

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

+ **W.P(C) No.10765/2009**

% **Date of Decision: 13.11.2009**

Shanti Sports Club Petitioner

Through Mr.P.N.Lekhi, Sr.Advocate with
Mr.Yashraj Singh Deora, Advocate.

Versus

UOI and Ors Respondents

Through Mr.Ajay Verma, Advocate for the
DDA/respondent no.3.
Mr. Yatinder Shaudhary Advocate for
respondent no.1.
Mr. Shoaib Haider Advocate for
Mr.N.Waziri, Standing counsel for the
respondent no.2

CORAM:

HON'BLE MR. JUSTICE ANIL KUMAR

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|----|---|-----|
| 1. | Whether reporters of Local papers 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 |

ANIL KUMAR, J. (Oral)

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1. The petitioners seek a direction to the respondents to act in accordance with the policy dated 1st May, 2008 and a Writ of Certiorari seeking quashing of letter No.F.3(75) 2008/MP/J-12/458 dated 21st August, 2009.

2. The grievance of the petitioners in the present writ petition is that pursuant to notification dated 1st May, 2008 inviting application from bonafide institutions for regularization, an application dated 19th June, 2008 was filed by the petitioner. Along with the application the petitioners are alleged to have submitted copies of the land ownership documents with a site plan of the area; plan and details of existing built up area; site plan; registration certificate of the society; registration documents of the society; set of building plans for record of the local body. The petitioners in their applications had allegedly disclosed that the proposed complex is one of the best and most well built having an infrastructure matching international standards. It was also asserted that the petitioners complied with all the terms and conditions for regularization as the land does not form part of the notified Ridge/Regional Park/Developed Park/River Bed/Gram Sabha or public land, lands affected by Heritage Zone and/or land required for master plan roads or other essential public facilities. Regarding the extent of buildable area it was contended that it is limited to the extent of MPD-2021 norms and the petitioner shall be willing to pay all charges leviable such as external development charges etc and the petitioner shall make arrangement for provisions of the public/municipal services.

3. The Petitioners had applied for withdrawal of their land from acquisition which was purchased after the notifications were issued

under Section 4 & 6 of Land Acquisition Act and on which the construction was done without seeking any sanction or permission of any type, rather sanction and permission had not even been applied. The appeal of the petitioners for release of the land from the acquisition was pending in the Supreme Court being Civil Appeal Nos.8500-8501/2001. The application of the petitioners was not decided. The petitioners had filed an application in respect of regularization according to the notification dated 1st May, 2008 which was disposed of by order dated 14th July, 2009 allowing the petitioners to withdraw the application with liberty to avail such remedies as could be available under law. Thereafter petitioners filed the present petition on 4th August, 2009 praying inter-alia for a direction to the respondents to act in accordance with its policy dated 1st May, 2008 and to decide the application of the petitioners for regularization.

4. The application of the petitioners dated 19th June, 2008 was dismissed by the respondent No.3 and the decision was communicated to the petitioner by letter dated 21st August, 2009. The respondent No.3 while dismissing the application held that the petitioners did not fulfil the criterion laid down in public notice dated 1st May, 2008 and the proposed road of 60 meters is an important link between the existing Nelson Mandela road and the existing M.G road in Zone J which will pass through the Shanti Sports Club and it will connect the proposed

commonwealth games facilities at Vasant Kunj and the proposed 239 acres of CPWD complex at Ghitorni Village for Judicial Commission/Govt. Housing etc. and the change of land use for 239 acres of CPWD land at Ghitorni village has already been notified by the Government of India on 14th July, 2009. It was also held that the petitioners are not covered under the Act and the categories mentioned in the advertisement.

5. After rejection of the application of the petitioners for regularization in accordance with policy dated 1st May, 2008, the Civil Appeals seeking de-notification of the lands of the petitioners was also dismissed by the Supreme Court by order dated 25th August, 2009. While dismissing the appeals, the counsel for the petitioners sought time to vacate the land. The Supreme Court, therefore, granted three months time to the petitioners to hand over possession of the land. Time was granted subject to condition that within two weeks from 26th August,, 2009 an affidavit of an authorized persons would be filed on behalf of petitioners undertaking that the possession of the lands will be handed over to respondent No.3 by 30th November, 2009 and during this period no encumbrances whatsoever will be created by the petitioners or their agents and that no compensation will be claimed for the construction already made. The Supreme Court had also allowed

respondents to take the possession with the police help in case of undertaking being not filed by the petitioners.

6. The petitioners have contended that they have given undertaking to the Supreme Court to vacate their lands by 30th November, 2009. The petitioners after giving undertaking to vacate the lands, filed the applications in the present writ petition seeking amendment on account of order dated 21st August, 2009 passed by respondent No.3 rejecting the application of the petitioners for regularization and for impleadment of Shanti (India) Pvt Ltd/petitioner no.2 which was allowed.

7. The contention of the petitioners is that rejection of the land from the acquisition notification was within the knowledge of the respondent yet the name of the petitioners' sports club was included in the list prepared by the respondent pursuant to notification dated 1st May, 2008. If the lands were not to be released from acquisition then why the respondents had entertained the application and not only entertained the application, included the name in the list of institutions which had to be regularized. According to the petitioners the public notice given by the respondents has given a fresh cause of action as the draft zonal plan also included the name of the petitioners sports club at serial No.12.

8. Relying on Master Plan 2021 it is contended that sports activities are an important part of the physical and social development as the sports activities have a significant effect on the community because of which the standards have been laid under Clause 13.3.1 in Table 13.7 of the Master Plan. The petitioner's sports club is stated to have three hectares of land for various activities whereas DDA's club has only one acre. According to the petitioners, the name of the petitioners sports club was included in the list for regularization for this reason, as the sports facilities available with the petitioners are more than the district sports centers, however, less than divisional sports centers as contemplated in the Master Plan. The petitioners asserted that their sports club falls in the cultural activities under Table 13.23 of the Master Plan. Their sports club has a membership of almost 720 active members and 196 honorary members and the petitioners' club provides services to all senior citizens free of charge and they also provide free coaching to under privileged children as well as children who represent at the state as well as international level tournaments. In these circumstances the petitioner had filed the writ petition on 4th August, 2009 and thereafter the representation of the petitioners to the DDA has been dismissed on 21st August, 2009

9. According to the petitioners the link road, arterial roads in the zonal plan are the zonal plan roads and such roads cannot be construed as the road contemplated in the Master Plan and, therefore, the rejection of their representation without considering the pleas and contentions, is in denial of the principles of natural justice and the impugned order suffers from non application of mind. In the circumstances it is contended that the petitioners club is a bonafide occupier and their application should have been accepted especially as the petitioners had also agreed to give up the land for the construction of road.

