

Sanjay Tyagi and anr. Vs. State of Rajasthan and ors.

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Court : Rajasthan Jaipur

Decided On : Nov-27-2010

Judge : Justice Mr.Jagdish Bhalla; Justice Mr.Jagdish Bhalla, Jj.

Acts : Rajasthan Urban Improvement Trust Act - Sections 52(1), 52(2), 52(4), 2(f), 52(1)(2), ; [Constitution of India](#) - Article 226; Land Acquisition Act - Sections 3, 3(a), 2(q)(2), (3), 4(1), 48, ;Central Act - Sections 17, 52(1) (2) (3), (4); Rajasthan Land Reforms and Acquisition of Landowners' Estates Act - Section 10.

Appeal No. : D.B. Civil Writ Petition (PIL) No.1737/2003.

Appellant : Sanjay Tyagi and anr.

Respondent : State of Rajasthan and ors.

Advocate for Def. : Mr.S.N.Kumawat; Mr.Alok Sharma; Mr.P.S.Sharma; Mr.R.N.Mathur; Mr.Vimal Choudhary; Mr.R.D.Rastogi; Amicus Curiae; Mr.Mahendra Shandilya, Advs.

Advocate for Pet/Ap. : Mr.Poonam Chand Bhandari, Advs.

Judgement :

1. This Public Interest Litigation relates to a land, which exists in the heart of Jaipur City, known as Rambagh Area. A decision was taken somewhere in the month of February, 1973 to acquire the land of Ram Bagh Area and, thereafter, a Gazette Notification was issued under the provisions of Rajasthan Urban Improvement Trust Act, 1959 (for short UIT Act of 1959). Acquisition was

challenged by Brigadier Bhawani Singh (erstwhile Ruler), Gandhi Grah Nirman Co-operative Society and many other persons. Acquisition proceedings were upheld by the Division Bench of this Court and Hon'ble Apex Court, dismissed the Special Leave Petition. On dismissal of the S.L.P., an award was passed on 18.10.1993. Petitioner has come up with this petition alleging encroachment on the part of land so acquired. It is submitted that private respondents are having political and bureaucratic shelter to maintain illegal possession on acquired land worth crores of rupees. Looking to aforesaid, a direction has been sought on the State Government and on its authorities to remove encroachments from Rambagh Campus area to make it part of Central Park.

2. Learned counsel for petitioner submits that the Secretary, Department of Town Planning, Government of Rajasthan informed Officer on Special Duty, Town Planning Department regarding Government's decision to acquire land around Rambagh Palace Hotel and residency palace situated in village Bhawani Shankerpura and Bhojpura vide letter dated 24.02.1973. Pursuant to the aforesaid, a Notification was issued under Section 52(1) followed by a notice under Section 52(2) of the UIT Act of 1959. In the notice under Section 52(2), acquisition was sought for the land nearby Rambagh Palace Hotel, however, in the Notification, the word vacant was added before word land, which has become root cause for encroachment though vacant land denotes entire area of various khasra numbers shown therein, excluding only those areas, which were not intended to be acquired. Like in khasra No.72 of village Bhawani Shankerpura, 8 bighas of land of Ashok Club was excluded from acquisition apart from 3 bighas 1 biswa of land in khasra No.111 of village Bhojpura. The notice was having boundaries of the land indicating north side to be Prithviraj Road of C-Scheme, in south side Bhawani Singh Marg and S.M.S. Stadium, in east side Tonk Road and Kanota House and in the west, Bhagwan Das Road, Secretariat, Agricultural Department and Accountant General Office. With the aforesaid indications, entire land in those boundaries were sought to be acquired leaving few areas specifically mentioned therein. On 02nd April, 1974, an order was passed on the objections raised by various parties, which include Brigadier Bhawnai Singh, S.M.S. Investment Corporation (Private) Ltd., Rajasthan Polo Club, Golf Club, Jaipur Horse Breeding and Riding Association, Flower International, Field Club and Gandhi Grah Nirman

Co-operative Society. Therein, a recommendation was made for acquisition of land after hearing objections. Thereafter, a Notification was issued on 11.07.1974 indicating that as per provision of Section 54(4) of the Act of 1959, the land vests in the government from the date of Gazette Notification under Section 52(1) of UIT Act of 1959. While the proceedings for acquisition were going on, a challenge to acquisition of land was made on various grounds. The Division Bench of this Court dismissed the petition. The judgment of the Division Bench was challenged before the Hon'ble Apex Court. The Special Leave Petition so preferred by Gandhi Grah Nirman Co-operative Society was dismissed on 30.03.1993. On dismissal of the Special Leave Petition, Land Acquisition Officer passed an award on 18.10.1993 for the land measuring 322 bighas 8 biswas. Learned counsel for petitioner urged that entire land of khasra Nos. 72, 75 and 77 of village Bhawani Shankerpura was acquired (except for Ashok Club) and accordingly, the award was passed. In these khasra numbers, the land has been encroached upon mainly by the non-petitioner Nos.6 to 11. This is due to political and bureaucratic shelter to these respondents. The compensation awarded was deposited with the Civil Court followed by a Reference Application for enhancement of compensation at the instance of Brigadier Bhawani Singh. The Government is mainly supporting private respondents due to their political approach and thereby certain letters were issued to favour the respondents despite acquisition of entire land and deposition of compensation thereupon. This is more so when few non-petitioners had earlier approached this High Court to challenge the acquisition with unfavourable result. In a petition filed by Shri Ram Saran Gupta, Smt. Mridula Gupta and M/s. Suramas Properties Pvt. Ltd., specific plea was taken that bungalow No.36, Kanak Bhawan situated in khasra No.77 of village Bhawani Shankerpura consisting an area of 3890 sq. mt. was never intended to be acquired, thus the Notifications under Sections 52(1) and 52(2) of the Act of 1959 have been wrongly issued. The Officer on Special Duty, Town Planning Department exceeded to its jurisdiction in issuing Notification for entire property/land of khasra No.77. The writ petition bearing No.3931/1993 was dismissed by this Court vide its judgment dated 08.09.1993 holding that pursuant to judgment of the Division Bench so as the judgment of Apex Court, challenge to the acquisition cannot be accepted, it becomes second round of litigation to challenge the acquisition. It was held that challenge at the

