

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

**1. Letters Patent Appeal No. 44 of 1990 (O&M)
and X-Obj. No.17 of 1991**

Date of Decision : August 31, 2016

Bhatinda Improvement Trust Appellant

VERSUS

Madan Lal and others Respondents

2. Letters Patent Appeal No. 45 of 1990 (O&M)

Bhatinda Improvement Trust Appellant

VERSUS

Bhola Singh and others Respondents

3. Letters Patent Appeal No. 46 of 1990 (O&M)

Bhatinda Improvement Trust Appellant

VERSUS

Ram Pal and others Respondents

4. Letters Patent Appeal No. 47 of 1990 (O&M)

Bhatinda Improvement Trust Appellant

VERSUS

Mohan Lal and others Respondents

**5. Letters Patent Appeal No. 48 of 1990 (O&M)
and X-Obj. No.18 of 1991**

Bhatinda Improvement Trust Appellant

VERSUS

Boota Singh and others

..... Respondents

6.

Letters Patent Appeal No. 49 of 1990 (O&M)
and X-Obj. No.19 of 1991

Bhatinda Improvement Trust

..... Appellant

VERSUS

Varinder Mohan and others

..... Respondents

7.

Letters Patent Appeal No. 50 of 1990 (O&M)

Bhatinda Improvement Trust

..... Appellant

VERSUS

Satish Kumar Singla and another

..... Respondents

8.

Letters Patent Appeal No. 466 of 1990 (O&M)

Bhatinda Improvement Trust

..... Appellant

VERSUS

Ajinder Singh Mann and others

..... Respondents

9.

Letters Patent Appeal No. 467 of 1990 (O&M)
and X-Obj. No.20 of 1991

Bhatinda Improvement Trust

..... Appellant

VERSUS

Anita Garg and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE SURYA KANT
HON'BLE MR. JUSTICE A.B. CHAUDHARI

PRESENT: Mr. Salil Sagar, Sr. Advocate, with
Mr. Samrath Sagar, Advocate, for the appellant.
Sarvshri J.R. Mittal, Rupinder S. Khosla and Akshay
Bhan, Sr. Advocates, with Sarvshri Dhirinder Chopra,
Lalit Sharma, Mohan Sharma, Ajay Aggarwal, Alok
Mittal, Sumit Goel, Sarvesh Malik and Rajiv Mittal,
Advocates, for the respondent(s).

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Per A.B. Chaudhari, J.:

These Letters Patent Appeal Nos.44 to 50, 466 and 467, all of 1990, were filed by Bhatinda Improvement Trust, Bhatinda (hereinafter referred to as 'the Trust') in this Court in the year 1990 against the judgment and order dated 20.10.1989, passed by the learned Single Judge of this Court, allowing the writ petitions quashing the acquisition of land that was acquired by the Trust. There were two land acquisitions for the scheme to be implemented by the Trust. One was in respect of 16.44 acres (hereinafter referred to as 'the first set of cases') and the other related to 25.21 acres (hereinafter referred to as 'the second set of cases').

This Court had decided all these appeals, Civil Writ Petitions as well as Contempt Petitions by judgment and order dated 02.04.2012. The Letters Patent Appeals were allowed and the acquisition as aforesaid, of the land was upheld by the Division Bench of this Court. The appellate judgment was put to challenge by the aggrieved parties before the Supreme Court of

India in Civil Appeal Nos. 1057-1058 of 2013 (arising out of SLP (Civil) Nos.8050-8051 of 2013)(CC Nos.8763-8764 of 2012), 1059 of 2013 (arising out of SLP (Civil) No.15859 of 2012), 1060 of 2013 (arising out of SLP (Civil) No.15912 of 2012), 1061 of 2013 (arising out of SLP (Civil) No.8052 of 2013)(CC No.9157 of 2012), 1062-1063 of 2013 (arising out of SLP (Civil) Nos.8053-8054 of 2013)(CC Nos.9280-9281 of 2012), 1064 of 2013 (arising out of SLP (Civil) No.8055 of 2013)(CC No.9484 of 2012), 1065 of 2013 (arising out of SLP (Civil) No.22269 of 2012), 1066 of 2013 (arising out of SLP (Civil) No.22271 of 2012), 1067-1071 of 2013 (arising out of SLP (Civil) Nos.25221-25225 of 2012), 1072 of 2013 (arising out of SLP (Civil) Nos.25232 of 2012) and 1073-1074 of 2013 (arising out of SLP (Civil) Nos.8056-8057 of 2013)(CC Nos.17476-17477 of 2012). The Apex Court on 08.02.2013, set aside the appellate judgment of this Court and remitted all the matters to this Court for fresh consideration by leaving all the questions involved in these matters open to be again adjudicated by this Court. It would be useful to reproduce the relevant portion from the said order made by the Apex Court, which reads thus:-

“4. Having regard to the dispute whether notices under Section 38 of the Punjab Town Improvement Trust, 1922 were duly served on the petitioners and, if served, whether any objections were filed by them, Ms. Priya Hingorani, learned counsel for the Bhatinda Improvement Trust (BIT), submits that BIT has no objection if the matters are appropriately considered by the High Court again.”

“7. All questions in the above matters are left open to be agitated before the High Court.”

It is in the light of the above background facts, all these matters were listed before this court for hearing.

This Court commenced the hearing and was required to hear these matters on almost day to day basis on various dates after the regular work. After completion of hearing, the matters were closed for orders on 31.05.2016.

At the outset, having regard to the direction made by the Apex Court, inter alia, in para-4 above, it became expedient to find out whether the notices under Section 38 of the Punjab Town Improvement Act, 1922 (hereinafter referred to as 'the Act') were served on the original writ petitioners and then to find out if served, whether any objections were filed by them. Accordingly the counsel for the Trust was put on notice to be ready with the records of the Trust for finding out the factual position. The revelations, upon seeing the record, are culled out and shown in the relevant paragraph (III) – Non service of individual notices.

Reverting back, it is seen from the record that the **“first set”** of matters; namely, LPA Nos.44 to 50 of 1990 and Cross Objections Nos.17, 18 and 19 of 1991 filed by the original writ petitioners in LPA Nos.44 of 1990, 48 of 1990 and 49 of 1990, arising out of the judgment and order dated 20.10.1989, made by the learned Single Judge of this Court, are in respect of 16.44 acres of land.

The “second set” of matters relate to 25.21 acres of land having LPA Nos.467 of 1990 and 466 of 1990, and Cross Objections No.20 of 1991 filed by the original writ petitioners in LPA Nos.467 of 1990.

Facts :

A Notification under Section 36 of the Act was published on 09.09.1976. However, the said Notification was quashed by this court on 03.12.1982 as Notification under Section 42 of the Act was not published within three years of the first Notification. Thereafter, on 06.01.1984, the Trust passed resolution (Annexure P-3) recommending the publication of the Town Planning Schemes, as notified earlier. However, the Deputy Commissioner passed an order on 30.01.1984 and stayed the resolution of the Trust. But then, the Notification under Section 36 of the Act was published in the following manner:-

Ajit Daily Jalandhar	04/02/84	11/02/84	18.2.1984
The Tribune, Chandigarh	10/02/84	17.2.1984	24.2.1984
Government Gazette	24.2.1984	02/03/84	09/03/84

Objections to the Scheme were submitted by some persons. Notices under Section 38 of the Act came to be issued to the land owners to enable the land owners to submit objections within 60 days. Thereafter, the Notification under Section 42 of the Act of sanction of the Scheme by the State Government was published on 28.01.1987 in 16.44 acres Scheme and on 06.03.1987 in 25.21 acres Scheme. Finally, the

award was declared by the Land Acquisition Collector on 23.12.1988. Number of Civil Writ Petitions were filed. CWP No. 2600 of 1984 was filed on 31.05.1984, which was amended in 1989. CWP Nos.2712 and 2713, both of 1987, were filed on 11.05.1987, CWP Nos.6124 and 6125, both of 1987, on 07.09.1987, CWP No.91 of 1989 on 31.01.1989, CWP No. 2378 of 1989, on 22.02.1989, CWP 162 of 1989 on 05.01.1989 and CWP No.9458 of 1988 on 12.10.1988.