10. The learned counsel for the petitioners has contended very vociferously that inclusion of the name of the petitioners has given legitimate expectation to them, as even DDA accepted petitioners' institution to be a bonafide institution in its order dated 21st August, 2009. According to the petitioners their land cannot be termed as public land since the possession of the land has not been taken. The learned counsel for the petitioners relied on (1993) 3 SCC 499, Union of India Vs Hindustan Development Corporation; (1993) 1 SCC 71, Food Corporation of India Vs Kamdhenu Cattle Feed; (1992) Supp 2 SCC 351, State of H.P Vs Kailash Chand Mahajan; (1994) 5 SCC 509, Madras City Wine Merchants' Association vs State of T.N; (1995) 2 SCC 326, U.P Awas Evam Vikas Parishad vs Gyan Devi; (2006) 8 SCC 38,

Ram Pravesh Singh and ors. Vs State of Bihar & ors.1; (2008) 10 SCC 1, Official Liquidator vs Dayanand and AIR 1953 SC 215, Ram Prasad Narayan Sahi vs State of Bihar to canvass that the petitioners can invoke the doctrine of Legitimate expectation in the facts and circumstances for regularization of their sports club.

11. The learned counsel for the petitioners has also relied on (2006) 3 SCC 434, Bombay Dyeing and Manufacturing Company Ltd v. Bombay Environmental Action Group and Ors; (2003) 3 SCC 186, Cellular Operators Association of India v. Union of India and (2009) 5 SCC 313, Bank of India v. K.Mohandas to contend as to how a judgment/order should be read and considered. The learned counsel for the petitioners Mr.Lekhi has contended that a judgment as defined in Section 2(9) of the Code of Civil Procedure means the statement given by the Judge of the grounds for a decree or order. According to him what a judgment should contain is indicated in Order 20 Rule 4(2) which says that a judgment 'shall contain a concise statement of the case, the points for determination, the decision thereon, and the reasons for such decision'. It should be a self-contained document from which it should appear as to what were the facts of the case and what was the controversy which was tried to be settled by the court and in what manner. The process of reasoning by which the court came to the ultimate conclusion and decreed the suit should be reflected clearly in the judgment.

12. Referring to *Bombay Dyeing*(supra) and *Bank of India* (supra), it has been contended by Mr. Lekhi that an order of the Court must be construed having regard to the context in which the same was passed. For the said purpose, the orders of the Courts are required to be read in their entirety. A judgment, it is well settled, cannot be read as a statute. It is further asserted that construction of a judgment should be made in the light of the factual matrix involved therein. What is more important is to see the issues involved therein and the context wherein the observations were made. Any observation made in a judgment, should not be read in isolation and out of context as a decision is only an authority for what is actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically follows from the various observations made in it.

13. Learned Senior Counsel for the petitioners also asserted that the subject matter of the Supreme Court proceedings was different as regularization pursuant to inclusion of the name of the petitioners' club was not before the Apex Court and liberty was granted to the petitioners to avail any remedy available to them. According to him by denying the regularization the respondents have violated Article 14 of the Constitution of India. According to him there is no bar for the

petitioners to invoke Article 226 of the Constitution of India in the facts and circumstances

14. The petitioners have also contended that after draft zonal plan was submitted by the respondent no.3 including the name of the sports club of the petitioners, the respondent no.3 could not interfere and could not contend that the petitioners club is not to be included in the institutions/clubs for the regularization. According to the learned counsel, the respondents cannot be allowed to blow hot and cold. Allegation against the respondent no.3 is also of acting contrary to the requirements of section 10 of DDA Act. Since the modified draft zonal plan including the name of the club of the petitioners had been submitted, the respondent no.3 could not modify the draft zonal plan in any manner. According to him a thing must be done in the manner it is provided and not in any other manner which can be inferred from various precedents of the Supreme Court and High Court. Reliance was also placed on 118 (2005) DLT 694, Kishan Chand Bhatia Vs Union of India holding that for issuing a writ of certiorari, the Court is concerned about the legality of the decision and the procedure adopted while arriving at decision.

15. Per contra, the learned counsel for the respondents who have appeared on advance notice has contended that merely filing an application for regularization pursuant to which the name of petitioners' sports club was included in the list of health, education, cultural or spiritual/religion Institutes falling in zone 'J' as per the public notice issued by Master Plan section on 1st May, 2008 does not give any right nor the petitioners can invoke legitimate expectations in this regard. It is contended that the note appended to the said list categorically stipulated that mere inclusion of name in the list will not qualify any legal right/land use/ownership or any other benefit/entitlement or relieve from legal proceedings/law etc. The learned Counsel Mr. Verma for respondent no.3 has asserted that there can be legitimate expectation only if there is promise, representation or an established practice and the petitioners have none. It is further contended that before invoking legitimate expectations, the petitioners has to show that they have acted on the expectations which have worked to their detriment.