instance of petitioners (respondents in this case) is not maintainable rather the petitioners therein i.e. owners of Kanak Bhawan are having agreement to sale only and, that too, such agreement to sale was executed after publication of Notification for acquisition. Hence, even the agreement to sale was held to be void. The matter did not end here as in a civil suit filed by Smt. Mridula Gupta, Ram Saran Gupta and M/s. Surams Properties Pvt. Ltd., an order was passed on 06.08.2005 holding that in view of the judgment of High Court in this case, the land vests in the government, thus specific performance of the agreement cannot be enforced and agreement was held to be void. The aforesaid order was passed by the Additional District and Sessions Judge (Fast Track) after passing of the award, yet neither the order of the Additional District and Sessions Judge (Fast Track) nor the judgment of this High Court was challenged by the respondents and those orders/judgments became final against the respondents-owners of the bungalow No.36 i.e. Kanak Bhawan. The State Government yet not taken any action against the encroachers. Even in regard to the property of other respondents falling in khasra Nos. 72,75 and 77 of old village Bhawani Shankerpura, entire land stood acquired. However, a confusion is tried to be created by the private respondents by giving misinterpretation to the word vacant land used in the notification to show that structures occupied by them does not fall within the meaning of vacant land. When original notice dated 24.03.1973 was issued, the word vacant land was not existing though in the Notification of the same date, the words vacant land exist. However, looking to the meaning of the word vacant as given in various dictionaries, an unoccupied house is also considered to be within the meaning of vacant but the private respondents are trying to demonstrate that it is only the land, which was acquired leaving the part where structure exists. The aforesaid plea is not sustainable not only in the light of the acquisition proceedings but even in view of award passed subsequently for entire land even where buildings exist. None of the respondents yet challenged the award if the same was contrary to Notification issued under Section 52(1) and 52(2) of the Act of 1959. In view of provisions of Section 52(4) of the Act of 1959, the land vests in the government on issuance of notification under Section 52(1)(2) of the Act of 1959. Thus, in the light of aforesaid, inaction on the part of respondents against encroachers has been made subject matter of this Public Interest Litigation. It is stated by learned

counsel for petitioner that land in question is worth nearly Rs.300 crores. All inactions are due to political and bureaucratic shelter, which is even coming out from the documents filed by the private respondents, which includes even a note written by the then Chief Minister of State of Rajasthan Shri Bhairon Singh Shekhawat (since deceased).

3. On the other hand, learned counsel for respondents have raised common objections and pleas in response to the Public Interest Litigation. It is firstly stated that in view of availability of alternative remedy, this PIL may not be entertained. A reference of the judgment in the case of *Bombay Dyeing & Mfg. Co. Ltd. v. Bombay Environmental Action Group & Ors.* reported in 2006 (3) SCC 434 and *Shiv Nandan Gaurishankar v. Laxmi Vilas Textile* reported in 2008 (13) SCC 323 has been given. Other preliminary objection is of *res judicata*. A writ petition earlier filed by Godu Ram bearing D.B. Civil Writ Petition No.6055/1996 was for seeking similar relief. It was disposed of by this Court vide judgment dated 24.10.1997 holding that if any unauthorized possession exists on the acquired land, the State Government is always free to take action. Therein it was not held to be a case of unauthorized possession of land by respondents, in spite of specific allegations. The job to identify those unauthorized possession was left to the State Government. Successive Public Interest Litigation on the same subject is not maintainable, more so, when the Government did not treat disputed property under acquisition. Accordingly, the present writ petition is hit by *res judicata*. A reference of the judgment in the case of *State of Karnataka & Ors. v. All India Manufacturers Organization and Ors.* reported in (2006) 4 SCC 683 has been given wherein it has been held that a judgment in the previous PIL would be judgment in rem and binding to the public at large. Same issue has been decided in the case of *Green Halagh v. Mallard* reported in 1947 (2) All.E.R. 255 at 257. Another objection taken by the respondents is regarding jurisdiction of this Court to adjudicate question of title. It is stated that question of title cannot be adjudicated by the Court exercising writ jurisdiction. A reference of the judgment of the Hon'ble Apex Court in case of *North Eastern Railway (HQ) through its General Manager, Gorakhpur & Anr. v. Chhedilal & Ors.* reported in 1987 (Suppl.) SCC 609 has been given. Therein, it was held that dispute regarding title of the property requires examination of evidence, hence, cannot be decided in a petition under Article 226

of the [Constitution of India](#). Same view was expressed in the case of State of Rajasthan v. Bhawani Singh & Ors. reported in 1993 Suppl. (1) SCC 306. A reference of the judgment in case of G. Srinivas v. Government of Andhra Pradesh & Ors. reported in (2005) 13 SCC 712 and Dwarka Prasad Agarwal (D) By LRs & Anr. v. B.D. Agarwal & Ors. reported in (2003) 6 SCC 230 has also been given. It is urged that the question of ownership of property cannot be determined by this Court while exercising its jurisdiction under Article 226 of the [Constitution of India](#). This is more so when the possession of disputed property was never taken by the official respondents which becomes clear from the Fard Kabja dated 02.11.1993. Even the Government had taken categorical stand that structures in various khasra numbers were not subject matter of acquisition. In view of aforesaid, anything contrary becomes disputed question of fact. The other objection is that in the matter of acquisition, doctrine of expropriatory legislation must be strictly construed. In view of the judgment of Hon'ble Apex Court in the case of Devindra Singh & Ors. v. State of Punjab & Ors. reported in (2008) 1 SCC 728, any order for acquisition of land is taken as expropriatory legislation, thus to be strictly construed. A reference of the judgment in the case of Hindustan Petroleum Corpn. Ltd. v. Darius Shapur Chenai & Ors. (2005) 7 SC 627 and in case of The State of Madhya Pradesh & Ors. v. Vishnu Prasad Sharma & Ors. reported in AIR 1966 SC 1593 has also been given to support the aforesaid argument. This is to say that when the word vacant has been used before the word land, the intention of official respondents is clearly coming out i.e. they were intended to acquire only vacant land leaving the structure parts. The property in dispute is having structures, thus was not subject matter of acquisition. The interpretation of the word is to be given strict meaning. Various judgments of the Supreme Court have been referred to show that even the circulars issued by the Central Board of Direct Taxes were held to be binding on all officers. According to the private respondents, the structures/houses were excluded from acquisition as is coming out from the Notification itself. Other argument advanced by learned counsel for the private respondents is that physical possession of land is necessary in land acquisition matters. Referring to the judgment in case of Balwant Narayan Bhagde VS. M.D. Bhagwat reported in 1976(1) SCC 700 it is submitted that actual possession of the land is necessary to complete the acquisition, thus taking of

possession cannot be symbolic. In this case, possession of the property in dispute was never taken. It is lastly urged that principle of estoppel applies against official respondents as they have changed their stand. In the counter to the writ petition, Jaipur Development Authority had taken a favourable stand towards private respondents, whereas, in the subsequent affidavits, they have gone with the petitioner. The aforesaid act of the respondents is not permissible in view of the judgment of the Hon'ble Supreme Court in the case of Darshan v. State of Punjab reported in 2007 (14) SCC 262. Learned counsel for respondent No.6 has taken further objection in reference to covenant notified in Rajasthan Gazette dated 14.01.1950. The Article 363 of the [Constitution of India](#) bar interference by court in disputes arising out of treaty, agreement, covenant, engagement, sanad or other similar instrument which was entered into or executed before commencement of the [Constitution of India](#), by any Ruler of an Indian State and to which the Government of the Dominion of India or any of its predecessor, was a party and which has been continued in operation after such commencement. According to the respondents, neither the Supreme Court nor any other Court is having jurisdiction to hear a dispute arising out of covenant. It is further urged that the State Government, under its legislative powers, enacted Rajasthan Land Reforms and Acquisition of Landowners' Estates Act, 1963 (hereinafter to be referred as the Act of 1963). The State Act applies to the Ex-Rulers of Rajasthan and authorizes resumption of land under the Act subject to exception provided under the Act. Section 10 of the Act of 1963 provides protection to the properties of Ex-Rulers from acquisition under the Act. A reference of the judgment in case of State of Rajasthan v. Bhawani Singh Former His Highness Jaipur & Ors. reported in 1980 W.L.N. 295 has been given. Therein, it was held that to satisfy it to be the private property of the Ex-Ruler, two conditions are to be satisfied: (i) the land contains palace, fort, building, or building plot and;