The challenge to both the acquisitions by way of Civil Writ Petitions was accepted by the learned Single Judge and, consequently, the acquisition was set aside. The learned Single Judge also held that in the wake of stay of resolution by order issued by the Deputy Commissioner on 30.01.1984, and in the absence of any specific order by the State Government rescinding the order of stay, the acquisition proceedings were illegal and were, therefore, quashed.

By this judgment, we are deciding all the Letters Patent Appeals while the pending writ petitions and a COCP are being decided separately.

Arguments were heard by this Court in LPA No.49 of 1990 as a lead case on majority of points, though additional arguments were also heard in remaining matters. Sarvshri J.R. Mittal, Rupinder S. Khosla and Akshay Bhan, learned Senior Advocates appearing for the respondents, made several submissions in support of the appeals. It would be appropriate to cull out the submissions while considering the relevant

contentions :

(i) CM No.515 of 2009 – Appeal (LPA-49-1990) stands abated as legal representatives of appellant-Virinder Mohan have not been impleaded.

Following decisions were cited :-

1. Puran Singh vs. State of Punjab, 1996(1) RRR 519;
2. Madan Naik (dead by LRs.) and others vs. Mst. Hansubala Devi and others, 1983 AIR (SC) 676;
3. State of Punjab vs. Nathu Ram, 1962 AIR (SC) 89; and
4. Smt. Bhagwanti Devi and another vs. State of Haryana and another, 1994(2) PLR 423.

The question whether LPA 49 of 1990 stood abated on account of failure to implead the legal representatives of Virinder Mohan has to be examined in the light of the decision of the Apex Court in the case of Puran Singh (supra). The Code of Civil Procedure is not applicable to the writ proceedings and, as such, non impleadment of the legal heirs of Virinder Mohan within the period of limitation, would not necessarily abate the appeal. Apart from the fact that the provisions of Code of Civil Procedure as to the abatement of an appeal arising out of the writ proceedings stricto sensu not being applicable, there is another angle in the sense that the proceedings in question regarding land acquisition for the public purpose; namely, implementation of the Town Planning Scheme for public at large, will have to be viewed differently. We invoke the doctrine of '**utilitarianism**'. Such a lis cannot be treated like the ordinary

civil suit/case, first appeal or second appeal, essentially governed by the provisions of code of Civil Procedure. It is a well settled legal position that the writ proceedings are not governed by the Code of Civil Procedure. We are unable to agree with the arguments advanced by Shri J.R. Mittal, learned Senior Advocate, for distinguishing the decision in the case of Puran Singh (supra). Apart from the above legal position, on facts what we find is that along with Virinder Mohan there were other co-owners and, therefore, the interest of legal representatives of Virinder Mohan was well taken care of. One co-owner can certainly represent the estate of the other co-owner and we do not think that non impleadment of legal heirs of deceased-Virinder Mohan renders LPA No.49 of 1990 as abated. We, therefore, hold that LPA No.49 of 1990 did not abate.

(ii) Filing of ALL appeals without legal and valid authority:

The learned counsel for the appellants next contended that these appeals were filed on 18.12.1989 through Shri Mukhtiar Singh Sandhu, as Chairman of the Trust, as against his appointment as such by Notification dated 26.08.1991, with effect from 28.03.1989. The submission is that the Notification dated 26.08.1991 obviously did not exist on the date of filing of the appeals viz. 18.12.1989 and there could not be any appointment with retrospectivity as was sought to be done. Therefore, the appeals filed on 18.12.1989 were not filed

according to law. The contrary submission is that there is no bar in issuing Notification with retrospectivity and that within the scope of Section 101 (e) of the Act, the same could be said to be only a curable irregularity, well within the four corners of law.

Upon perusal of the record and upon hearing the learned counsel for rival parties, we find that these appeals were filed through Shri S.P. Kanwal, Advocate, who was the Advocate for the Trust before the learned Single Judge as well. These appeals are intra-court appeals and, therefore, according to us, filing of the appeals through Shri S.P. Kanwal, Advocate, who had filed the writ petitions with authority or Power of Attorney, could not be said to be either irregular or illegal. In our opinion the objection to the filing of the appeals in the above background does not have any merit. That apart, the issuance of Notification dated 26.08.1991 is an administrative act and we do not find anything wrong in making the Notification retrospective referable to Section 101(e) of the Act. Save it is expressly provided, the statutory power to issue a notification implies the power to issue it with retrospective effect also. Further, on facts, no prejudice is shown. It would be too late to consider such a challenge. None prevented the appellants from raising such an objection as preliminary objection by motion hearing immediately when they received the notices of appeals way back in the year 1990. Had the Court found substance in such a preliminary objection, the

appellants in that event could have their opportunity to make amends if necessary.

(iii) Merger, res judicata and locus :

The next question argued before us was that the State of Punjab had filed an appeal against the same impugned judgment made by the learned Single Judge along with an application for condonation of delay. Indisputably, appeal by the State was filed at a later point of time i.e. after LPA 49 of 1990 by the Trust was admitted for final hearing by this Court on 29.01.1990. It was pointed out to us that the appeal filed by the State was dismissed as the Division Bench (appellate court) of this Court did not find any reason to condone the delay in filing the LPA. As the application for condonation of delay was dismissed, the LPA was also dismissed as a consequence.

Now, the questions raised before us are :-

(i)whether by virtue of doctrine of merger, these appeals filed by the Trust would be hit also by the principle of res judicata; or

(ii)Whether the Trust, allegedly being a wing of the State of Punjab and only a beneficiary did not have locus to file appeals making these appeals incompetent.

We have carefully considered the submissions made by the learned counsel for the rival parties.

Mr. J.R. Mittal, the learned Senior Advocate cited the following decisions:-

1. Dr. S.C. Gupta vs. State of Haryana, 1991 PLJ 63;
2. Sheodan Singh vs. Daryao Kunwar, 1966 AIR (SC) 1332;
3. Kunhayammed vs. State of Kerala, 2000 AIR (SC) 2587;
4. Rani Choudhari vs. Lt. Col. Suraj Jit Choudhary, 1982 AIR (SC) 1397;
5. Messers. Mela Ram and Sons vs. Commissioner of Income-tax, Punjab, 1956 AIR (SC) 367;
6. Pujari Bai vs. Madan Gopal, 1989 (3) SCC 433; and
7. Workmen of Cochin Port Trust vs. Board of Trustees of the Cochin Port Trust and another, 1978 (3) SCC 119.

We have minutely gone through these decisions. The decision in the case of Sheodan Singh cited supra in the facts of this case is clearly distinguishable as this Court admitted appeals by the Trust for final hearing far earlier to the State of Punjab filing appeal after limitation or delay or latches. This Court did not decide the appeal filed by State of Punjab on merits but dismissed it for latches i.e. for delay in filing appeal which, to repeat, were filed long after the Trust filed appeals. To say that appeals filed by the Trust within limitation and admitted for final hearing should be rejected merely because at a later point of time appeal filed by State beyond limitation would be far-fetched.

We, therefore, think that all the above cited decisions would be of no help.

Next the doctrine of merger will have no application at all. This issue is no more res integra in view of the ratio

decidendi in the case of Chandi Prasad and others Vs. Jagdish Prasad and others, (2004) 8 SCC 724. There is one more decision in the case of State of Kerala v. Kondottyparambanmoosa, (2008) 8 SCC 65 holding the same view. We are, therefore, of the considered opinion that neither the doctrine of merger has any application nor the principles of res judicata.

The next question is about the competency of the appeals preferred by the Trust ("beneficiary") and as a wing of the State Government particularly in the wake of the dismissal of the appeal filed by the State, which was dismissed as the delay was not condoned.