16. The respondents have contended that the pleas of the petitioners for release of their lands from acquisition have already been dismissed and where similar pleas were raised which have already been declined by the Court. According to respondents the rights of the petitioners, if any, have already been extinguished and the petitioners after giving

undertaking to the Supreme Court to vacate the lands, are not left with any rights to claim regularization. It has already been held that the petitioners cannot invoke Article 14 of the Constitution of India to perpetuate their illegal possession. They have already delayed the execution of public purpose by resorting to all kinds of litigation. It is contended before considering the plea of legitimate expectation, the conduct of the petitioners has also to be seen. Relying on (1993) 3 SCC 499, Union of India Vs Hindustan Development Corp. it is contended that expectation cannot be same as anticipation and a pious hope even leading to a moral obligation cannot amount to a legitimate expectation. The learned counsel has pleaded that the decision not to regularize the lands of the petitioners after their pleas for release of lands were declined by the Supreme Court after a very protected litigation, is a fair and objective decision and would not entitle petitioners for any relief as sought in the present writ petition. Referring to Madras City Wine Merchants Assn Vs State of T.N, (1994) 5 SCC 509 it is stated that the legitimate expectations arise if there is an express promise given by the public authority; existence of regular practice and such an expectation is reasonable. However, if there is a change in policy or in public interest the position is altered by a rule or regulation, no question of legitimate expectation would arise. Reliance was also placed on Official Liquidator Vs Dayanand, (2008) 10 SCC1; Food Corporation of India Vs Kamdhenu Cattle Feed Industries, (1993) 1 SCC 71 that any

expectation which is based on sporadic or casual or random acts, or which is unreasonable, illogical or invalid cannot be legitimate expectation. In the circumstances, it is contended that the petition is an abuse of process of law and is without any merit and is liable to be dismissed.

17. I have heard the learned counsel for the parties in great detail. The contention of the learned Senior Counsel for the petitioners Mr. Lekhi that an order of the Court must be construed having regard to the context in which the same was passed cannot be disputed. A decision is only an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically follows from the various observations made in it. The ratio of any decision must be understood in the background of the facts of that case. It has been said long time ago that a case is only an authority for what it actually decides, and not what logically follows from it. It is well settled that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision. The Supreme Court in *Bharat Petroleum Corporation Ltd and Anr. v. N.R.Vairamani and Anr.*, AIR 2004 SC 778 had observed:-

" Court should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are neither to be read as Euclid's

theorems nor as provisions of the statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of Courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes.

The following words of Lord Denning in the matter of applying precedents have become locus classicus:

"Each case depends on its own facts and a close similarity between one case and Anr. is not enough because even a single significant detail may alter the entire aspect, in deciding such cases, one should avoid the temptation to decide cases (as said by Cordozo) by matching the colour of one case against the colour of Anr.. To decide therefore, on which side of the line a case falls, the broad resemblance to Anr. case is not at all decisive."

In *Ambica Quarry Works v. State of Gujarat and Ors.* MANU/SC/0049/1986 the Supreme Court observed:-

"The ratio of any decision must be understood in the background of the facts of that case. It has been said long time ago that a case is only an authority for what it actually decides, and not what logically follows from it."

Similarly in *In Bhavnagar University v. Palitana Sugar Mills Pvt Ltd* (2003) 2 SC 111 (vide para 59), the Supreme observed:-

" It is well settled that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision."

In P.S.Rao Vs State, JT 2002 (3) SC 1, the Supreme Court had held as under:

" . There is always a peril in treating the words of judgment as though they are words in a legislative enactment and it is to be remembered that judicial utterances are made in setting of the facts of a particular case. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusion in two cases."

In Ragiq Vs State, 1980 SCC (Crl) 946 it was observed as under:

"The ratio of one case cannot be mechanically applied to another case without having regard to the fact situation and circumstances obtaining in two cases."

18. The petitioners have relied on a number of precedents in respect of various contentions raised, however, the ratios of which may not be applicable in the facts and circumstances of the petitioners' Writ petition. This however, will not be correct as far as the decision of the appeals of the petitioners declining their plea for release of their lands from acquisition. The petitioners had raised many similar pleas on which they are seeking regularization, for the purpose of release of their lands from acquisition, the decision of such pleas however, in the facts and circumstances shall be binding on the petitioners.

19. From the pleas and contentions raised by the petitioners it emerges that the petitioner No.1, Shanti Sports Club, is a society which

is registered under the Society's Registration Act, 1860 and the society runs a sports complex and is seeking regularization of the sports club in view of public notice dated 1st May, 2008, though their plea for release of lands from acquisition has been declined after a protected litigation. Petitioner no.2 is a company which is the owner of the land on which the sports complex is run by petitioner no.1. President of the Society and is also the director of petitioner no.2. The petitioner no.2 is alleged to have given implied consent to petitioner no.1 to seek regularization

20. On 1st May, 2008 the DDA had invited applications from the baonafide institutions rendering cultural, Religious (including spiritual), healthcare and education services which had been in existence prior to 1st January, 2006 for regularization. The notification No.F.20 (19)96-MP dated 1st May, 2008 sought the following for the purpose of consideration of the applications for regularization:-

- I. Certified/verified land ownership documents along-with site plan giving physical description of the land/property under reference.
- II. Area of land under reference.
- III. Plan and details of existing built up area
- IV. Site plan indicating the location of buildings and surrounding roads/features.
- V. Proof of existence of institutions and buildings before 01.01.2006.

- VI. Registration documents of the Society
- VII. Set of building plans for record of the Local Body/Authority along-with certificates of structural safety and fire safety.
- VIII. Google map in the scale of 1:1000 as on or preceding 1.1.2006.

The said notification categorically stipulated that the regularization shall be considered in respect of lands which do not form part of the notified Ridge/Regional Park/Developed Park/River Bed/Gram Sabha or public land. Lands affected by Heritage Zone required for Master plan roads or other essential public facilities etc. shall not be regularized. The terms and conditions as contemplated under the notification dated 1st May, 2008 are as under:-

Terms and Conditions:-

- I. The regularization shall be considered in respect of lands which do not form part of the notified Ridge/Regional Park/Developed Park/River Bed/Gram Sabha land or public land, Lands affected by Heritage Zone land required for Master plan roads or other essential public facilities etc shall not be regularized.
- II. The extent of buildable area shall be limited to the extent of MPD-2021 norms and the remaining/surplus area shall be reserved for Recreational Green/Open with a maximum 15 FAR, subject to payment of levies/charges/other conditions as may be stipulated. Buildings so permitted will have to directly serve the principle objectives of the Institution.
- III. The regulation shall be subject to payment of all charges/levies etc, such as, external development charges etc.
- IV. The regularization of the Institutional activities shall not entitle the applicant for provision of the public/municipal

services and roads, for which the society shall have to make its own arrangements.”