(ii) the said property is specified in the inventory signed with the Government of India in terms of covenant;

4. Definition of Estate under the Act of 1963, means, a right, title or interest in the land held by the land owner. Definition of land is given under Section 2(f) of the Act of 1963 and the word inventory has been defined under Section 2(d) of the

said Act. The issue aforesaid was considered by the Hon'ble Apex Court in case of Aadhunik Grah Nirman Sahkari Samiti Ltd. & Ors. v. State of Rajasthan & Anr. reported in 1989 Suppl. (1) SCC 656. According to respondent No.6, the property in occupation is the part of inventory at para (xii) of the covenant, thus, could not have been made subject matter of acquisition or requisition. Hence, left from acquisition. On merits, private respondents have raised certain common issues. It is firstly stated that structures occupied by private respondent Nos. 6 to 11 were existing much prior to the Notification for acquisition. This is coming out from inventories in the covenant apart from many other documents. The part of structure now known as Laxmi Vilas Hotel was occupied sometime in the year 1976 and other building known as Kanak Bhawan was occupied subsequently in the year 1986. Both the buildings were existing prior to issuance of Notification for acquisition in the year 1973. In view of aforesaid, property in question does not fall within the definition of vacant land whereas, the Notification shows acquisition of vacant land only. For that reason, even on passing of award, possession of structures forming Laxmi Vilas Hotel and Kanak Bhawan were not taken by the official respondents. In a challenge to acquisition by Brigadier Bhawani Singh in Writ Petition No. 2962/1974, the State Government had taken candid stand that properties shown in inventory had nothing to do with acquisition proceedings. Thus, only the motor garage and work shop were leased out by Brigadier Bhawani Singh w.e.f. 01.01.1976 and now above property is known as Laxmi Vilas Hotel. The State Government, vide its order dated 08.09.1989 granted exemption from ceiling to the land measuring 18000 sq.mt. under Section 20(1) of the Urban Land (Ceiling & Regulation) Act, 1976 (for short the Ceiling Act of 1976). The respondent No.6 had even made an application for addition and alteration in the premises, which was duly approved by the Jaipur Development Authority on 06.10.1993. A letter was issued by the Deputy Secretary, Government of Rajasthan, declaring that Laxmi Vilas Hotel is not the part of acquisition. Further letter was issued on the same date by the Department of Urban Development for unnecessarily stopping construction of Laxmi Vilas Hotel.

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5. The respondent No.6 even approached Settlement Committee constituted to resolve dispute pertaining to land matters. Therein, Settlement Committee passed a detailed order. It was found that Laxmi Vilas Hotel is not the part of acquired land, however, at Item No.3 of the conclusions, it was further observed that even if Laxmi Vilas Hotel is part of acquisition (being acquisition of khara Nos.72,75 and 77), then the State Government should issue formal order of its exemption from acquisition. The matter was, however, referred to the State Level Committee being a matter involving more than Rs.50 lacs, not within the competence of the Settlement Committee. On reference of the matter, an interim order was passed by the State Level Committee allowing respondent No.6 to carry out construction as per approved plan. The respondent No.6 accordingly constructed the boundary wall to cover the open land. The direction issued by the State Level Committee is binding on J.D.A. as well as on State Government. The J.D.A. in its reply accepted that structures occupied by respondent Nos. 6 to 11 were not subject matter of acquisition proceedings, however, an additional affidavit filed now by the J.D.A. shows a reverse turn, which is not permissible. In the affidavit now filed, it is stated that property falling in khasra No.72 stood acquired pursuant to acquisition proceedings and award thereupon. This is in ignorance to the order passed by the Government of Rajasthan and the Settlement Committee. The Chief Secretary, State of Rajasthan has recently filed an affidavit showing area possessed by the respondent Nos. 6 to 11 to be part of acquired land. The aforesaid affidavit is again contrary to the letters earlier issued by the Deputy Secretary. The aforesaid affidavit carries no meaning as same is based on an order passed by the Jaipur Development Authority Tribunal (for short the J.D.A. Tribunal) in an appeal filed by Gandhi Grah Nirman Co-operative Society. The aforesaid order of the Tribunal is pending consideration in a writ petition and an interim order exists therein. Respondent No.6 has also given reference of a news item published in Dainik Bhaskar to show that the J.D.A. is having land in excess to what was acquired. The respondent No. 7 has further emphasized that Kanak Bhawan was a motor garage bungalow shown in the covenant. The aforesaid bungalow falls in khasra No.77 showing it to be Gair Mumkin Abadi, thus could not have been acquired, as for that purpose, acquisition was sought for. This is apart from the fact that possession of the building was never taken, rather J.D.A., by issuing notice under

Section 32 and 33 of the JDA Act, considered it to be a private property as such notices are issued for unauthorized construction and not for removal of encroachment. The notice under Section 72 of the Act has now been issued by the J.D.A. while the matter was pending adjudication before this Court. The word vacant land is to be given meaning as per provisions of the Ceiling Act of 1976. The provisions of aforesaid Act is *pari materia* to provisions of the Act of 1959. The Hon'ble Apex Court in case of *Ahemdabad Pvt. Teachers' Association v. Administrative Officer & Ors.* reported in (2004) 1 SCC 755 held that doctrine of *pari materia* is permissible for taking reference of other statutes dealing with the same subject. In case of *Municipal Corporation of Delhi v. Shiv Shanker* reported in 1971 (1) SCC 442 and in case of *Tata Consultancy Services v. State of Andhra Pradesh* reported in (2005) 1 SCC 308, the Hon'ble Apex Court held that it is to be presumed that legislature enact consistent and harmonious law, which is ordinarily in the interest of certainty and consistency. Learned counsel for respondent has given reference of Section 2(q) of the Act of 1976 to show the meaning of vacant land. Learned counsel for respondent No.7 has further clarified the judgment in his case bearing writ petition No.3931/1993 wherein acquisition was challenged. The aforesaid writ was decided before passing of the award. The award has not included structure portion, thus it was to the satisfaction of the respondent, hence, there was no occasion to challenge the judgment. The decision in aforesaid writ petition does not address the issue raised herein.

6. So far as the decision of the Hon'ble Apex Court in regard to acquisition proceeding is concerned, it does not affect rights of the respondents as their matter stands altogether on different footings. Even if the Hon'ble Supreme Court confirmed the acquisition for land measuring 322.8 bighas, the right of the respondents still remains ineffectuated as the issue as to whether structures were acquired or not was not a subject matter of decision by the Hon'ble Supreme Court. Before the Hon'ble Apex Court, only two issues were raised and decided i.e. as to whether the land is required for public purpose and whether acquisition is hit by Section 11-A of the Land Acquisition Act of 1894 (in short the Act of 1894) as the provisions of UTA Act of 1959 stood superseded. Coming to the allegations against the State Government and J.D.A. to favour private respondents, it is submitted that such allegations are vague and do not indicate involvement of any

officer of the J.D.A. or the State, thus needs to be ignored.