The decision in the case of Ramesh Datta vs. State of Punjab and others (CWP No.2702 of 1995, decided on 20.08.1997) rendered by this Court has been relied by Mr. J.R. Mittal, the learned Senior Advocate. Two Supreme Court decisions have been cited in that judgment. The statement of law in these decisions is that 'Beneficiary' cannot maintain challenge to the "award" of compensation by a petition under Article 226 of the Constitution. Also in Municipal Corporation of the City of Ahmedabad vs. Chandulal Shamaldas Patel and others, 1971 (3) SWCC 821, it was held that acquiring body – M.C., Ahmedabad did not have locus to challenge the decision of the High Court quashing Section 4 and Section 6 notifications. But in a later decision in Himalaya Tiles and Marble (P) Ltd. vs. Francis Victor Coutinho (dead) by LR's, 1980 (3) SCR 235, the Apex Court reversed the decision of the L.P.A. Court, and held that "the "Acquiring Body" definitely had the 'locus' and 'right' to challenge the decision of Single Judge quashing the "acquisition", as it was vitally interested in protecting the acquisition and to

safeguard its interest in the matter of payment of huge compensation". These decisions came up for consideration before the celebrated Constitution Bench judgment of the Apex Court in the case of U.P. Awas Evam Vikas Parishad vs. Gyan Devi (dead) by L.Rs., 1995 AIR (SC) 724, and by majority view the Apex Court overruled the decision in the case of Municipal Corporation of the City of Ahmedabad (supra), and upheld the decision in the case of Himalaya Tiles and Marble (supra) to hold that the "Acquiring Body" has the locus standi to challenge the Single Judge decision in appeal. Para-19, reads thus:-

"19. The Court has taken note of "general consensus of judicial opinion that even though a company may not have any title to the property yet it certainly has a right to appear and put forward its case in the matter of determination of the quantum of compensation". The Court has also considered the definition of "person interested" contained in Section 3(b) of the L.A. Act and has held that the company for whom the land is acquired is a "person interested" for the purpose of Section 18(1) of the L.A. Act. The Court appears to have gone into this question for the reason that the Letters Patent Bench in the High Court had held that the Company was not a "person interested" within the meaning of Section 18(1) of the L.A. Act. Having regard to the express provisions contained in the proviso to Section 50(2) of the L.A. Act, it would not be correct to say that a local authority or a company for whom land is acquired is a "person interested" under Section 18(1) of the L.A. Act because on that view a local authority or a company would be entitled to seek a reference against the award of the Collector which would run counter to the proviso to Section 50 (2). It was, therefore, not correct to place reliance on Section 18 (1). But the conclusion in Himalayan Tile's case (supra) that the company had the *locus standi* to file an appeal is right when

the said judgment is read in the context of Section 50(2). For that reason, we are unable to endorse the view taken in *Municipal Corporation of City of Ahmedabad v. Chandulal Shamaldas Patel* (supra).

Thus, the question raised by the learned Senior Advocate before us is no more res integra.

Apart from that, in the above context, we reproduce, Sections 3 and 96 of the Act, which read thus:-

“3. Creation and incorporation of trust.- The duty of carrying out the provisions of this Act in any local area shall, subject to the conditions and limitations hereinafter contained, be vested in a board to be called “The (name of town) Improvement Trust” hereinafter referred to as “the Trust”; and every such board shall be a body corporate and have perpetual succession and common seal, and shall by the said name sue and be sued.”

“96. Powers of chairman as to institution, etc., of legal proceedings and obtaining legal advice.- The chairman may, subject to the control of the Trust -

- (i) institute, defend or withdraw from legal proceedings under this Act,
- (ii) compound any offence against this Act,
- (iii) admit, compromise or withdraw any claim made under this Act, and
- (iv) obtain such legal advice and assistance as he may from time to time deem it necessary or expedient to obtain, or as he may be desired by the trust to obtain, for any of the purposes referred to in the foregoing clause of this section, or for securing the lawful exercise or discharge of any power or duty vested in or imposed upon the Trust or any officer or servant of the trust.”

A perusal of the above two provisions, to our mind,

clearly makes the Trust an independent “legal entity” to sue or be sued. The Scheme of the Act nowhere prescribes that the locus of the Trust to institute any legal proceedings would at all depend upon the State Government's approval, sanction or decision. To put in other words, the Trust is an independent legal entity and authority having independent and separate legal status to file the lis or to institute appeals, independent of the actions or authority of the State Government for filing the appeals. To go a step ahead, it would not be wrong to say that even if State prevents the Trust from filing appeals, the Trust can still file appeals being an independent legal entity. Chapter VII-A of the Act “Control over Trusts” does not come in the way. The Division Bench decision of this Court dated 20.08.1987 in CWP No.2702 of 1995 (Ramesh Dutta vs. State of Punjab and others) has no application. In that case, no provisions alike Sections 3 and 96 of the Act fell for consideration of the Bench. That apart, after the Constitution Bench judgment of the Apex Court in the case of U.P. Awas Evam Vikas Parishad (supra), acquiring body being necessary party has full right to challenge the award independent of the State. At any rate, in the wake of the principle - *ubi jus ibi remedium*, when the acquiring body has vital interest in acquisition and is required to pay compensation through nose, it would be unjust to deny the Trust its basic right in law to challenge a decision which according to Trust is wrong. This being the legal position, we find that dismissal of the appeal filed by the State for delay in filing in the said subject matter does not and cannot affect the right of the Trust to have recourse to its legal remedy of filing the appeals and, therefore, it would be wrong to say that the Trust does not have any locus standi to file or prosecute any appeal, due to the

dismissal of the appeal filed by the State Government. That apart, the factual position which is seen from the record is that the Trust had filed the appeals on 18.12.1989 and the same were also admitted by this Court for final hearing on 29.01.1990. Till 29.01.1990, the State had never preferred any appeal. The appeal filed by the Trust having been admitted for final hearing, we think the submission becomes otiose. We are, therefore, unable to accept this submission.

Having considered these submissions, it is not necessary now to discuss the other cited decisions :-

1. S. Nazeer Ahmed vs. State Bank of Mysore and others, 2007(2) ACJ 737 (SC);
2. C. Cheriathan vs. P. Narayanan Embranthiri and others, 2009(1) CCC 482;
3. V. Ramakrishna vs. Smt. N. Sarojini and others, 1993 AIR (AP) 147; and
4. Narayanarao (Dead) through LRs. And others, 1995 (Suppl.) SCC 463.

(iv) Section 24 of the 2013 Act :

The next question in the form of preliminary objection raised by Mr. J.R. Mittal, the learned Senior Advocate, is that by virtue of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short 'the 2013 Act'), the acquisition proceedings in all these cases have lapsed and, therefore, the declaration to that effect is required to be given by this Court.

We have heard the arguments of the learned counsel for rival parties at length on this point. Some decisions were also cited before us in that behalf. We have, however, an order made by the Apex Court on 04.07.2014 in the case of Gurcharan Singh and others

vs. State of Punjab and others (SLP (Civil) Nos.8565-8567 of 2011), wherein the Apex Court has categorically held that Section 24 of the 2013 Act has no application at all and, consequently, the argument about lapsing of the acquisition proceedings has also no merit. We quote the entire order of the Apex Court, which reads thus:-

“Mr. Raju Ramachandran, learned senior counsel for the petitioners, sought to invoke Section 24 (2) of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short, 'the 2013 Act') and submitted that acquisition proceedings have lapsed.

Mr. Salil Sagar, learned senior counsel for respondent No.2 submits that acquisition in the present case was initiated and concluded under the Punjab Town Improvement Act, 1922.

Section 24 of the 2013 Act reads as under :-

"24. Land acquisition process under Act No.1 of 1894 shall be deemed to have lapsed in certain cases '- (1) Notwithstanding anything contained in this Act, in any case of land acquisition proceedings initiated under the Land Acquisition Act, 1894 (1 of 1894), -

- a) Where no award under section 11 of the said Land Acquisition Act has been made, then, all provisions of this Act relating to the determination of compensation shall apply; or**
- b) Where an award under said section 11 has been made, then such proceedings shall continue under the provisions of the said Land Acquisition Act, as if the said Act has not been repealed.**

(2) Notwithstanding anything contained in sub-section (1), in case of land acquisition proceedings initiated under the Land Acquisition Act, 1894 (1 of 1894), where an award under the said section 11 has been made five years or more prior to the

commencement of this Act but the physical possession of the land has not been taken or the compensation has not been paid the said proceedings shall be deemed to have lapsed and the appropriate Government, if it so chooses, shall initiate the proceedings of such land acquisition afresh in accordance with the provisions of this Act:

Provided that where an award has been made and compensation in respect of a majority of land holdings has not been deposited in the account of the beneficiaries, then, all beneficiaries specified in the notification for acquisition under section 4 of the said Land Acquisition Act, shall be entitled to compensation in accordance with the provisions of this Act.

