had not tendered 80% of the estimated amount of compensation. The contention was repelled by the Division Bench with the following observations:-

"*it is well settled that non-payment of the estimated amount of compensation does not by itself vitiates the acquisition proceedings. That aspect of the controversy is squarely covered by the decision of the Supreme Court in S.P. Jain and Ors. Vs. State of U.P. & Ors. (1993) 4 SCC 369."*

34. The last contention of the learned counsel for the petitioners was that if the ownership of the land in question already vested in the Government, this could not have been subject matter of acquisition. The argument, in our view is devoid of any merit. This is not the case of the respondents that land in question is owned by the government. Their case is that in view of the order passed by the Revenue Assistant on 29.5.81, land in question came

to be vested in Gaon Sabha, Tajpul. Gaon Sabha is not the government and is a separate equal entity constituted u/s 150 of Delhi Land Reforms Act which provides for establishing Gaon Sabha in each Gaon Sabha Area. It further provides that Gaon Sabha shall be a body corporate, with capacity of suing and being sued in its corporate name, or acquiring, holding administering and transferring property and of entering into contracts. As provided in Section 150(3) of Delhi Land Reforms Act, the property of Gaon Sabha vests in the government only if the whole of a Gaon Sabha area ceases to be rural area, by virtue of notification u/s 507 of Delhi Municipal Corporation Act. Therefore, there was no legal embargo acquiring the land irrespective of whether it belonged to Gaon Sabha as the case of respondents is or it continued to belong to the petitioners, as claimed by them.

35. The question whether a land owned by the government can be acquired or not has been subject matter of judicial pronouncements. In *Dalbir Singh Vs. Land Acquisition Collector & Ors.* 142(2007) Delhi Law Times 159, it was contended before a Division Bench of this court that land in question being government land cannot be acquired. Repelling the contentions, the Division Bench held as under.

*"The above observations leave no doubt that the Court have distinguished the matters where the Government has title as well as possession and he entire bundle of rights in the land and there is nothing to be acquired, and where it has only title and not possession meaning thereby that it can acquire possession also by way of acquisition. Needless to say, that the process of acquisition encompasses in itself the taking over of all interests and rights including title and possession because the land has to vest in the Government free from all encumbrances. If the Land Acquisition Act is to be interpreted in its letter and spirit, then no other meaning can be attributed to the acquisition. If the Government has already got the title, as admitted in this case, it cannot be deprived of other interests including the possession and the said interests can be acquired through the Land Acquisition Act culminating in taking over of physical possession.*

*A perusal of the above judgments leave no doubt that it has been unequivocally held that even after having the title, other interests, and rights which are still with a private person can be acquired and compensation paid for the said rights and interests in the land including deprivation of the physical possession. The Hon'ble Supreme Court has held as under in Sharda Devi case (supra):*

> *"…. The power to acquire by the State, the land owned by its subjects hails from the right of eminent domain vesting in the State which is essentially an attribute of the Sovereign Power of the State. So long as the public purpose subsists the exercise of the power of the State to acquire the land of its subjects, without regard to the wishes and willingness of the owner or person interested in the land, cannot be questioned."*

36. In *Collector of Bombay Vs. Musserwanji Rattanji Mistri & Ors,* AIR 1955 SC 298, the Hon'ble Supreme Court held that when the government acquires land under the provisions of Land Acquisition Act, it acquires the sum total of all private interest subsisting in them and if the government has itself the interest in the land, it has only to acquire the other interests outstanding thereof so that it might be in a position to pass it on absolutely for public user.

37. Though the grounds taken in the petition include that requirement for a police station was not a public purpose, no arguments on this ground, was adduced before us. In our opinion, requirement of land for construction of a police station is undisputedly a public purpose and, therefore, it was very much permissible for the respondents to acquire land in question for

using it for a police station. Another ground taken in the appeal, though not agitated during arguments, was that there was no urgency involved so as to justify invoking the emergency powers conferred upon the government u/s 17 of the Land Acquisition Act. In the case of *Nirodhi Prakash Gangoli* (Supra), the Hon'ble Supreme Court held that invoking urgency powers u/s 17(1) and (4) of Land Acquisition Act was a matter of substantive satisfaction of the government with which the court would not ordinarily interfere unless it comes to the conclusion that the appropriate authority had not applied its mind to the relevant factors or that the decision taken by the appropriate authority was malafide. The following observations made by the Hon'ble Supreme Court in this regard are pertinent:

> *"The question of urgency of an acquisition under Sections 17(1) and (4) of the Act is a matter of subjective satisfaction of the Government and ordinarily it is not open to the court to make a scrutiny of the propriety of that satisfaction on an objective appraisal of facts. In this view of the matter when the Government takes a decision, taking all relevant considerations into account and is satisfied that there exists emergency for invoking powers under Sections 17(1) and (4) of the Act, and issues notification accordingly, the same should not*

*be interfered with by the court unless the court comes to the conclusion that the appropriate authority had not applied its mind to the relevant factors or that the decision has been taken by the appropriate authority mala fide. Whether in a given situation there existed urgency or not is left to the discretion and decision of the authorities concerned. If an order invoking power under Section 17(4) is assailed, the courts may enquire whether the appropriate authority had all the relevant materials before it or whether the order has been passed by non-application of mind. Any post-notification delay subsequent to the decision of the State Government dispensing with an enquiry under Section 5-A by invoking powers under Section 17(1) of the Act would not invalidate the decision itself specially when no mala fides on the part of the Government or its officers are alleged."*

38. As far as the present case is concerned, since land on which the building of police station Badarpur presently stands constructed is urgently required for six lane elevated highway, the government has to immediately provide land for construction of another building to house the police station. Therefore, it cannot be denied that land in question, which has been found most suitable for the police station, after inspecting a number of sites, was urgently required by the government. Therefore, invoking the

emergency powers granted u/s 17 of Land Acquisition Act was eminently justified in this case.

39. No other point was urged before us.

For the reasons given in the preceding paragraphs, we find no merit in the petitions. Both the petitions as well as pending CMs are hereby dismissed. The interim order stands vacated.

**V.K.JAIN, J.**

**VIKRAMAJIT SEN,J.**

**September 1, 2009**
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