

acquisition of lands including the land of petitioners. In the year 1995-96, the construction activity of expressway started. A notification under Section 4(1) of Land Acquisition Act, 1894 came to be published on 4th January 1996 followed by Section 6 notification being published on 30th May 1996. Award came to be passed on 31st January 1997. According to the petitioners, the entire land which came to be acquired by the respondent authorities for the expressway was not actually used for the formation of expressway, but for ancillary purpose for the formation of expressway, including quarry for minor minerals, which was required for the formation of the road.

3 It is also not in dispute that by virtue of certain orders in Writ Petition No.238/1999 and also Writ Petition 4896/1998, this Court granted reliefs in a particular way which benefitted some of the owners of the land whose lands came to be acquired under the above said notification. So far as Writ Petition No.238/1999, on perusal of the contents of the documents, we notice that this order came to be passed prior to taking over possession from the land owner. Then, so far as Writ Petition 4896/1998, there was material on record that it was doubtful

whether the respondent authorities still need the land for the public purpose. Therefore, a direction was given to the Divisional Commissioner to consider the application filed under Section 48 of the Land Acquisition Act, 1894.

No doubt, the present petitioners also lost their land under the very same acquisition notification, but the facts in each case would differ and depending on the facts and circumstances of each case, the procedure and the Land Acquisition Act has to be applied. If any benefits are applicable to the petitioners, the same has to be given. On the ground of parity, in the present case, we cannot blindly extend similar benefit that was extended in the other two cases. We have to first analyze the pleadings and admitted facts, and thereafter, we have to see whether any of the provisions of the Land Acquisition Act, 1894 could be applied to the facts of the present case.

4 In order to understand the case of the petitioners, in their pleadings, they have stated that they are in possession of the property cultivating the same personally, they also alleged that respondent authorities though have not used the land for the

formation of expressway, have let out the land for the purpose of petrol pump, so also hotel and restaurant. There is nothing on record to show that which portion of land of each petitioner is being used for what purpose. It is a vague statement made by the petitioners in general saying that the authorities are misusing the land. Even if the respondent authorities acquired land for the purpose of formation of expressway, if petrol pump is in existence in one of the lands of the petitioners, it is nothing but an ancillary need for the purpose of expressway. If someone needs fuel while travelling on the expressway, the authorities concerned must also provide not only the fuel station, but also rest rooms and other civic amenities for the benefit of the people who use the expressway. Therefore, merely because some of the lands acquired are leased for running a petrol pump, hotel, rest-house or a restaurant, we cannot conclude that the respondents are making use of the same for commercial activity with *malafide* intention. The very admission of the petitioners that the land is being used for many commercial activities other than expressway, would indicate that petitioners are not in possession of the land in question.

4 Section 48 of the Land Acquisition Act reads as under :

48 Completion of acquisition not compulsory, but compensation to be awarded when not completed.

(1) Except in the case provided for in section 36, the Government shall be at liberty to withdraw from the acquisition of any land of which possession has not been taken.

(2) Whenever the Government withdraws from any such acquisition, the Collector shall determine the amount of compensation due for the damage suffered by the owner in consequence of the notice or of any proceedings thereunder, and shall pay such amount to the person interested, together with all costs reasonably incurred by him in the prosecution of the proceedings under this Act relating to the said land.

6 Once the petitioners fail to establish that they are still in possession of the land especially with the above pleadings, as well as total denial of said possession being with the petitioners on behalf of the respondents, we are of the opinion that the petitioners have not brought on record material, whereby we could direct consideration of his application under section 48 of the Land Acquisition Act, since his own pleadings rather indicate

that the possession is taken over by the respondent authorities.

7 Under these circumstances, for the reasons mentioned above, we opine that the impugned order is in conformity with the law declared by the Apex Court in the case of *State of Kerala Vs. Bhaskar Pillai, (1997) 5 SCC 432*.

8 Accordingly, petition is dismissed.

(N.M. JAMDAR, J)

(CHIEF JUSTICE)