A close reading of Section 24 makes it clear that land acquisition proceedings under Land Acquisition Act, 1894 (for short, 'the 1894 Act') are deemed to have lapsed in certain cases which are indicated in the provision. Since the acquisition of the subject land has taken place under the 1922 Act and not under the 1894 Act, Section 24 has no application at all.

The argument concerning Section 24 of the 2013 Act and lapsing of the acquisition proceedings has no merit and is overruled. The grounds raised in the special leave petitions in challenging the impugned judgment will be considered at the time of final disposal.

List the special leave petitions for final disposal on a non-miscellaneous day within six months."

Mr. J.R. Mittal, the learned Senior Advocate, vehemently contended with reference to above order of the Supreme Court that the said order is in the nature of an interim order and the Special Leave Petitions have still been fixed for final disposal and, therefore, the Apex Court has not laid down any ratio as such.

In our opinion, a close look at the aforesaid order shows

that the Apex Court has categorically held that Section 24 of the 2013 Act has no application at all and has given the reason therefor also. Consequently, the Apex Court has over-ruled the plea about lapse of the acquisition proceedings being bereft of any merit. We think the aforesaid finding being conclusive in nature would certainly bind us. Apart from that, what we find is that a judgment of the Apex Court rendered by "Three Judges" in the case of Nagpur Improvement Trust vs. Vasantrao and others, 2002(4) R.C.R. (Civil) 551, in clear terms lays down the law that the Land Acquisition Act stands incorporated in the State Act and, therefore, the subsequent amendments to Land Acquisition Act have no effect upon the acquisition made under the State Act. In the very first paragraph of the said judgment, the Apex Court observed that three State Acts, which fell for their consideration, were - The Punjab Town Improvement Act, 1922, The Nagpur Improvement Trust Act, 1936 and The Uttar Pradesh Avas Evam Vikas Parishad Adhiniyam, 1965. Their Lordships further observed that if it was held that the provisions of the Land Acquisition Act stand legislatively incorporated in the State Act, the subsequent amendment to the Land Acquisition Act will have no effect upon the acquisitions made under the State Act. The categorical answer given by the Apex Court to the above question is found in paras 48 (relevant portion) and 58 of the said judgment, relevant portion reads thus:-

"48. We are, therefore, of the view that what has been held by this Court in *U.P. Avas Evam Vikas Parishad v. Jainul Islam and another* (supra) with regard to U.P. Act holds good for the Punjab Act as well as the Nagpur Act. Consequently we are unable to subscribe to the view taken in *Bhatinda Improvement Trust v. Balwant Singh and others* (supra) that the

provisions of the Land Acquisition Act have not been incorporated into the Punjab Act and that they have merely been cited or referred to in the Punjab Act.”

“58. So far as the acquisition under the Nagpur Act and the U.P. Act are concerned they have been challenged on the ground that the Notification corresponding to the declaration under Section 6 of the Land Acquisition Act was made more than 3 years after the expiry of the date of the publication of the Notification corresponding to the Notification under Section 4 of the Land Acquisition Act. This was on the assumption that the provisions of the Land Acquisition Act were not incorporated in the State Acts but were merely referred to and the amendment of Section 6 of the Land Acquisition by insertion of proviso thereto by Act 13 of 1976, would apply to the acquisitions. We have already held that the provisions of the Land Acquisition Act as modified by the State Acts and the Schedule thereto stand incorporated in the State Acts and, therefore, the subsequent, amendments of Section 6 by the Land Acquisition (Amendment and Validation) Act, 1976 (Act No. 13 of 1976) or by Act 68 of 1984, will have no effect on the acquisition made under the State Acts. The High Court of Allahabad has taken this view while the High Court of Bombay, Nagpur Bench, Nagpur has taken the contrary view. The appeals, therefore, which are directed against the judgment of the High Court of Allahabad must be dismissed and those against the judgment of the High Court of Bombay, Nagpur Bench, Nagpur, must be allowed. Since we have held that the Land Acquisition Act stands incorporated in the State Acts, with the consequence that subsequent amendments to the Land Acquisition Act have no effect upon the acquisition made under the State Acts, it is not necessary to consider the submission of Mr. Rakesh Dwivedi, Senior Advocate, that in view of the judgment of this Court in T.M. Peter's case (supra), the absence of any time limit in the State Acts for issuance of Notification corresponding to the declaration under 6 of the

Land Acquisition Act will not expose the State Acts to the charge of discrimination invoking the principles enshrined in Article 14 of the Constitution.”

In para-49 (relevant portion), it was held as under:-

“49. In these circumstances with a view to save the law from the vice of arbitrary and hostile discrimination, the provisions must be construed to mean, in the absence of anything to the contrary, that the provisions of the Land Acquisition Act as amended by the 1984 Act relating to determination and payment of compensation would apply to acquisition of land for the purposes of the State Acts. It must, therefore, be held that while incorporating the provisions of the Land Acquisition Act in the State Acts, the intention of the legislature was that amendments in the Land Acquisition Act relating to determination and payment of compensation would be applicable to acquisition of lands for the purposes of the State Acts. Consequently the claimants are entitled to the benefits conferred by Section 23(1-A), if applicable, and Sections 23(2) and 28 of the Land Acquisition Act as amended by the 1984 Act for acquisition of land for the purposes of the State Acts under Section 59 of both the Nagpur and the Punjab Acts.”

The Apex Court, however, held that the intention of the Legislature was that the amendments in the Land Acquisition Act relating to determination and payment of compensation will be applicable to the acquisition of land for the purposes of State Act. We, therefore, find that the submission about lapsing of acquisitions with reference to Section 24 of the 2013 Act cannot be accepted and is rejected.

On merits :

(I) Publication of Notification under Section 36 of the Act has to be in the official gazette before such publication in the

newspapers.

This point need not detain us any further in view of the decision of the Supreme Court in the case of Phagwara Improvement Trust vs. The State of Punjab and others, 1991 Supp (2) SCC 753 as well as Bhatinda Improvement Trust vs. Balwant Singh and others, AIR 1992 Supreme Court 2214(1), in which it is held that the Notification is not required to be published prior in time in the official gazette to the publication in the newspaper. We are, therefore, unable to accept the said submission.

II Whether the order dated 30.01.1984 passed by the Deputy Commissioner suspending the resolution of the Trust would render the publication of the Notification under Section 36 of the Act null and void ?

It is not in dispute that the Deputy Commissioner had made an order of stay/suspension on 30.01.1984 suspending the resolution of the Trust. There is controversy raised in relation to the revocation of the said order of suspension by the Deputy Commissioner himself on 18.04.1984 as no such order of revocation dated 18.04.1984 has been produced. However, the submission that no such order has been produced and, therefore, Court should not consider the existence of any such order, does not appeal to us for reasons more than one. In the first place, the fact that the order of revocation dated 18.04.1984 was made by the Deputy Commissioner himself was asserted in the written statement filed way back in November, 1987 by the Trust, to which there was no specific denial. If at all the original writ petitioners wanted that such order dated 18.04.1984 should be produced on record or that the same did not exist, nothing prevented them from making such a motion before the

learned Single Judge or asking production thereof before the learned Single Judge or by issuing notice to produce the document/order during the pendency of the writ petitions before the learned Single Judge. No plausible explanation is forthcoming as to why steps in this regard were not taken before the learned Single Judge. In the wake of the aforesaid circumstances and coupled with the assertion in the written statement about revocation order dated 18.04.1984, we think the fact of revocation of order by the Deputy Commissioner himself needs to be accepted as there is a failure on the part of the original writ petitioners in taking necessary steps, as noticed above, at the appropriate time and it is too late now after so many years to expect the production of the order. The delay in decision by the Court cannot enure to the benefit of any litigant. Looking to the number of years that have passed from 1984, we do not think that we should draw any adverse inference against the Trust as contended. On preponderance of probabilities, we, therefore, hold the revocation of suspension order dated 30.01.1984 was made by the Deputy Commissioner himself on 18.04.1984.