7. It is lastly contended by respondents that when, during the pendency of writ petition, possession of property was taken by the J.D.A., in the Special Leave Petition preferred by respondent, the Hon'ble Apex Court has taken a prima facie view regarding property in question to be out of acquisition. The view was expressed after noticing the judgment in earlier writ petition filed on behalf of respondent No.7 challenging acquisition though resulting in dismissal. Though as per further observation by the Hon'ble Apex Court, this Court has to take its own view based on material, which may be independent to the observations made in the S.L.P. but that should be after considering the letters dated 26.08.2000 and 19.09.2000 apart from earlier reply of the J.D.A. and the State Government. Learned Additional Advocate General Mr. S.N.Kumawat appearing for the State submitted that while initial notice inviting objection for acquisition was issued on 24.03.1973, the word vacant land was not there, though in the Gazette Notification, it appeared. The word land has been defined under provisions of Rajasthan Land Acquisition Act, 1953 (for short the Act of 1953). The definition given in the Act of 1953 has been taken as the definition of land under Section 2(ix) of the UIT Act of 1959. As per definition of land given under the Act of 1953, includes anything attached to the earth. Use of word vacant before land cannot nullify the definition of land otherwise provided. This is moreso when it is based on misinterpretation of the word vacant. As per meaning given in various dictionaries, the word vacant includes an un-occupied house also. If the facts given by respondent Nos. 6 to 11 are looked into, then they had occupied the structures subsequent to issuance of Notification for acquisition in the year 1973. At that time all the structures were lying un-occupied, thus considered to be vacant land. The issue so raised by respondent Nos. 6 to 11 is otherwise of no consequence when acquisition proceedings for entire land measuring 322.8 bighas has been up-held by the Hon'ble Apex Court. The respondent Nos. 6 to 11 cannot have better right than Brigadier Bhawani Singh, who had challenged acquisition proceedings and lost the case therein apart from Gandhi Grah Nirman Co-operative Society. This Court has no authority to nullify the judgment of the Hon'ble Apex Court up-holding the acquisition. Principles of res judicata rather applies against private respondents claiming their rights through the agreement. The principle of

constructive res judicata shows that if an issue was available to a party, however, not raised, then it cannot be raised subsequently. If an issue was available to Brigadier Bhawani Singh, which was not raised, then respondent Nos. 6 to 11 cannot have better rights than Brigadier Bhawani Singh because they said to have purchased the property from him much subsequent to issuance of Notification for acquisition. As per Section 52(4) of the UIT Act of 1959, the land vests in the Government on issuance of notification under Section 52(1) and (2). Even in the record, land exists in the name of the official respondents. The respondent No.7 contested the issue raised herein by preferring a writ petition challenging the acquisition. The learned Single Judge dismissed the writ petition after considering the specific issue raised regarding existence of structure in the shape of bungalow No.36. Even a suit preferred by owners of Kanak Bhawan was also dismissed by the Civil Court holding that they have no right over the property in view of the judgment of learned Single Judge holding agreement to sale to be void in view of acquisition of property. No challenge to aforesaid was made, thus, conclusively, judgment stands against the private respondents. In reference to order passed by the Deputy Secretary, Government of Rajasthan and other orders showing that constructed portion was not part of acquisition, Mr.S.N. Kumawat submitted that those letters apart from the reply of J.D.A. cannot supersede the acquisition proceedings, more specifically in view of the judgment of the Hon'ble Apex Court. If the Hon'ble Apex Court has upheld the acquisition of 322.8 bighas of land, then no part of it can be taken out from acquisition by issuing letters. In any case, pursuant to last letter sent by the J.D.A., the matter is pending consideration before the State Government for a final decision and, in the meantime, a detailed order has been passed by the J.D.A. Tribunal on the issue holding structures to be part of acquisition though it is pending consideration before the learned Single Judge. In any case, the Chief Secretary, State of Rajasthan has taken a candid stand pertaining to acquisition. The other arguments raised by Mr.Kumawat are common to what have been argued by learned counsel Mr.R.N.Mathur appearing for the J.D.A. Learned counsel Shri R.N.Mathur appearing for respondent J.D.A. has submitted that unnecessary confusion has been created because of the word vacant existing before the word land in the Notification for acquisition. If the initial notice inviting objections is taken note of, then the word vacant does not exist

apart from the fact that land sought to be acquired was demarcated in boundaries by specifying as to what is existing in south, north, east and west of the property to be acquired. The word vacant has not been defined in the UIT Act of 1959 except the definition of land, which has been defined in the Act of 1953. As per the definition of land, a structure standing on it, is included and, thereby, no part of khasra Nos. 72,75 and 77 of village Bhawani Shankerpura has been left out other than specifically mentioned in the Notification itself i.e. the part of land forming Ashok Club. If the plea of private respondents is accepted, then large area of land falling in those khasras is deemed to have been left out, though such presumptions cannot be drawn contrary to the award already passed. The said award was not challenged by the respondents despite the fact that entire land in above referred khasras had been acquired. Referring to the Fard Kabja report, structure part had not been taken in possession regarding land of village Bhojpura only and not for village Bhawani Shankerpura where the property in dispute exists. In any case, as per provisions of Section 52(4) of the UIT Act of 1959, the land vests in the Government on issuance of Notification under Section 52(1) of the UIT Act. A reference of the judgment of Hon'ble Apex Court in case of Pratap & Anr. v. The State of Rajasthan & Ors. reported in J. T. 1996 (2) S.C. 759 has been given. Therein, it was held that once the land vests in the government, then even if any person has occupied an area of such land, is to be considered as trespasser. So far as the note written by the then Chief Minister Shri Bhairon Singh Shekhawat is concerned, it was nothing but a prima facie opinion and in any case, not an order. This was to find out as to why the construction of Laxmi Vilas Hotel has been stopped and same is the position regarding issuance of successive letters, which includes letter dated 25.06.1998, it is a clarificatory note and not an order, otherwise there was no reason for Settlement Committee to pass an alternative direction for release of land, if acquired. The decisions of the Settlement Committee become a subject matter of litigation before the High Court in a Public Interest Litigation, wherein an interim order has been passed. Thus, no reliance can be placed on the order passed by the Settlement Committee at this stage that too when property in question was found to be of more than 50 lacs, thus held to be beyond competence of Settlement Committee. As otherwise the order of the Settlement Committee goes contrary to decision of the Hon'ble Supreme Court

upholding acquisition and of High Court in regard to Kanak Bhawan. Following judgments have been relied upon by official respondents to support their arguments on different issues, which are summarized hereunder:

1. 2009 (10) SCC 501 (page 209, 210) para 19, 24, 27, 28, 29, 30 It is not necessary to take possession of the entire land and the paper possession can be taken.

2.1996(4) SCC 212 para 3 Possession can be taken through Panchnama, thus subsequent retention of such land is illegal.

3.1997(9) SCC 224 para 4 Symbolic possession is a method of taking possession.

4.2009(8) SCC 339 para 39 A dispute can also be looked into under Article 226 of the Constitution, if same can be decided on the basis of documents and affidavits.

5.AIR 1978 SC 515 Definition of the term land includes structures raised on it (Definition of the land in the Urban Improvement Trust Act, 1959 is similar).