21. Pursuant to the notification dated 1st May, 2008, the petitioners applied on 19th June, 2008. On the basis of the applications, is for Cultural, Religious, healthcare and Education services Organizations, a list of 61 such organizations was drawn by the DDA and the name of the petitioners' sports club appeared at serial No.12 among the list of 61 organizations/institutions/clubs. The petitioners have the sports club whereas other organization/institutions were either educational or spiritual. The said list also had a note specifying that mere inclusion of the name in the list will not qualify any legal right/land use/ownership or any other benefit/entitlement or relieve from legal proceedings/law etc.

22. The petitioners are running this Shanti Sports Club on the land which was acquired by notification dated 23rd January, 1965 in respect of which declaration under Section 6 was published on 23rd December, 1968 and notices under Section 9 & 10 were issued in 1976 and award was made on 22nd December, 1988. The petitioners had also raised construction over the land after issuance of the notification under Section 4 of the Act, the publication of declaration under Section 6 and the publication of award by the Collector. This was in violation of the provisions of the Delhi Lands (Restrictions on Transfer) Act, 1972.

23. There have been protracted litigation by the petitioners in respect of the said lands which were purchased by them after Section 4 and Section 6 notifications had been issued and on which land the petitioners constructed the club premises and structures without obtaining any sanction from the concerned authority. No application for sanction was made to the competent authority for the sanction of the building plans. Application was not filed as the same would have been rejected in view of the prohibition contained in Section 3 of the Delhi Lands (Restrictions on Transfer) Act, 1972 against transfer of the acquired land. Sh.Amrit Lal Khanna had purchased 26 bighas of land comprised in Khasra No.35, 369/36 and 37 along with others from Parmeshwar Lal by sale deed dated 31st January, 1969 after Section 4 and Section 6 notifications for acquisition of these lands.

24. The petitioners in order to avoid dispossession from the lands acquired despite the acquisition proceedings initiated and to thwart legal action for demolition of structure raised over it, had filed a writ petition No.4777/1993 in the name of Shanti Sports Club/petitioner No.1 through Sh.Satish Khosla who had got registered a company in the name and style of Shanti (India) Pvt Ltd. In the writ petition the

petitioners had sought release of the land under Section 48(1) of the Land Acquisition Act.

25. Prior to filing of the writ petition under Section 48(1) of the Land Acquisition Act for release of the land, two suits were also filed by Sh.Satish Khosla. One of the suit bearing No.3318/1991 was filed on 29th October, 1991 in the name of Shanti (India) Pvt Ltd seeking restraint against DDA/respondent no.3 from digging the land or constructing gates on the road leading to Shanti Garden. In the said suit Court had directed Delhi Development Authority to raise the wall without obstructing plaintiff's access. In another suit bearing No.1544/1993 the prayer made was that DDA/respondent no.3 be restrained from dispossessing or interfering with the possession or demolition or sealing any part of the constructions raised by the petitioners without any sanction from the competent authority.

26. After the writ petition was filed by the petitioners seeking release of their land under Section 48(1) of the Land Acquisition Act, Sh.Satish Khosla had instituted a third suit bearing No.2865/1995 in his own name and in the name of Sh.Amrit Lal Khanna claiming that they are bhoomidars of the land and sought a restraint against the officers of the DDA/respondent no.3 from demolishing the boundary wall and taking forceful possession of an area of about 250 sq.yards on the pretext that

it forms part of the land which was earmarked for construction of a dispensary.

27. The petition seeking release of the land under Section 48(1) of the Land Acquisition Act was dismissed holding that even if some land had been developed by the land owner according to their own notions and even if the constructions raised by them on the land is also serving some public purpose, however the same cannot be substituted for planned development of Delhi. It was held that if the public object for which the land is sought to be acquired by the authorities is justified, it cannot be frustrated because the land owner has developed the land and is utilizing the land for some other public purpose. The appeals filed by the petitioners in the Supreme Court bearing Civil Appeal Nos.8500-8501/2001 titled Shanti Sports Club and Anr. V. Union of India were also dismissed on 25th August, 2009.

28. While dismissing the appeals of the petitioners, the plea that there was no bar in the petitioners raising the construction as Delhi Land (Restrictions on Transfer) Act, 1972 came later on whereas the petitioners had acquired the land and constructed the structures in 1969 was rejected. The plea that since the land is required for Vasant Kunj residential scheme and the Sports Complex built on the land acquired after acquisition proceedings, is in consonance with the public

purpose, was also repelled by the Supreme Court. It was also held that the structures and constructions were made on the land after issuance of notification under Section 4 of the Act. The finding of the Division Bench that the construction made over the acquired land was unauthorized because the same was raised in violation of various statutory provisions was also upheld and it was held that the use of land by the petitioner club for recreational purpose is unauthorized. It was also held that if the land is regularized in favor of petitioners' club then the land use will have to be first changed from rural to recreational and for that purpose master plan would require amendment in accordance with Section 11A of the Delhi Development Act, 1957.

29. While dismissing the appeals of the petitioners for release of the land from the acquisition, it was also noted and held that the premises are used not only for sporting activities but also for wedding parties, birthday parties and for other festive occasions and cottages and structures in the premises are given to affluent parties such as Diplomats including Deputy High Commission of Pakistan, Ambassador of Khazakastan and huge sums and other charges are collected which runs into lakhs of rupees.

30. The plea of the petitioners that the sports complex has been built by spending crores of rupees and it is used by large section of people

was also rejected. It was held that the land was acquired illegally and illegal construction was carried out more than 10 years after finalization of the acquisition proceedings and consequently equity cannot be invoked in favor of petitioners.