We then find that the power to suspend a resolution is conferred on the Deputy Commissioner under Section 72-B of the Act, while the power to annul the same is vested with the State Government under Section 72-E of the Act. It is not necessary for us to quote other provisions except Section 72-B of the Act. The learned Single Judge held that State Government did not annul the suspension order which reasoning, in our opinion, is wrong. The reason is that if the Deputy Commissioner has the power to make an order of suspension, equally he has the power to make an order of revocation thereof. This is a well settled legal position. In this case,

the Trust came with a plea about revocation by the Deputy Commissioner himself. Section 72-B of the Act, reads thus :-

“72-B. Power to suspend any resolution or order of trust.- The Deputy Commissioner may, by order in writing, suspend the execution of any resolution or order of a trust or prohibit the doing of any act which is about to be done, or is being done in pursuance of or under cover of this Act, or in pursuance of any sanction or permission granted by the trust in the exercise of its powers under the Act, if, in his opinion, the resolution, order or act is in excess of the powers conferred by law or contrary to the interests of the public Or likely to cause waste or damage of trust funds or property, or the execution of the resolution or order, or the doing of the act, is likely to lead to a breach of the peace, to encourage lawlessness or to cause injury or annoyance to the public or to any class or body of persons.”

Mr. J.R. Mittal so also Mr. Sagar, the learned Senior Advocates, cited some decisions on the issue about the effect of the order of suspension of resolution. We need not cite all the decisions herein. The reason is that the decisions cited mostly relate to the stay/interim orders made by the judicial courts or other quasi judicial authorities having the power to make an adjudication of the binding nature.

We are unable to accept the contention that Section 72-B of the Act or the order made thereunder should not be held as administrative in nature. In our considered opinion the said provision ought to be interpreted keeping in mind the 'Mischief Rule'. In Heydon's case, the fourth proposition for sound construction of a statute was stated thus:-

“Fourth proposition :- The true reason of the remedy; and the office of all the Judges is always to make such

construction as shall suppress the mischief; and advance the remedy; to suppress subtle inventions and evasions for continuance of the mischief, and to 'pro privato commodo', and to add force and life to the cure and remedy, according to the true intent or the makers of the Act, 'pro-bono publico'.

Insofar as Section 72-B of the Act is concerned, we find that such a provision exists in several local laws in the country. This provision essentially is of a summary nature to take care of emergencies like preventing the local authority or its subordinate authority from causing mischief or damage to Trust's funds or property by some act or resolution which is likely to lead to a breach of peace or to encourage lawlessness or to cause injury or annoyance to the public or to any class or body of persons. This is an emergent power vested in the Deputy Commissioner to take care of the situations stated in the said provision. This power, therefore, must be regarded as an administrative power vested in the Deputy Commissioner to make order which of course must be held to be short lived and without destroying or creating any rights in anybody. Under this power, no adjudication on any issue of binding nature on any person or authority is made, but such an order would always be subject to the decision or adjudication in the substantive proceedings, if any, before the competent court. In that view of the matter, we are of the view that despite order of suspension, issuance and publication of notification in the newspapers or in the Government gazette even during the period till its revocation would merely be an irregularity and the same cannot make such an action null and void in the eye of law. At any rate, as held by us above, the Deputy Commissioner himself had revoked the said order on

18.04.1984 which would obviously be an important event validating the publication. We, therefore, hold that the learned Single Judge went wrong in holding that the order of suspension of resolution would make the proceedings of acquisition illegal. The findings recorded by the learned Single Judge to that effect will have to be, therefore, set aside.

III Non service of individual notices to the occupiers/ owners/and the period of 30 days stated in Section 38(1) of the Act.

The issue about individual service of notices and lodgment of objections is required to be examined on facts as ordered by the Apex Court. We give the details about service of notices and filing of objections which are as under:-

Sr. No.	Name of the petitioner(s)	Mode of dispatch of notice with report whether notice served.	Whether objection filed
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LPA No.44 of 1990/CWP No.6125 of 1987				
1.	(i)	Madan Lal s/o Tilak Ram	Notice dated 05.12.1984, dispatch No.1902, but notice not available on record.	Objection filed by Kulwant Rai co-sharer on 13.02.1985 who is not petitioner.
	(ii)	Devki Devi w/o Parkash	No proof of personal service on any of the petitioners	Objections not filed by petitioners
	(iii)	Pushpa Devi w/o Amrit		
	(iv)	Virender Kumar s/o Parkash Chand		
	(v)	Parkash Chand Aggarwal s/o Tilak Ram		
	(vi)	Mohinder Kumar s/o Ram Sarup		
	(vii)	Dr. Narain Parshad s/o Banarsi Dass		

LPA No.45 of 1990/CWP No.6124 of 1987				
2	(i)	Bhola Singh s/o Gabba Singh	Notice dated 05.12.1984, dispatch No.1919. No proof of service of individual petitioners.	Objections dated 28.06.1984 filed by petitioners No. (i) to (vii) i.e. Bhola Singh s/o Gabba Singh, Gurparkash Singh s/o Chanan Singh, Harbans Singh, Baldev Singh, Shamsher Singh s/o Chanan, Pritam Singh s/o Gurbachan Singh Petitioners No. (viii) and (ix) – Objections not on record as no proof of service.
	(ii)	Gurbaksh Singh s/o Chanan Singh		
	(iii)	Harbans Singh s/o Chanan Singh		
	(iv)	Baldev Singh s/o ChananSingh		
	(v)	Baldev Singh s/o Chanan Singh		
	(vi)	Shamsher Singh s/o Chanan Singh		
	(vii)	Pritam Singh s/o Gurbachan Singh		
	(viii)	Asha Rani w/o Ram Niwas Jain		
	(ix)	Ram Niwas Jain s/o Prabh Dayal Jain		

LPA No.46 of 1989/CWP No.2713 of 1987				
3.	(i)	Ram Pal s/o Mehar Chand	Notice dated 05.12.1984, Notice u/s 38 received by Kashmiri Lal (last petitioner), No proof of service on others	Objections not filed.
	(ii)	Sheela Devi s/o Sham Lal		
	(iii)	Deepak Kumar s/o Rup Chand		
	(iv)	Rajinder Parshad s/o Basakhi Ram		
	(v)	Satish Kumar s/o Rup Chand		
	(vi)	Rup Chand s/o Basakhi Ram		
	(vii)	Birbal Dass s/o Bishan Mal		
	(viii)	Dropti Devi w/o Bazir Chand		
	(ix)	Veera w/o Jagdish Chandar		
	(x)	Parshotam Dass s/o Ram Sarup		
	(xi)	Anguri Devi w/o Ram Sarup		
	(xii)	Sheela Devi w/o Krishan Lal		
	(xiii)	Kewal Krishan s/o Veer Chand		
	(xiv)	Dayawanti w/o Veer Chand		
	(xv)	Shimla Devi w/o Lachman Dass		
	(xvi)	Lachman Dass s/o Rup Chand		
	(xvii)	Kashmiri Lal s/o Kheta Mal		

LPA No.47 of 1990/CWP No.2378 of 1989				
4.	(i)	Moha Lal s/o Banarsi Dass	No evidence of service of notice	Objections not filed
	(ii)	Vijay Kumar s/o Gurdev Singh		

LPA No.48 of 1990/CWP No.2712 of 1987				
5.	(i)	Buta Singh s/o Gamdoor Singh	Notice dated 05.12.1984, dispatch No.1947 is said to have been pasted at site, No proof of individual service	Objections not filed.
	(ii)	Sukhmandar Singh s/o Gurdev Singh		
	(iii)	Ajaib Singh s/o Naryan Singh		

LPA No.49 of 1989/CWP No.9458 of 1988				
6.	(i)	Virinder Mohan s/o Dila Ram	No proof of individual notice on the petitioners	Kulwant Rai, Co-sharer filed objections on 13.02.1985, who is not petitioner
	(ii)	Mrs. Vimal Mittal w/o Jagdish Rai Mittal		

LPA No.50 of 1990/CWP No.91 of 1989				
7.	(i)	Satish Kumar s/o Hant Ram	Notice dated 05.12.1984, dispatch No.1946, No proof of service of notice	Objections not filed by petitioners