8. Learned counsel Mr. Vimal Choudhary and Mr.R.D. Rastogi have supported stand of the petitioner. It is due to political rapport that land worth nearly Rs.300 crores has been encroached by the respondent Nos. 6 to 11. Referring to judgment of the Hon'ble Apex Court in case of Sunil Kumar Jain v. Kishan & Ors. reported in 1995(4) SCC 147, it is submitted that agreement to sale after issuance of Notification for acquisition is a void transaction. Same way, reference of another judgment in case of Yadu Nandan Garg v. State of Rajasthan & Ors. reported in 1996(1) SCC 334 has been made. Therein, it was held that when acquisition is finalized, the State is entitled to have the possession with absolute title free from all encumbrances. A reference of the judgment in case of Radhey Shyam v. State of Rajasthan in S.B. Civil Writ Petition No. 7226/1993 has further been given. Therein, it was held that in view of decision in case of Gandhi Grah Nirman Co-operative Society v. State of Rajasthan, the land once vested in the respondent cannot be divested. The petitioners therein were the members of Gandhi Grah Nirman Co-operative Society. It has been held that once battle was lost by the co-operative society and ground urged before the Single Bench was not raised before

the Hon'ble Apex Court, then this Court cannot take up the said issue. The judgment in case of Radhey Shyam (supra) was upheld by the Division Bench other than the observations regarding prosecution of petitioner Radhey Shyam. A further challenge was made before the Hon'ble Supreme Court, therein, judgment was not interfered with. The definition of land as given under the Land Acquisition Act of 1894 has been referred to show it to be *pari materia* to the definition given under the Act of 1953. The Hon'ble Apex Court in case of Mari Mabu etc. v. State of Gujarat, considered the aforesaid definition and held that it is not necessary that super structures standing on the land are to be mentioned separately, once it is included in the definition of land. Reference of para 4 of the judgment has been given specifically. The respondent Nos. 6 to 11 have tried to raise an objection that writ petition involves adjudication of title of land whereas no such issue exists. This is not only in view of the decision by the Civil Court in case of Kanak Bhawan but the judgment of learned Single Judge Honb'le Mr. Justice N.L.Tibrewal (since retired) where plea that bungalow No.36 is out of acquisition was not accepted. The aforesaid decision is binding and amply prove respondent No.7 to be encroacher on the land. So far as Laxmi Vilas Hotel is concerned, it stands on same footings as Kanak Bhawan. Even the Settlement Committee did not conclusively held property in question to be out of acquisition. It cannot otherwise sit over the judgment of the Hon'ble Apex Court. The working of the Settlement Committee was doubted and, for these reasons only, in the Public Interest Litigation, interim orders were passed and subsequently Government withdrew those Settlement Committees.

9. In rejoinder, learned counsel for petitioner submitted that many preliminary objections raised in the arguments are not part of reply submitted by respondent Nos. 6 to 11. The present litigation is not hit by *res judicata*. Perusal of the judgment in the case of Godu Ram does not show adverse finding, rather writ petition therein was decided with an observation that if encroachment exists on acquired land, the Government is free to take action. After the aforesaid, when Government failed to take possession of the land encroached upon, writ petition filed by petitioner is not only maintainable but shows that despite observations in the case of Godu Ram, no action was taken by the Government thus there exists good reason to pass necessary order for removal of encroachment. Adjudication

of title does not exist in this case. Petitioner's prayer is only for removal of encroachments from various khasra numbers mentioned in the Notification for acquisition and award passed therein. When no part of land was left from khasra Nos. 72, 75 and 77 other than part of khasra number 72 forming Ashok Club, then properties in dispute cannot be said to be left out from acquisition, based on presumption taken by the respondent Nos. 6 to 11. In fact, earlier judgment in case of Kanak Bhawan conclusively decided the issue, thereby respondents become encroachers though the aforesaid judgment may be in case of Kanak Bhawan but ratio propound therein applies to all similarly situated. The petitioner, thus, prays to give due interpretation not only to provisions of relevant Acts but acquisition proceedings taken therein. The respondent Nos. 6 to 11 have already taken shelter of the official respondents due to their political rapport, which is even reflecting from the note/letters issued by the then Chief Minister so as the Deputy Secretary. However, none is having authority to sit over the judgment of the Hon'ble Apex Court so as the judgment of the High Court and the Civil Court where different issues were raised and decided holding acquisition to be valid. The respondent Nos. 6 to 11 cannot claim better rights than the erstwhile ruler Brigadier Bhawani Singh from whom they had taken land. Thus, letters and documents issued in favour of respondent Nos. 6 to 11 is piece and proof of mala fide actions at the instance of official respondents. Hence, allegations of mala fide are strengthen on that count though respondent Nos. 6 to 11 are trying to take advantage of those documents. In any case, such letters are not binding on this Court rather it is due to political reasons, action was not taken against private respondents. However, in view of affidavit now given by the J.D.A. as well as the Chief Secretary, things have become clear for the first time. In reference to the order passed by the Hon'ble Apex Court in S.L.P. filed on behalf of Laxmi Vilas Hotel and Kanak Bhawan, it is urged that the Hon'ble Apex Court has not drawn final conclusion therein. In fact, same could not have been done because the petitioner was not served with the notice calling him for hearing of the Special Leave Petition. The order therein was passed only after hearing the official respondents. Therefore only a request has been made by the Hon'ble Apex Court for decision of this writ petition by the High Court expeditiously and, that too, after considering the merits of the case. In view of direction aforesaid, preliminary

objections raised by the respondents lose its significance. Now, as per the order of the Hon'ble Apex Court in two Special Leave Petitions, this Court is under an obligation to decide the matter on its merits. Learned counsel for petitioner further argued on all other preliminary objections as well as factual aspects, which would be dealt with by us while dealing with the issues. This is to avoid repetition of certain facts and arguments.

We have considered rival submissions made by the learned counsel for the parties and scanned the matter carefully besides going through the judgment cited at Bar.

10. It is a case where acquisition of land of Ram Bagh area was subject matter of litigation in the hands of Brigadier Bhawani Singh, Gandhi Grah Nirman Sahkari Samiti Co-operative Society and many other persons being members of the Co-operative Society. The matter travelled up to the Hon'ble Supreme Court and therein challenge to the acquisition of land was not accepted. In view of aforesaid, action of the official respondents for acquisition of land got affirmed. The properties in dispute namely Laxmi Vilas Hotel and Kanak Bhawan were leased out/sold subsequent to issuance of Notification for acquisition and even initiation of litigation in the hands of Brigadier Bhawani Singh. The lease for Laxmi Vilas Hotel was executed in the year 1976. So far as Kanak Bhawan is concerned, agreement to sale is dated 17.02.1986 for part of land of bungalow No.36 and for remaining adjoining land measuring 1750.5 sq.mt. is dated 12.12.1986. The Division Bench of this Court dismissed the petitions involving challenge to acquisition, vide its judgment dated 21st February, 1986. The Apex Court dismissed S.L.P. vide its judgment dated 30.03.1993. After the aforesaid, Ram Saran Gupta and other concerned to Kanak Bhawan preferred another writ petition to challenge the land acquisition proceedings by maintaining Writ Petition No.3931/1993 with specific ground that bungalow/building situated in Khasra No.77 consisting an area of 3890 sq.mt. of old Bhawani Shankerpura village was never intended to be acquired, thus Notifications under Section 52(1) and 52(2) of the Act of 1959 were wrongly issued. The specific challenge aforesaid was not accepted and the writ petition was dismissed with the finding that second round of challenge to the acquisition proceedings is not sustainable with a clear finding that petitioners are bound by the judgment in the writ petition filed by Brigadier Bhawani Singh. It was further