31 While dismissing the appeals of the petitioners, the Supreme Court had adversely noted about unauthorized possession taken by the builders after the commencement of acquisition proceedings and illegal construction carried on such lands and commercial activities carried on from such structures under the camouflage of educational, sports and other activities. Some of the observations and findings of the Supreme Court are as under:-

"1. These appeals filed against order dated 21.8.2001 of the Division Bench of Delhi High Court whereby it refused to interfere with the Central Government's decision not to exercise discretion under Section 48(1) of the Land Acquisition Act, 1894 (for short 'the Act') to withdraw from the acquisition of land comprised in khasra Nos. 35, 369/36, 37, 38, 367/21 and 365/33 of Village Masudpur, Tehsil Mehrauli, Delhi **are illustrative of how the litigants use the courts process for frustrating the acquisition of land for a public purpose for years together and seek equity after raising illegal construction over the acquired land under the cloak of interim order(s) passed by one or the other court.**

12. By filing Writ Petition No. 4777/1993, Shri Satish Khosla had hoped that he will be able to convince the High Court to ignore the gross irregularities and illegalities committed by him in securing possession of the acquired land and raising construction over it and pass an order for protection of the existing structure and also direct the Central Government to release the land from acquisition on

which sports complex had already been constructed, but his hopes were belied because the High Court did not entertain the prayer for interim relief. Undeterred by this unexpected adverse result, Shri Satish Khosla got filed C.M. No. 8269/1993 in Writ Petition No. 1753/1980 with the prayer that the government be directed to release the land from acquisition because the same has already been developed. The Full Bench of the High Court considered similar prayer made on behalf of other land owners, referred to the judgment of this Court in *Gandhi Grah Nirman Sahkari Samiti Ltd. v. State of Rajasthan* [MANU/SC/0481/1994](#) : (1993) 2 SCC 662 and held:

...So, even if some land has been developed by the land owner according to his own notions and may be the construction raised by him on the said land is also serving some public purpose, still that cannot be a substitute for planned development of Delhi which object is visualized by the authorities. **If the public object for which the land is sought to be acquired by the authorities is justified, it cannot be frustrated because the land owner has developed the land and is utilising the land for some other public purpose. So, this contention also does not survive in view of the law held down by the Supreme Court.**

43. **The appellants' plea that the Government ought to have de-notified the land covered by the sports complex because the same has been built by spending crores of rupees and is being used by a large section of people sounds attractive, but, after having given serious thought to the entire matter, we are convinced that the Government rightly refused to exercise discretion under Section 48(1) of the Act for de-notifying the acquired land and the High Court did not commit any error whatsoever by refusing to fall in the trap of alluring argument that demolition of the sports complex built by spending substantial amount will be a waste of national wealth and nobody will be benefited by it.** The appellants have not denied the fact that the land on which the sports complex has been constructed was acquired by the Government by issuing notification dated 23.1.1965 under Section 4(1) of the Act, which culminated in the making of award dated 22.12.1980. It is also not their case that the construction activity was started prior to

initiation of acquisition proceedings. Rather, their admitted stance is that they came in possession of the land between 1990-1993, i.e., more than 10 years after finalization of the acquisition proceedings. This being the position, the appellants cannot plead equity and seek court's intervention for protection of the unauthorised constructions raised by them. It is trite to say that once the land is acquired by following due process of law, the same cannot be transferred by the land owner to another person and that any such transfer is void and is not binding on the State. A transferee of the acquired land can, at best, step into the shoes of the land-owner and lodge claim for compensation - *Gian Chand v. Gopala and Ors.* MANU/SC/0624/1995 : (1995) 2 SCC 528; *Secretary, Jaipur Development Authority, Jaipur v. Daulat Mal Jain and Ors.* (1997) 1 SCC 37; *Yadu Nandan Garg v. State of Rajasthan and Ors.* MANU/SC/0126/1996 : JT (1995) 8 S.C. 179 and *Jaipur Development Authority v. Mahavir Housing Coop. Society, Jaipur and Ors.* MANU/SC/1722/1996 : (1996) 11 SCC 229.

47. Although, the then Minister for Urban Development, who recorded note dated 8.6.1999, was extremely magnanimous to the appellants when he wrote that the extensive construction must have been made with full cooperation of public servants concerned, but having carefully examined the entire record, **we have no hesitation to observe that the construction of this magnitude could not have been possible, but for the active connivance of the concerned public servants who turned blind eye to the huge structure being built on the acquired land without any sanctioned plan. We are amazed to note that after having secured some sort of transfer of the acquired land in stark violation of the prohibition contained in Section 3 of the 1972 Act, the appellants could raise massive structure comprising cricket ground, tennis stadium, badminton courts, swimming pool, table tennis room, squash court, etc. and cottages with modern facilities without even submitting building plans for sanction by any competent authority and without being noticed by any of the authorities entrusted with the duty of checking illegal/unauthorised construction.** This mystery may perhaps never be solved because the officers responsible for ignoring the blatant violation of Section 3 of the 1972 Act, Delhi Development Authority Act and Building Rules,

Regulations and By-laws must have either retired or moved to higher positions in the administration where they will be able to block any inquiry in the matter. Be that as it may, such illegal constructions cannot be protected by the court by nullifying the decision taken by the Government not to withdraw from the acquisition of the land in question.

48. At this stage, we may also take cognizance of the commercial activities being undertaken in what has been described by the appellants as sports complex simpliciter. The nature and magnitude of the commercial activities may never have been revealed but for the fact that the officer representing the respondents could bring to the High Court's notice the written statement filed by Shri Satish Khosla in Suit No. 3064/1996 Eli Lilly Ranbaxy Ltd. and Ors. v. Satish Khosla. In that suit, the plaintiff had sought a decree of permanent injunction restraining the defendant from letting out the garden for parties and functions during the currency of lease agreement in respect of cottage No. 6. The contents of paras 4, 6 and 11 of the written statement, which have been extracted in the impugned order of the Division Bench of the High Court, read as under:

4. Para No. 4 is denied. It is pertinent to note that the Cottage in question is situated in the Shanti Sports Club and is one of the 7 cottages in the said Sports Club. Shanti Sports Club, of which the defendant is the Chairman, came into existence in 1989 and the sports facilities of the said Club are being utilized by its members as well as others. The said Club has amongst others a cricket ground, six tennis courts, swimming pool, squash courts, billiards rooms and a host of other facilities for use for its members. The Club has large beautifully manicured lawn appealing to the eye. Since the very inception of the Club, its beautiful lawns are hired for wedding parties, birth-day parties and for other festive occasions. These wedding parties have been held on the lawns of the Club since 1991, and are the very life and soul of the Club apart from its sports activities. **In fact, the aforementioned wedding parties and other functions which are held on the lawns are the major source of revenue for the Club. The club**

has more than 1500 members and about 200-300 frequent the club every day.