LPA No.466 of 1990/CWP No.162 of 1989				
8.	(i)	Jatinder Singh s/o S. Gurbachan Singh Mann	Notice dated 06.12.1984, dispatch No.1978, No proof of individual service on any petitioner, but this notice is said to have been received by Theatre Manager Sukhdev Sharma with whom no relationship is established.	Objections not filed
	(ii)	Gurbal Maninder wd/o S. Ajinder Singh Mann		
	(iii)	Indermeet Bains d/o S. Ajinder Singh Mann		
	(iv)	Mohanmeet Khosla w/o Rupinder Khosla		
	(v)	Charaneeta Mann d/o Ajinder Singh Mann		
	(vi)	Charanjit Singh Man s/o S. Gurbachan Singh Mann		

LPA No.467 of 1990/CWP No.2600 of 1984				
9.	(i)	Anita Garg wife of Kailash Garg	Notice not available on record. No proof of service. But petition having been filed on 31.05.1984, the petitioners had full knowledge of land acquisition proceedings	The statement in paras 6 and 7 in written statement that petitioners had filed objections dated 28.02.1984 and was under consideration was not countered by the petitioners.
	(ii)	Pawan Kumar s/o Om Parkash		

A careful perusal of the above chart would lead one to believe that Kulwant Rai was a co-sharer with petitioners in petitions from which LPA No.44 of 1990 and LPA No.49 of 1989 arose and had filed objections on 13.02.1985, in all probabilities, on the instructions of these petitioners. Else he not being interested in challenging acquisition would not do so. But then, the fact remains that there is no proof of service of individual notice to all these petitioners. Insofar as petitioner No.(i)-Bhola Singh to petitioner No.(vii)-Pritam

Singh in LPA No.45 of 1990 are concerned, though there is no proof of service of notice, they had filed objections, but petitioners (viii) and (ix) were also not served. In all other cases, there is no proof of service of notice under Section 38 of the Act, nor any objections were filed.

In the light of above factual scenario, the question is whether for want of service of notice under Section 38 of the Act and no opportunity to file objections, the acquisition should be quashed. Our firm answer is in the negative and we hold that acquisition cannot be quashed for the following factual and legal reasons.

We find on facts of these cases that the publication of the notification was made in the local newspaper 'Ajit Daily, Jalandhar' and 'The tribune, Chandigarh', as also in the public notice in the office of the Trust, apart from the gazette notification. It must be deemed that all the concerned including the petitioners had full knowledge of the wide publications made as above. Hence if they desired they could have filed objections. Section 38 of the Act, reads thus:-

“38. Notice of proposed acquisition of land.— (1) During the thirty days next following the first day on which any notice is published under section 36 in respect of any scheme under this Act the Trust shall serve a notice on -

- (i) every person whom the trust has reason to believe after due enquiry to be the owner of any immovable property which it is proposed to acquire in executing the scheme,**
- (ii) the occupier (who need not be named) of such premises as the trust proposes to acquire in executing the scheme.**

(2) Such notice shall -

- (a) state that the Trust proposes to acquire such property for the purposes of carrying out a scheme under this Act, and
 - (b) require such person, if he objects to such acquisition, to state his reasons in writing within a period of sixty days from the service of the notice.
- (3) Every such notice shall be signed by, or by the order of, the chairman.”

Section 79 of the Act, reads thus:-

“79. Service of notice. - (1) Every notice other than a public notice, and every bill, issued under this Act shall, unless it is under this Act otherwise expressly provided, be served or presented -

- (a) by giving or tendering the registered notice or bill, or sending it by registered post, to the person to whom it is addressed, or
- (b) if such person cannot be found, then by leaving the notice or bill at his last known place of abode, if within municipal limits, or by giving or tendering it to some adult male member or servant of his family, ordinarily residing with him, or by causing it to be affixed on some conspicuous part of the buildings or land (if any) to which it relates.

(2) When a notice is required or permitted under this Act to be served upon an owner or occupier, as the case may be, of a building or land, it shall not be necessary to name the owner or occupier therein, and the service thereof, in cases not otherwise specially provided for in this Act, shall be effected either -

- (a) by giving or tendering the notice, or sending it by post, to the owner or occupier, or if there be more owners or occupiers than one, to any one of them, or
- (b) if such owner or occupier cannot be found, then

by giving or tendering the notice to an adult male member or servant of his family ordinarily residing with him or by causing the notice to be affixed on some conspicuous part of the building or land to which it relates.

(3) Whenever the person on whom a notice or bill is to be served is a minor, service upon his guardian or upon an adult male member or servant of his family ordinarily residing with him shall be deemed to be service upon the minor.”

A reading of Section 38 of the Act shows that the Trust is required to issue a notice to every person whom the Trust has reason to believe after due enquiry to be the owner or occupier. Section 79 of the Act provides that such a notice is to be given or tendered or sent by Registered post to the person to whom it is addressed and if such a person cannot be found, then by leaving the notice at his last known address. In the case of Teja Singh vs. State of Punjab, 1995 (4) SCC 540, the Supreme Court in para-8 has held that the notice is deemed to be served on the land owners in terms of Section 79 of the Act when the actual service of the notice is made on one of the land owners. Apart from the above, in the wake of admitted position about the publication in the newspapers and the official gazette, we find that the Apex Court has settled this issue in the case of Improvement Trust, Moga vs. Manchanda Soap Works and others, 1996 (8) SCC 686, while considering the provisions of the Act. We quote paragraph 5 therefrom, which reads thus:-

“5. A reading of the Sections would clearly indicate that the statute requires general publication. The publication in that behalf in the newspaper and Gazette is mandatory requirement. On the facts of this case, they were, in fact, published in the newspapers. Therefore, the Act did not

provide for any individual notice or personal hearing under Section 79 of the Act read with Sections 36 and 38 of the Act. In consequence, the objectors are not required to be served with personal notice. Notice in the newspaper, as required under the Act, was intended to be sufficient notice for the objectors. The High Court, therefore, was not right in its conclusion that the respondents could not have read and had not read the newspapers. That reason is obviously fallacious. Once the statute requires publication of notification in the newspaper, that is the sufficient compliance. It presumes that the intending objectors are put on notice of the hearing and it is for them to appear and if they fail to appear they cannot make any grievance of non-issuance of personal notice which statute does not require them to be served."

Further, in the case of Special Deputy Collector, Land Acquisition C.M.D.A. vs. J. Sivaprakasam and others, 2011 (1) SCC 330, it was held as under:-

"16. The purpose of publication of the notification is two fold: First is to ensure that adequate publicity is given so that land owners and persons interested will have an opportunity to file their objections under Section 5A of the Act. Second is to put the land owners/occupants on notice that Government officers will be entering upon the property for carrying on the activities enumerated in section 4(2) of the Act. Section 4(1), before its amendment in 1984, required publication of the preliminary notification only in the official gazette and public notice, of the substance of the notification at convenient places in the locality. This Court, in *Madhya Pradesh Housing Board v. Mohd Shafi & Ors.*, 1992(1) R.R.R. 583 : 1992(2) SCC 168 explained the object of issuing a notification under Section 4 of the Act thus :

"The object of issuing a notification under Section 4 of the Act is two-fold. First, it is a public announcement by the Government and a public notice by the Collector to the effect that the land, as specified therein, is needed or

is likely to be needed by the Government for the "public purpose" mentioned therein; and secondly, it authorizes the departmental officers or officers of the local authority, as the case may be to do all such acts as are mentioned in Section 4(2) of the Act. The notification has to be published in the locality and particularly persons likely to be affected by the proposal have to be put on notice that such an activity is afoot. The notification is, thus, required to give with sufficient clarity not only the "public purpose" for which the acquisition proceedings are being commenced but also the "locality" where the land is situate with as full a description as possible of the land proposed to be acquired to enable the "interested" persons to know as to which land is being acquired and for what purpose and to take further steps under the Act by filing objections etc., since it is open to such persons to canvass the non- suitability of the land for the alleged "public purpose" also. If a notification under Section 4 (1) of the Act is defective and does not comply with the requirements of the Act, it not only vitiates the notification, but also renders all subsequent proceedings connected with the acquisition, bad."