held that agreement to sale is void in view of the fact that on publication of Notification under Section 52(1) of the UIT Act of 1959, property/land vested in the State Government absolutely free from all encumbrances. Two independent suits filed by individual concerned to Kanak Bhawan against Brigadier Bhawani Singh were dismissed in the year 1995 holding that when land stood acquired and a challenge to such proceedings was not accepted in a writ petition filed by them with a further finding that agreement to sale is void, then no right can be claimed by the plaintiffs. Aforesaid are the brief facts concerned to the matter, however, before elaborating further, it would be proper to first deal with the preliminary objections raised by the respective parties though writ petition was admitted on 25.02.2003 and otherwise, in the light of order passed by the Hon'ble Apex Court in S.L.P. of respondent Madan Lal Sharma, this Court is under an obligation to consider the matter on merits. The relevant part of the aforesaid order is quoted hereunder for ready reference: With the aforementioned directions this appeal stands finally disposed of. However, it is clarified that all questions projected in the writ petition and refuted by the appellants and other respondents to the writ petition, still remain to be considered on merits in accordance with law by the Division Bench as and when the petition is heard by the Court. With the above direction, this appeal stands finally disposed of. The parties to bear their own costs. The private respondents have taken objections regarding maintainability of writ petition on the ground of alternative remedy. It is urged that even if private respondents are assumed to be encroachers, the J.D.A. can initiate proceedings under the Rajasthan Premises (Eviction of Unauthorised Occupants) Act, 1964 (in short the Act of 1964). Thus writ petition is not maintainable.

11. We have considered the aforesaid objection. From perusal of the written arguments, it clearly comes out that remedy under the Act of 1964 is available to the J.D.A. and not to the petitioner. In view of aforesaid, it cannot be said that petitioner is having alternative remedy apart from the fact that writ petition was admitted way back in the year 2003, thus it cannot be dismissed on the aforesaid ground. Thus, the judgment cited on the issue is not applicable to the facts of this case. Accordingly, the first preliminary objection raised by the respondents regarding maintainability of the writ petition cannot be accepted. The second objection is on the ground of res judicata. It is submitted by the respondents that

D.B. Civil Writ Petition bearing No.6055/1996 (Godu Ram Meena v. State & Ors.) was decided by this Court vide judgment dated 24.10.1997, thus successive writ petition is hit by doctrine of res judicata, moreso when reliefs sought in two writ petitions are same. To appreciate aforesaid argument, it would be gainful to quote main part of the judgment in the case of Godu Ram (supra) for ready reference: It is contended by learned counsel that the land in question has stood acquired under the Land Acquisition Act and the acquisition proceedings have been held valid by the Apex Court of the Country, but still some persons are in unauthorised possession over some part of the land.

The land vests in the State Govt. and if any unauthorised possession has been made by any person, the State Government is always free to take action. So far as prayer (a) is concerned, it can not be granted in this petition of PIL.

The petition stands disposed of with the above observations.

Perusal of part quoted above does not show that issue raised therein has been decided inter se between the parties moreso when the writ petition was filed to seek restoration of possession of Prakash Chand Saini and Smt.Rukmani Devi. For that purposes, the reliefs sought are also quoted hereunder for ready reference:

(a) the land from which Shri Prakash Chand Saini and Smt. Rukmani Devi were dispossessed be restored to them with all damages or in the alternatives.

(b) the persons whose names have been given in the body of the writ petition and who are still in occupation of the acquired land of Rambagh be ordered to be dispossessed from the acquired area of Rambagh with immediate effect, and the officials of Jaipur Development Authority and the State Government should be bound down to do so.

(c) the matter as to why the aforesaid persons were allowed to retain possession of the acquired land of Rambagh area may be got investigated by the Central Bureau of Investigation or any independent agency of investigation by this Hon'ble Court.

(d) any other order or direction which this Hon'ble Court may deem fit and proper may also kindly be passed in favour of the petitioner.

12. No doubt, in sub-para (b), it is prayed that those, who are occupying the acquired land of Ram Bagh may be ordered to be dispossessed but the prayer at parra (a) has been denied specifically. The writ petition therein has not been dismissed for the other prayers made, rather the State Government was made free to take action, if unauthorized possession exists. The question now comes is that if such liberty was given and no action has been taken by the Government, then whether the present writ petition is hit by res judicata. For that, it is argued that this Court should not take different view than taken by the coordinate Bench. We have considered aforesaid aspect. As it is seen that the writ petition at the instance of Godu Ram was not decided after addressing the controversy raised in this case, thus question of taking a different view than expressed earlier, does not arise. Therein, controversy has not been decided after addressing the merit of the case and now subsequent writ petition is not between the same parties. This is moreso when no action was taken by the government despite liberty given in a case where land is said to be worth nearly Rs.300 crores. In the case of State of Karnataka & Anr. v. All India Manufacturers Organisation & Ors. (supra), the issue of res judicata has been discussed in respect of Public Interest Litigation. Therein, it was held that a judgment in previous Public Interest Litigation would be a judgment in rem. It binds the public at large. The facts of the aforesaid case are, however, to be taken into consideration. Therein, the first litigation was initiated by Somashekar Reddy, wherein the Division Bench of Karnataka High Court formulated as many as six issues for its decision. The questions so formulated were thereafter discussed and decided on merit. In the said judgment, Hon'ble Karnataka High Court exhaustively considered all the material and documents presented before it. In the background aforesaid, the issue of res judicata was considered and decided in the second writ petition. However, in the present case, such is not a situation. According to private respondents themselves, the issue as to whether they are encroachers or not, has not been decided by the Court earlier. Thus, it cannot be said that principle of res judicata applies to the facts of this case. If the earlier judgment is looked into, then it becomes clear that Government was given a liberty to take action, if there exists encroachment. If no such action is