6. Para 6 is denied. The contents of this para are absolutely false to the knowledge of the plaintiffs inasmuch as the plaintiffs all along knew that the garden in between the two Cottages was let out on hire for marriage and other private parties. The defendant denies any verbal assurance was given to the plaintiffs that the garden was to be used for the families residing in two cottages and not for any other purpose. **The lawn/garden in question in between the two cottages is of more than 3000 sq. yards in size and it was not hired out to the plaintiff.**

11. The averments made in para 11 are denied. It is submitted that the plaintiffs have filed the present suit only to harass the defendant. **It is pertinent to note that in the other Cottages in the Club several Diplomats including Deputy High Commissioner of Pakistan, Ambassador of Kazakastan and other dignitaries are staying for several years without any complaint.** It is denied that the plaintiffs are entitled to a decree of permanent injunction restraining the defendant from hiring out the garden for functions and parties during the tenure of the alleged lease agreement. **The revenue generated from hiring out the garden for functions and parties is significant revenue and is necessary for the proper and efficient running of the Club and these functions and parties are the very life and soul of the Club.**

The aforesaid averments made in the written statement filed by Shri Satish Khosla in the above noted suit clearly reveal that the cottages at the club and its lawns are being used for commercial and rental purposes. In respect of cottage No. 6 alone the club was charging large amounts as per below under various agreements. These details are as follows:

49. From what we have noted above, it is crystal clear that the appellants have been undertaking large scale commercial activities in the complex and their so-called love for sports has substantial flavor of commerce.

53. Unfortunately, despite repeated judgments by the this Court and High Courts, the builders and other affluent people engaged in the construction activities, who have, over the years shown scant respect for regulatory mechanism envisaged in the municipal and other similar laws, as also the master plans, zonal development plans, sanctioned plans etc., have received encouragement and support from the State apparatus. As and when the courts have passed orders or the officers of local and other bodies have taken action for ensuring rigorous compliance of laws relating to planned development of the cities and urban areas and issued directions for demolition of the illegal/unauthorized constructions, those in power have come forward to protect the wrong doers either by issuing administrative orders or enacting laws for regularization of illegal and unauthorized constructions in the name of compassion and hardship. Such actions have done irreparable harm to the concept of planned development of the cities and urban areas. It is high time that the executive and political apparatus of the State take serious view of the menace of illegal and unauthorized constructions and stop their support to the lobbies of affluent class of builders and others, else even the rural areas of the country will soon witness similar chaotic conditions.

54. In the result, the appeals are dismissed. However, by taking note of the submission made by Shri Mukul Rohtagi that some time may be given to his clients to vacate the land, we deem it proper to grant three months' time to the appellants to handover possession of the land to the concerned authority of DDA. This will be subject to the condition that within two weeks from today an affidavit is filed on behalf of the appellants by an authorised person that possession of the land will be handed over to DDA by 30th November, 2009 and during this period no encumbrances whatsoever will be created by the appellants or their agents and that no compensation will be claimed for the construction already made. Needless to say that if the required undertaking is not filed, the concerned authorities of DDA shall be entitled to take possession of the land and, if necessary, take police help for that purpose. Contempt Petition Nos. 252-253 of 2001."

32. The petitioners had filed an application seeking regularization pursuant to notification dated 1st May, 2008 in the Supreme Court which application was withdrawn by them with liberty to avail such remedy as may be available to them. Thereafter, the present petition was filed. During the pendency of the present petition seeking regularization of their sports club, the petitioners have given undertaking to the Supreme Court to vacate the premises and hand over the possession of the lands which had been acquired and in respect of which an award was passed long ago without claiming any compensation for the structures constructed by them illegally and unlawfully. After giving an undertaking to the Supreme Court to vacate the premises, the petitioners are not entitled to seek regularization and pending regularization, an interim order for a stay of the dispossession. When the undertaking was given by the petitioners, they should have given the same subject to outcome of the present petition. Though the cause of action of the present petition is different than the cause of action which was before the Supreme Court, as in the appeals before the Supreme Court the petitioners were seeking release of their lands from acquisition. Since the petitioners have given undertaking to vacate the premises during the pendency of the present petition, they have already got their rights extinguished and they are not entitled to claim that they may be allowed to continue in possession and their sports club be regularized. The petitioners ought to have given undertaking to

vacate the premises subject to outcome of the present petition. In the circumstances, the petitioners cannot be allowed to claim the relief of regularization of their sports club.

33. The petitioners have emphasized about various facilities in their club and has compared it with the club of DDA/respondent no. 3 and has also relied on certain provisions of Master plan. This has already been held in their appeals by the Supreme Court that is even if the club has been developed by them according to their notions of public purpose and their sports club may be serving some public purpose, still that cannot be a substitute for planned development of Delhi which was the object visualized by the authorities. The lands of the petitioners and their sports club are in fact their commercial venture under the camouflage of public purpose. The petitioners had admitted that cottages in the club are given to diplomats and other dignitaries and the revenue generated from hiring out the cottages and the garden for functions and parties is significant. In the circumstances it will be difficult to infer that the sports club of petitioners is used for public purpose. Merely because general public use their club subject of payment of charges to the petitioners, it will not make the use of the club for public purpose. In the circumstances the decision of the respondents not to regularize their sports club cannot be faulted in the facts and circumstances. The Supreme Court has held the builders and

other affluent people engaged in construction activities have scant regard for the regulatory mechanism and laws. The Supreme Court in the case of petitioners had also observed that those in power come forward to protect the wrong doers either by issuing administrative orders or enact laws for regularization of illegal and unauthorized constructions. It was held that such actions have done irreparable harm to the concept of planned development. In the circumstances on the ground that the sports club of the petitioners provide better sports facilities, the same cannot be regularized and should not be regularized in the facts and circumstances of this case.