17. By Amendment Act 68 of 1984, section 4(1) was amended introducing the additional requirement relating to publication of the notification in two daily newspapers circulating in the locality. The purpose of requiring such newspaper publication is to give as wide a publicity to the notification as possible, as the State Gazettes do not have a wide circulation and causing public notice of the substance of the notification at convenient places in the locality would give notice only in specific pockets in the locality. Legislature therefore provided for publication in two newspapers (of which at least one being in the regional language) to have a wider reach. Having regard to the object and purpose of the provision, it is evident that publication should be in

newspapers which have a reasonably good circulation in the locality. If the publication is to be made in obscure newspapers having only token or insignificant circulation, either to cut the cost of publication or by way of political or official patronage, that will defeat the very purpose of providing for publication in newspapers.”

“20. This leads us next to the consequences of publication of the notification in two newspapers having reasonably wide circulation and consequences of *bona fide* publication of the notification in two newspapers which do not have a wide circulation in the locality.”

“20.2 If the two newspapers carrying the publication of the notification have reasonably wide circulation in the locality, (apart from the publication of the notification in the Gazette and causing public notice of the substance of the notification to be given at convenient places in the locality), then the requirements of section 4(1) are complied with and all persons concerned in the locality shall be deemed to have notice of the notification. (For this purpose, the publication need not be in newspapers having the widest or largest circulation, but it is sufficient if the publication is in newspapers having reasonably wide circulation). In that event, neither the notification under section 4(1), nor the consequential acquisition proceedings would be open to challenge, on the ground of violation of Section 4 of the Act.”

“20.4 If the person challenging the acquisition is able to establish that the notifications were deliberately and with *mala fides*, published in newspapers having negligible circulation, to avoid notice to the persons concerned, then section 4(1) will be violated.”

“21. The acquiring authority need not prove actual notice of the proposal to acquire under section 4(1) of the Act, to the person challenging the acquisition. As the purpose of publication of public notice provided in section 4(1) of the Act is to give notice of the proposal of acquisition to the persons

concerned, such notice can also be by way of implied notice or constructive notice. For this purpose, we may refer to the difference between actual, implied and constructive notices.”

In the light of the aforesaid decisions, we think the plea about non receipt of individual notices and opportunity to file objections in the wake of wide publication in the newspapers and Government gazette must fail. The contention about the period of 30 days as stated in Section 38(1) of the Act next following the first publication under Section 36 of the Act must also fail for the above reasons. We, therefore, hold that the acquisition in question is not vitiated for this reason.

IV Whether the period during which the resolution of the Trust remained suspended, can be excluded for determining the period of three years mandated by proviso to Section 42 of the Act?

Insofar as the first set of cases is concerned, the issue does not arise at all since, admittedly, the first notification was issued in the newspaper on 04.02.1984 while the notification under Section 42 was issued on 28.01.1987 i.e. within three years. Thus the original writ petitions in the “**first set**” of cases will have to be dismissed which we do.

However, insofar as second set of cases is concerned, the first notification was issued on 04.02.1984 while section 42 notification was issued on 05.03.1987 which was published on 06.03.1987 which was obviously beyond the period of three years. The contention raised on behalf of the Trust is that the order of suspension of resolution dated 30.01.1984 was operative till 18.04.1984 i.e. the date of revocation of that order and, therefore, the said period is required to be excluded while computing the period

of three years.

We are unable to agree with this submission made by Mr. Sagar, the learned Senior counsel for the Trust. The reason is that under Section 6 of the Land Acquisition Act, the provision for exclusion of such period is only in relation to the orders made by the courts. We do not see any reason as to why the said principle should not be read into Section 42 of the Act. It is, therefore, not possible to hold that the order of suspension made by the Deputy Commissioner would be order of the Court. Consequently, proviso to Section 42 of the Act does not contemplate exclusion of such period and, therefore, it is not possible to exclude the period, as contended. We, thus, find that the notification under Section 42 of the Act was issued beyond the period of three years from the first publication of the notification under Section 36 of the Act. We hold accordingly in respect of **“second set”** of cases.

The next question is what relief should be granted ? Mr. Sagar, the learned senior counsel for the trust, submitted that all the land owners in the second set of cases have filed reference under Section 18 of the Act for seeking enhanced compensation. He further submitted that many of the land owners in the second set of cases had received the compensation also. This aspect submitted by Mr. Sagar appears to be factually correct. Apart from that, what we find is that the Scheme of the Trust related to the year 1984 and the award was passed way back on 23.12.1988 and the execution of the Scheme has almost been completed. Though we hold that Section 42 notification was issued beyond a period of three years in the second set of cases, according to us, that by itself would be no reason or ground to quash the acquisition in respect of such land

owners applying the doctrine of 'utilitarianism'. Thus, merely because we have held that notification under Section 42 of the Act was issued beyond three years, it does not follow that the acquisition must be quashed. Except CWP Nos.2713 and 2712, both of 1987, all the petitions were not filed with promptitude, within reasonable time and the award was made on 23.12.1988.

The Apex Court in State of Rajasthan and others vs. D.R. Laxmi and others, (1996) 6 Supreme Court Cases 445, held thus in para-10 (relevant portion) :-

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

As to the application of the doctrine 'utilitarianism', we are fortified with the view in the case of Nand Kishore Gupta and others vs. State of U.P. and others, 2010 (10) SCC 282, the Apex Court stated thus (in paras 35, 44, 46 and 73):-

“35. In fact, in Balbir Singh's case, it was pointed out that out of the 12,315 affected farmers in 133 villages over the total area of 1,638 hectares of the Expressway, 11387 have

already received compensation and only 142 farmers have raised the issues. The High Court has rightly held that the private interest is always affected to some extent in such large schemes requiring the acquisition of land. The High Court has rightly held that a holistic view had to be taken to look for an all round development without forgetting about our heritage, culture and traditions. We also, therefore, would not entertain the objections, feebly raised before us, individually.”

“44. The first and foremost thing which we must keep in mind while deciding these matters is that at least in the present two matters (Balbir Singh's case decided on 5.10.2009 and Nand Kishore's case decided on 30.11.2009), the subject related only to the acquisition of few hectares of land as compared to the acquisition of large chunk which has not been challenged. Further, it is an admitted position that majority of the acquisition proceedings are over. In Balbir Singh's case also, the persons who challenged the Project, were 9 in number, owning about 7.09 hectares of land i.e. about 0.42% of the total land.”

“46. The learned Counsel appearing on behalf of the appellants could not deny the fact that the total number of petitioners concerned in these acquisition proceedings, coming up before the High Court, was extremely insignificant as compared to those who had accepted the compensation. Of course, that by itself may not be the only reason to hold against the appellants (the petitioners), however, that fact will have to be kept in mind while deciding the issues which cover the whole acquisition process, which acquisition is for the purpose of development of 25 million square meters of land. The High Court has also noticed this aspect. We have mentioned this aspect only with a limited objective of showing that the criticism against the whole scheme which would invalidate the acquisition would be difficult to be accepted, particularly in this case, in view of the fact that majority of the land owners have parted with possession, taken the compensation and thus,

the whole scheme has progressed to a substantial level, wherefrom it will be extremely difficult now to turn back to square one.”

“73. In this judgment, the subject of eminent domain has been discussed and considered with thoroughness and all the ramifications of the principle of eminent domain have been discussed. We have already culled out the principles emanating from this decision in the earlier part of this judgment and even at the cost of repetition, we may say that this judgment is practically, the law setter on the subject of eminent domain, as also on the other allied subjects of acquisition. The judgment has also explained the concept of 'public purpose', which has been held to be wider than 'public necessity'. The judgment proceeds on a basis that merely because the benefit goes to a particular section of the society, the acquisition does not cease to be for the public purpose. It has been specifically held that where the State is satisfied about the existence of a public purpose, the acquisition would be governed by Part II of the Act, as has happened in the present matter.”

In the light of the above dictum laid down by the Apex Court, we think the acquisition made by the Trust must be upheld insofar as the original writ petitioners in these matters are concerned. At any rate, the remedy to seek enhanced compensation is provided by law.

Before parting, we think it is our duty to record an essential finding on the admitted facts in all these first and second set of cases. As a matter of fact, except CWP Nos.2712 and 2713, both of 1987, all the petitions were filed beyond reasonable time and were liable to be dismissed at the threshold. But the present lis having travelled from one court to another with ultimate directions from Apex Court, we refrain

from doing so. We, however, proceed to record the finding.