taken by the State, a successive writ petition cannot be said to be barred by principles of res judicata moreso when there exists allegation against official respondents regarding mala fide action to favour private respondents for a land said to have worth around Rs.300 crores. So far as the alternative plea that pursuant to the liberty given in the case of Godu Ram, the Government said to have taken a decision holding property in dispute to be out of acquisition proceedings. It is in reference to letter dated 25.06.1998 and afterwards. If the State Government has already taken a decision then this writ petition is not hit by res judicata as the issue as to whether the property in dispute stood acquired pursuant to the acquisition proceedings or not, has to be decided on judicial side in the light of material available though earlier judgment in the case of Kanak Bhawan also covers the issue but ignored by the State Government. Thus, the question of res judicata in the facts and circumstances of this case does not arise, hence, even second ground cannot be accepted. The third objection raised by the respondents is that question of title cannot be adjudicated in a writ petition. It is urged that dispute in regard to title of property requires examination of evidence, which is to be led by respective parties. Such issue cannot be decided in a proceeding under Article 226 of the [Constitution of India](#). The aforesaid objection has been taken in specific term by respondent No.7 holder of Kanak Bhawan, which seems to be unknowingly that civil suit between them and Brigadier Bhawani Singh resulted in adverse order holding that agreement to sale is void, thus no right can be claimed. The aforesaid finding is based on the judgment of learned Single Judge in writ petition No.3931/1993, holding that successive writ petition to challenge the acquisition of bungalow No.36 cannot be entertained and therein, agreement to sale was held to be void. For averting to the aforesaid issue, it is necessary to see as to whether dispute regarding title of land exists or not? The only issue before us is as to whether the property in dispute stands acquired and, if that is so, then whether private respondents have right to maintain possession. In view of above, question of title does not arise. Reference of the judgments in case of North Eastern Railway (HQ) through its General Manager, Gorakhpur & Anr. v. Chhedilal & Ors. (supra) and State of Rajasthan v. Bhawani Singh & Ors. (supra) have been given by the respondents. So far as the case of North Eastern Railway (HQ) through its General Manager, Gorakhpur & Anr.

(supra) is concerned, therein a prayer was made for withdrawal of writ petition to institute a proper civil suit. In the light of aforesaid prayer, it was observed that a right course has been adopted to get a declaration of title. Learned counsel for private respondents could not show as to how the aforesaid judgment is applicable to the facts of this case. So far as the case of State of Rajasthan v. Bhawani Singh & Ors. is concerned, therein a writ petition was filed by Mrs. Mani Devi Ojha to claim several reliefs including relief to recognise her to be owner of plot No.A-9. In the light of the prayer aforesaid, the Hon'ble Apex Court, without expressing any opinion on the question of title, given liberty to agitate the issues before the appropriate Court. The prayer made in this writ petition is not of the aforesaid nature. So far as the case of G. Srinivas v. Govt. of A.P. & Ors. (supra) is concerned, therein also a claim was made in regard to the plot No. 7-A measuring 2 acres 38 guntas situated in village Shaikpet. The appellant therein claimed right, title and interest over the said plot on the basis of an unregistered deed of sale. Essentially, the prayer therein was for adjudication of issue of title, which is not a case herein. Thus, the aforesaid judgment is also not applicable to the facts of this case. The facts of the case of Dwarka Prasad Agarwal (D) By LRs & Anr. v. B.D. Agarwal & Ors. (supra) are altogether different. Therein, Ramesh Chand filed a suit for declaration on 13.10.1984 based on an authority letter dated 10.01.1983 from Dwarka Prasad for admitting him to be owner of the newspaper and company, as leased for publication of Dainik Bhaskar at Gwalior. The factual matrix therein and the prayer are altogether different than in the present matter. In this case main issue raised by respective parties is as to whether acquisition was for the land excluding structure part, thus question of title does not exist. Petitioner herein is not claiming title over the property in dispute qua private respondents. In view of aforesaid, even third objection raised by the respondents cannot be accepted.

13. The next ground raised by the respondents is that acquisition law is an exproprietary legislation. Reference of judgments in case of Devindra Singh & Ors. v. State of Punjab & Ors. (supra) and in the case of Hindustan Petroleum Corpn. Ltd. v. Darius Shapur Chenai & Ors. (supra) so as the case of Vishnu Prasad Sharma (supra) have been made. We agree that acquisition law is an exproprietary legislation thus be construed strictly. Taking aforesaid, we have to consider the

effect of provisions of Section 52(1), 52(2) and 52(4) of the UIT Act of 1959. Therein, it has been provided that on issuance of Notification under Section 52(1), the land will vest in the Government. We have to give strict meaning to the aforesaid provision while dealing with the issue raised by private respondents that in the Notification for acquisition before the word land, the word vacant has been used. This is to denote that only open land was subject matter of acquisition and not the structures. Since, it would be an issue to be decided while dealing with the case on merits, we will consider the aforesaid aspect keeping in mind three judgments referred to above and while considering the aforesaid, we would even consider principle of contemporanea ex-positio and judgments in the case of Baleshwar Bharti v. Bhagirath reported in 1914 (14) ILR, Navneet Lal Javeri v. CIT reported in 1965 SC 1375 , in the case reported in (1972) 4 SCC 474, Collector of Central Excise, Guntur v. Andhra Sugar Ltd. reported in 1989 Suppl. (1) 144, K.P.Vargis v. I.T.O. Reported in (1981) 4 SCC 473, Indian Metals and Ferro Alloys Ltd., Cuttack v. Collector of Central Excise, Bhubaneshwar reported in 1991 Suppl. (1) SCC 125 and lastly in the case reported in (2007) 10 SCC 573. An objection has further been taken that disputed question of facts, cannot be decided in a writ petition. This objection has been taken in view of the reply earlier filed by the J.D.A. supporting the private respondents but subsequent change in their stand in view of the affidavits filed in support of the petitioner.

We have considered aforesaid arguments. Recently, the Hon'ble Apex Court in the case of National Thermal Power Corporation Ltd. v. Mahesh Dutt & Ors. (supra) held that a disputed fact can also be looked into under Article 226 of the [Constitution of India](#) if it can be decided on the basis of documents or affidavits. Para 39 of the aforesaid judgment is quoted hereunder for ready reference:

39. It is not a case where oral evidence was required to be taken. There is no law that the High Court is denied or debarred from entering into a disputed question of fact. The issue will have to be determined keeping in view the fact situation obtaining in each case. If a disputed question can be determined on the basis of the documents and/or affidavit, the High Court may not ordinarily refuse to do so. In a given case, it may also examining witnesses. In the light of the aforesaid judgment, we can decide the issue raised herein. The issue for our determination

is as to whether land under acquisition includes structures. This is more so when determination of issue would be based on document relied upon by the parties. The merit of this case is otherwise to be determined in the light of the recent order passed by the Hon'ble Apex Court in the Special Leave Petition filed by the private respondents. While dealing with the merit of the case, we will also consider the stand taken by the State Government as well as the J.D.A. i.e. what was the stand of J.D.A. in the earlier reply and in the affidavits subsequently filed. This is required to be seen even in the light of allegation made by the petitioner against the official respondents for favouring private respondents. The other argument is that a petition cannot be entertained in respect of the properties of Ex-Rulers mentioned in the inventory.

14. The aforesaid argument has been taken in view of Article 363 of the [Constitution of India](#). It would be gainful to quote Article 363 of the [Constitution of India](#) for ready reference:

363. Bar to interference by courts in disputes arising out of certain treaties, agreements, etc. - (1) Notwithstanding anything in this Constitution but subject to the provisions of article 143, neither the Supreme Court nor any other Court shall have jurisdiction in any dispute arising out of any provision of a treaty, agreement, covenant, engagement, sanad or other similar instrument which was entered into or executed before the commencement of this Constitution by any Ruler of an Indian State and to which the Government of the Dominion of India or any of its predecessor Governments was a party and which has or has been continued in operation after such commencement, or in any dispute in respect of any right accruing under or any liability or obligation arising out of any of the provisions of this Constitution relating to any such treaty, agreement, covenant, engagement, sanad or other similar instrument. (2) In this article -

(a) Indian State means any territory recognised before the commencement of this Constitution by His Majesty of the Government of the Dominion of India as being such a State; and

(b) Ruler includes the Prince, Chief or other person recognised before such commencement by His Majesty or the Government of the Dominion of Indian as

the Ruler of any Indian State.