34. The proposed road of 60 meters is an important link between the existing Nelson Mandela road and the existing M.G road in Zone J which has to pass through petitioners' Shanti Sports Club and it will connect the proposed commonwealth games facilities at Vasant Kunj and the proposed 239 acres of CPWD complex at Ghitorni Village for Judicial Commission/Govt. Housing etc. Change of land use for 239 acres of CPWD land at Ghitorni village has already been notified by the Government of India on 14th July, 2009. The notice dated 1st May, 2008 categorically stipulates that the regularization will not be considered in respect of lands which would be required for Master Plan roads. Since the proposed road, which is an important road will pass through the lands of the petitioners which was acquired long back and whose

possession has not been given by the petitioners by initiating various litigation from time to time, the lands of the petitioners are not entitled to be regularization on account of having a sports club constructed illegally and unlawfully. The petitioners cannot contend nor they can be allowed to contend in the facts and circumstances that out of the total land, the land necessary for building the road be taken from them and the sports club on the rest of the land be regularized. The learned counsel for the petitioners has also contended that the proposed road is shown in the zonal plan and consequently it cannot be termed as master plan road. This plea on behalf of the petitioners is also not legally sustainable. The zonal plan is a part of the master plan and any road in the zonal plan has to be termed as master plan road. Consequently under the said notification dated 1st May, 2008, the petitioners are not entitled for regularization of the sports club.

35. Equally unacceptable is the plea of the petitioners that since the possession of the lands which were acquired almost 3 decades ago has not been taken from the petitioners, therefore it will not be public lands. The lands on which the sports club has been made by the petitioners illegally and un-authorizedly was acquired by notification dated 23rd January, 1965 in respect of which declaration under Section 6 was published on 23rd December, 1968 and notices under Section 9 & 10 were issued in 1976 and award was made on 22nd December, 1988. The

petitioners raised construction over the land after issuance of the notification under Section 4 of the Act, the publication of declaration under Section 6 and the publication of award by the Collector. This was in violation of the provisions of the Delhi Lands (Restrictions on Transfer) Act, 1972. The petitioners have also given undertaking to the Supreme Court to vacate the lands by 30th November, 2009. In the circumstances the petitioners cannot be allowed to contend that since the possession of lands have not been recovered from them, the lands in which illegal and unauthorized occupation of the petitioners shall not be public lands. The relevant notification under which the petitioners are claiming right categorically stipulates that regularization shall not be done in respect of public lands. In the circumstances even on this ground the petitioners are not entitled for regularization and the decision of the respondents declining the application of the petitioners for regularization, cannot be termed illegal or unlawful or having passed without application of mind.

37. Inclusion of the name of their sports club in the list prepared by the DDA will also not give any such rights to the petitioners on the basis of which they can claim regularization. The plea of the petitioners that rejection of lands from acquisition notification was within the knowledge of the respondents and still it was included in the list is also not sustainable. That list was prepared by the respondents and the

appeals of the petitioners seeking release of their lands from acquisition were still pending. In any case the list categorically stipulated that mere inclusion of name will not qualify for any legal right or any other legal benefit. In view of the categorical stipulation denying any tangible rights, the petitioners cannot be allowed to claim any rights for regularization in the facts and circumstances.

38. The plea of the petitioners that once the draft zonal plan was submitted to the central government, the DDA was not authorized to carry out any modification in the facts and circumstances is also not sustainable. Section 11 A of the Delhi Development Act, 1957 permits the authorities to make any modification to the master plan or zonal development plan which in the opinion of the authorities do not affect important alterations in the character of plan and which do not relate to the extent land users or the standards of population density. If the master plan or zonal development plan even after approval by the Central Government can be modified subject to conditions enumerated there, it will not be rational to infer that the respondents did not have the power to modify the draft zonal development plan. The plea of the petitioners is not that the modification in the draft zonal plan is not in accordance with the procedure but the emphatic argument of the learned senior counsel was that in no circumstances, the draft zonal plan could be modified by the respondents. This plea of the petitioners

is also not sustainable and it is rejected and the petitioners cannot claim regularization of their sports club in the facts and circumstances. The precedents relied on by the learned counsel for the petitioners are distinguishable and the plea of the petitioners cannot be accepted in view of them.

39. The petitioners also raised the plea of legitimate expectation and have cited a number of precedents. It is not necessary to discuss in detail all the precedents relied on by the petitioners. The law about legitimate expectation was considered by the Supreme Court in the matter of Sethi Auto Service Station and anr. Vs Delhi Development Authority and ors, (2009) 1 SCC 180 after considering previous precedents. The Supreme Court had held that at the root of the constitution principle of legitimate expectation is regularity, predictability and certainty in the Government's dealings with public. The Supreme Court had considered some decisions in paragraph 25 onwards at page 188 which are as under:

25. At this juncture, we deem it necessary to refer to a decision by the House of Lords in *Council of Civil Service Unions v. Minister for Civil Service*, 1985 ac 374, a locus classicus on the subject, wherein for the first time an attempt was made to give a comprehensive definition to the principle of legitimate expectation. Enunciating the basic principles relating to legitimate expectation, Lord Diplock observed that for a legitimate expectation to arise, the decision of the administrative authority must affect such person either (a) by altering rights or obligations of that person which are enforceable by or against him in private law, or (b) by depriving him of some benefit or advantage

which either: (i) he has in the past been permitted by the decision-maker to enjoy and which he can legitimately expect to be permitted to continue to do until some rational ground for withdrawing it has been communicated to him and he has been given an opportunity to comment thereon, or (ii) he has received assurance from the decision-maker that they will not be withdrawn without first giving him an opportunity of advancing reasons for contending that they should be withdrawn.

26. In *Attorney General of Hong Kong v. Ng Yuen Shiu*, (1983) 2 ALL ER 346 (PC), a leading case on the subject, Lord Fraser said: (All ER p. 351g-h)

“... when a public authority has promised to follow a certain procedure, it is in the interest of good administration that it should act fairly and should implement its promise, so long as implementation does not interfere with its statutory duty.”

27. Explaining the nature and scope of the doctrine of legitimate expectation, in *Food Corporation of India v. Kamdhenu Cattle Feed Industries* (1993) 1 SCC 71, a three-Judge Bench of this Court had observed thus: (SCC p. 76, para 8)

“8. The mere reasonable or legitimate expectation of a citizen, in such a situation, may not by itself be a distinct enforceable right, but failure to consider and give due weight to it may render the decision arbitrary, and this is how the requirement of due consideration of a legitimate expectation forms part of the principle of non-arbitrariness, a ¹⁸⁹ necessary concomitant of the rule of law. Every legitimate expectation is a relevant factor requiring due consideration in a fair decision-making process. Whether the expectation of the claimant is reasonable or legitimate in the context is a question of fact in each case. Whenever the question arises, it is to be determined not according to the claimant's perception but in larger public interest wherein other more important considerations may outweigh what would otherwise have been the legitimate expectation of the claimant. A bona fide decision of the public authority reached in this manner would satisfy the requirement of non-arbitrariness and withstand judicial scrutiny. The doctrine of legitimate expectation gets assimilated in the rule of law and operates in our legal system in this manner and to this extent.”