Notifications under Section 36 of the Act were published on 04.02.1984, and notification under Section 42 of the Act was issued/published on 28.01.1987. Finally, the award was declared on 23.12.1988 These writ petitions were filed as per details below:-

<i>Sr. No.</i>	<i>LPA No.</i>	<i>CWP No.</i>	<i>Date of filing</i>
1	LPA-467-1990	CWP-2600-1984	31.05.1984
2	LPA-48-1990 LPA-46-1990	CWP-2712-1987 CWP-2713-1987	11/05/87
3	LPA-45-1990 LPA-44-1990	CWP-6124-1987 CWP-6125-1987	07/09/87
4	LPA-49-1990	CWP-9458-1988	12/10/88
5	LPA-466-1990 LPA-47-1990 LPA-50-1990	CWP-162-1989 CWP-2378-1989 CWP-91-1989	05.01.1989 22.02.1989 31.01.1989

The land acquisition proceedings had made enough progress after Section 42 notification/sanction was published on 28.01.1987/06.03.1987, but the petitions were not filed within reasonable period. The law on the subject as to the extra ordinary writ jurisdiction of the High Court, delay and latches, refusal to exercise writ jurisdiction has been well settled even before the following decisions were rendered. That apart, in the following decisions, the Apex Court has categorically held that writ petitions seeking relief of quashment of acquisitions must not be entertained beyond reasonable time.

In Reliance Petroleum Ltd. vs. Zaver Chand Popatlal Sumaria and others, (1996) Supreme Court Cases 579, the Court

stated thus:-

“12. From the above facts which cannot be disputed as they were taken from records, it would be clear that respondents Nos. 1 to 3 (writ petitioners before the High Court) took their chance in the Award Proceedings and finding that the compensation as claimed by them was not given have moved the High Court. If really their intention was to challenge the acquisition as such they could have done immediately at least after the publication of declaration under section 6 or immediately after they received notices under Section 9 of the Land Acquisition Act. This shows that the only object of the writ petitioners was to get the maximum price for the land acquired.

13. Taking note of all these facts we have come to the conclusion that the High Court was not justified in entertaining the writ petition and also in exercising the discretionary jurisdiction to quash the section 4(1) notification, section 6 declaration and award made under the Land Acquisition Act.”

In the following decisions, the Apex Court consistently held that the High Court ought not to exercise the power under Article 226 of the Constitution when there is delay in challenging the Notifications for acquisition of land and the petitions were liable to be dismissed on the ground of laches. These decisions are :-

1. **Satendra Prasad Jain and others v. State of U.P. and others, 1993(3) RRR 598(SC) : 1993(4) SCC 369;**
2. **Awadh Bihari Yadav and others v. State of Bihar and others, 1995(3) RRR 445 (SC) : 1995(6) SCC 31;**
3. **State of Tamil Nadu v. L. Krishnan, 1996(1) RRR 638 (SC) : 1996(1) SCC 250;**
4. **State of Orissa v. Dhobei Sethi and another, 1995(3)**

- RRR 559 (SC) : 1995(5) SCALE 1881;
5. State of Maharashtra v. Digambar, 1995(3) RRR 567 (SC) : 1995(4) SCALE 98;
6. *The Ramjas Foundation v. Union of India*, AIR 1993 Supreme Court 852;
7. *Ramchand v. Union of India*, 1994(1) SCC 44;
8. Bhoop Singh v. Union of India and others, 1992(3) S.C.T. 120;
9. *Aflatoon and others v. Lt. Governor of Delhi and others*, AIR 1974 Supreme Court 2077;
10. *Indrapuri Griha Nirman Sahakari Samiti Ltd. v. The State of Rajasthan and others*, AIR 1974 Supreme Court 2085;
11. H.D. Vora v. State of Maharashtra and others, 1984(1) R.C.R.; (Rent) 457 : 1984(2) SCC 337; and
12. *Pt. Girdharan Prasad Missir and another v. State of Bihar and another*, 1980(2) SCC 83.

All these decisions were taken into consideration by the Apex Court in the case of Municipal Corporation of Greater Bombay vs. Industrial Development Investment Co. Pvt. Ltd. and others, (1996) Supreme Court Cases 501.

In D.R. Laxmi's case (supra), again in para-9, the Apex Court held that the High Court should be loathe to quash the notifications when there is an inordinate delay in filing the writ petitions.

LPA-467-1990 – Additional reasons :

CWP No.2600 of 1984 was filed on 31.05.1984 by Anita Garg and Pawan Kumar before the learned Single Judge from which this LPA has arisen. It appears from the record that before April, 1989, an application for amendment to the writ petition was filed, which was allowed and the order of sanction

dated 05.03.1987 (Annexure P-12) was challenged by way of amendment and, accordingly, challenge to the same was also made in prayer clause (a) along with the earlier Annexures P-7 to P-9, P-10 and P-11. To repeat, the petitioners had full knowledge and notice of the notifications under Section 36 of the Act and, therefore, the question whether the petitioners were duly served individually with the notices under Section 38 of the Act, would not arise as they had full knowledge about the same. However, insofar as the aspect of objections is concerned, there is no averment in the petition, but in the written statement filed by the Trust following was categorically stated in para-(iii)(a to f):-

“(iii)(a to f) – That the then Chairman of the Trust issued notices under Section 36 of the Act in pursuance of which various objections have been filed by the petitioners and others, which are to be considered by the Trust as required under Section 40 of the Act. Thus, the challenge to the notice under Section 36 of the Act at this stage is not valid as the objections are yet to be considered by the Trust. It may be submitted that after the issuance of the notices under Section 36 the Trust has already issued notices under Section 38 of the Act. As submitted the objections are yet to be considered by the Trust. Therefore, these notices cannot be challenged at this stage.”

There was no counter affidavit by the petitioners to this statement in the written statement. It was also stated in the written statement that the objections as filed were yet to be

considered by the Trust and, therefore, the petition was premature. It is, thus, clear that the writ petitioners had filed objections, obviously, in pursuance to the knowledge about the publication of the notifications, under Section 36 of the Act. To repeat, the petition was filed on 31.05.1984 while the first notification was published on 04.02.1984 i.e. about three months earlier to the filing of the petition. As stated earlier, somewhere before 15.04.1989, petition was amended to pose challenge to the sanction order (Annexure P-12) and the only ground of challenge i.e. (viii), is that the sanction was granted after the expiry of three years, as provided in the proviso to Section 42 of the Act. We have already dealt with this aspect in the main judgment and though we have held that notification under Section 42 of the Act was made beyond three years in the 'second set', the same did not deserve to be quashed and set aside for the reasons already assigned. There is no other ground in the amended petition in challenge to the sanction order dated 05.03.1987 (Annexure P-12). All other grounds have been considered by us in the main judgment. In our opinion, filing of the petition on 31.05.1984 i.e. within three months from the publication of the first notification under Section 36 of the Act without allowing the Trust to consider the objections filed by the petitioners was not at all justified and such a petition ought to have been entertained only after consideration of the objections by the Trust. The petition was, thus, required to be held to be premature. The learned Single

Judge has, however, stated that the petitioners were not served with notice under Section 38 of the Act which is in ignorance of the above factual aspect.

The upshot of the above entire discussion is that the Letters Patent Appeals filed by the Bhatinda Improvement Trust must be allowed and the impugned judgment made by the learned Single Judge must be set aside. The cross objections filed by the original petitioners also must be dismissed. In the result, we make the following order:-

ORDER

- i) LPA Nos. 44,45, 46, 47, 48, 49, 50, 466 and 467, all of 1990, are allowed. The impugned judgment dated 20.10.1989 in these LPAs is set aside and the writ petitions are dismissed.**
- ii) Cross objections No.17 of 1991 (in LPA-48-1990), 19 of 1991 (in LPA-49-1990) and 20 of 1991 (in LPA-467-1990) are also dismissed.**
- iii) There shall be no order as to costs.**

**(SURYA KANT)
JUDGE**

**(A.B. CHAUDHARI)
JUDGE**

**August 31, 2016
Kang**

Whether speaking/reasoned : Yes

Whether Reportable : Yes