28. The concept of legitimate expectation again came up for consideration in *Union of India v. Hindustan Development Corpn.*⁸ Referring to a large number of foreign and Indian decisions, including in *Council of Civil Service Unions*⁵ and *Kamdhenu Cattle Feed Industries*⁷ and elaborately explaining the concept of legitimate expectation, it was observed as under: (*Hindustan Development Corpn. Case*(1993) 3 SCC 499, SCC p. 549, para 35)

“35. ... If a denial of legitimate expectation in a given case amounts to denial of right guaranteed or is arbitrary, discriminatory, unfair or biased, gross abuse of power or violation of principles of natural justice, the same can be questioned on the well-known grounds attracting Article 14 but a claim based on mere legitimate expectation without anything more cannot ipso facto give a right to invoke these principles. It can be one of the grounds to consider but the court must lift the veil and see whether the decision is violative of these principles warranting interference. It depends very much on the facts and the recognised general principles of administrative law applicable to such facts and the concept of legitimate expectation which is the latest recruit to a long list of concepts fashioned by the courts for the review of administrative action, must be restricted to the general legal limitations applicable and binding the manner of the future exercise of administrative power in a particular case. It follows that the concept of legitimate expectation is ‘not the key which unlocks the treasury of natural justice and it ought not to unlock the gates which shuts the court out of review on the merits’, particularly when the element of speculation and uncertainty is inherent in that very concept.”

Taking note of the observations of the Australian High Court in *Attorney General for New South Wales v. Quinn*, (1990) 170 CLR 1 that “to strike down the exercise of administrative power solely on the ground of avoiding the disappointment of the legitimate expectations of an individual would be to set the courts adrift on a featureless sea of pragmatism”, speaking for the Bench, K. Jayachandra Reddy, J. said that there are stronger reasons as to why the legitimate expectation should not be substantively protected than the reasons as to why it

should be protected. The caution sounded in the said Australian case that the courts should restrain themselves and restrict such claims duly to the legal limitations was also endorsed.

29. Then again in *National Buildings Construction Corpn. v. S. Raghunathan*, (1998) 7 SCC 66, a three-Judge Bench of this Court observed as under: (SCC p. 75, para 18)

“18. The doctrine of ‘legitimate expectation’ has its genesis in the field of administrative law. The Government and its departments, in administering the affairs of the country, are expected to honour their statements of policy or intention and treat the citizens with full personal consideration without any iota of abuse of discretion. The policy statements cannot be disregarded unfairly or applied selectively. Unfairness in the form of unreasonableness is akin to violation of natural justice. It was in this context that the doctrine of ‘legitimate expectation’ was evolved which has today become a source of substantive as well as procedural rights. But claims based on ‘legitimate expectation’ have been held to require reliance on representations and resulting detriment to the claimant in the same way as claims based on promissory estoppel.”

30. This Court in *Punjab Communications Ltd. v. Union of India*, (1994) 4 SCC 727, referring to a large number of authorities on the question, observed that a change in policy can defeat a substantive legitimate expectation if it can be justified on “Wednesbury” reasonableness. The decision-maker has the choice in the balancing of the pros and cons relevant to the change in policy. Therefore, the choice of the policy is for the decision-maker and not for the court. The legitimate substantive expectation merely permits the court to find out if the change in policy which is the cause for defeating the legitimate expectation is irrational or perverse or one which no reasonable person could have made. (Also see *Bannari Amman Sugars Ltd. v. CTO*¹².)

31. Very recently in *Jitendra Kumar v. State of Haryana*, (2008) 2 SCC 161, it has been reiterated that a legitimate expectation is not the same thing as an anticipation. It is distinct and different from a desire and hope. It is based on a right. It is grounded in the rule of law as requiring

regularity, predictability and certainty in the Government's dealings with the public and the doctrine of legitimate expectation operates both in procedural and substantive matters."

40. Thus it was held that a case for applicability of the doctrine of legitimate expectation arises when an administrative body by reason of a representation or by past practice or conduct aroused an expectation which it would be within its powers to fulfill unless some overriding public interest comes in the way. However, a person who bases his claim on the doctrine of legitimate expectation, in the first instance, has to satisfy that he has relied on the said representation and the denial of that expectation has worked to his detriment. The Court should interfere only if the decision taken by the authority was found to be arbitrary, unreasonable or in gross abuse of power or in violation of principles of natural justice and not taken in public interest. But a claim based on mere legitimate expectation without anything more cannot ipso facto give a right to invoke these principles.

41. It has been held by the Supreme Court and by this Court that running of sports club is in the commercial interest of the petitioner and not for public purpose. The petitioners have also failed to show and demonstrate that denial of regularization has worked to the detriment of the petitioners. The decision of the respondents not to regularize the sports club of the petitioners cannot be termed as arbitrary,

unreasonable or gross abuse of power or in violation of principle of natural justice and not taken in public interest. Construction of road which passes through the lands on which unauthorized and illegal club is run by the petitioners is apparently not in public interest. Rather respondents' action is in public interest and it does not amount to abuse of power rather the writ petition is an abuse of process of law, as the petitioners have already given undertaking to the Supreme Court that they would vacate the lands without claiming any compensation for the structures constructed by them by 30th November, 2009. In Hindustan Development Corporation (supra) it was held that legitimate expectation can at the most be one of the grounds which may give rise to judicial review but the granting of relief is very much limited. The decision not to regularize the sports club of the petitioners appears to be fair and objective in the present facts and circumstances and in the circumstances it will not be appropriate for this Court to interfere with the same on any of the grounds raised by the petitioners. Therefore, even on the ground of legitimate expectation, the petitioners are not entitled for a directions to the respondents to regularize their sports club.

42. For the forgoing reasons, the writ petition is without any merit and the petitioners are not entitled for any of the reliefs sought by them.

The writ petition is therefore, dismissed. Parties are left to bear their own costs.

November 13th, 2009.
'Dev/k'

ANIL KUMAR J