Perusal of aforesaid Article shows that no Court will interfere in a dispute arising out of any provision of treaty, agreement, covenant, engagement, sanad or other similar instrument. In the present matter, no dispute is arising out of a provision of treaty, covenant etc., thus aforesaid Article has no application to the present matter. The issue herein pertains to State action regarding acquisition of land, that too, as to whether the properties in dispute are the part of acquisition or not, thus dispute herein is not coming out from a provision of a covenant. The aforesaid argument is otherwise not available to private respondents because such right exists with the parties to the covenant. It is a matter where acquisition was earlier challenged by the erstwhile ruler (Brigadier Bhawani Singh) and therein, challenge to acquisition was not accepted. If, at all, ground in reference to Article 363 of the [Constitution of India](#) exists, it was available to the erstwhile ruler Brigadier Bhawani Singh, who did not raise aforesaid ground in his petition as he was knowing about the fact that dispute is not arising out of any provision of treaty, covenant etc. The effort of respondents is to seek an order to nullify earlier judgment of Division Bench in the writ petition filed by Ex-Ruler Brigadier Bhawani Singh and subsequent judgment of Apex Court upholding the acquisition. This Court cannot nullify the acquisition already up-held by the Hon'ble Supreme Court on the ground urged above. The provisions of Article 363 of the [Constitution of India](#) are not available to the respondent Nos. 6 and 7 and otherwise not applicable to this case. There is another aspect of the matter inasmuch as it is not only the structures named as Kanak Bhawan and Laxmi Vilas Hotel but entire land and other properties forming part of covenant have been acquired and acquisition therein has been upheld by the Hon'ble Apex Court. If the argument of private respondents is accepted in the light of Article 363 of the [Constitution of India](#), then we would literally nullify the judgment of the Hon'ble Apex Court, upholding acquisition. Thus, aforesaid objection cannot be accepted. A reference of the provision of Rajasthan Land Reforms and Acquisition of Landowners' Estates Act, 1963 (in short the Act of 1963) has been given. According to private respondents, Section 10 of the Act of 1963 gives protection to certain properties from acquisition. This argument needs no elaboration as acquisition in the present matter is not pursuant to the Estates Act, 1963 but under UIT Act of 1959. Thus,

Section 10 of the Estates Act 1963 has no application to this matter. The provisions of Section 10 of Estates Act 1963 applies to the case where acquisition and requisition is under that Act only. Same is the position in the case of Aadhunik Grah Nirman Sahkari Samiti Ltd. & Ors. v. State of Rajasthan & Anr.(supra), wherein the issue was decided in reference to Estates Act, 1963 and not in regard to the acquisition under the UIT Act, 1959. This is apart from the fact that the issue aforesaid could have been raised by erstwhile Ruler Brigadier Bhawani Singh in his petition and if he failed to do so, then private respondents cannot raise the aforesaid issue though, on merit also, it has no substance. In the light of the aforesaid, we cannot accept even the aforesaid ground raised by the private respondents. Coming to the merits of the case, we will deal with the issues after taking into consideration the material available on record and all the arguments taken in written submissions, though not even part of reply of private respondents.

15. The main contention of private respondents is in reference to the Notifications for acquisition. Referring to those Notifications, it is demonstrated that only vacant land has been acquired and not the land having structures. To support the aforesaid, reference of Fard Kabja and notes/letters issued by the Government coupled with the decision of the Settlement Committee has been made apart from other material. At the same time, petitioner has made allegations regarding political and bureaucratic approach of private respondents. Since much emphasis has been made by private respondents that only vacant land has been acquired, we are dealing with the aforesaid issue at the first instance. In a compilation submitted by learned counsel appearing for Laxmi Vilas Hotel, notice dated 24.03.1973 has been enclosed as a first document. The aforesaid notice was issued under Section 52(2) of the UIT Act of 1959 (though mentioned as 1969 in Hindi). Perusal of notice does not show use of word vacant before word land. This is apart from the fact that at the end, boundaries of the land sought to be acquired has been shown apart from mentioning those land not under acquisition. Like, the land of Ashok Club. In the Notification and subsequent circular dated 11.07.1974, the word vacant land has been used. The meaning of the word land under the UIT Act, 1959 is as provided under Section 3 of the Rajasthan Land Acquisition Act, 1953. Provision of Section 2(ix) of the UIT Act, 1959 is reproduced hereunder for ready reference: 2(ix). The expression land and the expression person interested

have the meanings respectively assigned to them in section 3 of the Rajasthan Land Acquisition Act, 1953 (Rajasthan Act 24 of 1953).

Since, expression land has the meaning as assigned under Section 3(a) of the Rajasthan Land Acquisition Act, 1953, thus the same is also reproduced hereunder for ready reference:

3(a) the expression land includes benefits to arise out of land, and things attached to the earth or permanently fastened to anything attached to the earth.

15. The definition of land, as quoted above, is *pari materia* to the Central Act of 1894. Perusal of definition shows that the word land includes things attached to the earth or permanently fastened to anything attached to the earth. Thus, buildings and structures on the land are covered by the definition. The definition of word land was considered by the Hon'ble Apex Court in the case of *B. Mali Mabu v. State of Gujarat* reported in (1978) 2 SCC 515. Therein, it was held that even super structures are also included in the definition of land. Same view was expressed in the case of *The State of Kerala v. P.P. Hassan Koya* reported in AIR 1968 SC 1201. Relevant portion of para 4 of the judgment in the case of *B.Mali Mabu* (*supra*) is quoted hereunder for ready reference:

4. The second submission for the appellants was that S.4 notification was bad because -

(i)in the notification the land was specified but the super-structure standing thereon was not mentioned; and

(ii)construction of a dispensary may be for a public purpose, but building staff quarters for the employees of the State Insurance Scheme cannot be a public purpose. Such an expenditure is not warranted by S.28 of the Employees' State Insurance Act, 1948.

The definition of land in Cl.(a) of S. 3 of the Act will include the super-structure, if any, existing upon it. It was not the requirement of the law to mention the structure, if any, separately in the notification.

Perusal of aforesaid para shows that even super structures are included in the word land and there is no requirement to mention structures separately in the Notification. The emphasis of private respondents is, however, on the word vacant used before the word land. The word vacant has not been defined in the UIT Act, thus we are referring the dictionary meaning of the aforesaid word vacant:

Vacant adjective not filled or occupied

As per the Concise Oxford English Dictionary - Vacant not occupied; empty (of a position) not filled.

As per Legal Glossary - Vacant unoccupied

As per the Black's Law Dictionary Vacant -Empty;unoccupied.

As per Shorter Oxford English Dictionary Vacant (1) an adjective of a benefice, office, position, etc.: not (yet) filled or occupied.

(2) Containing no objects; empty

Perusal of word vacant shows that it is used as an adjective and even means not-filled or occupied. Now the meaning of the word vacant as defined in the dictionary and the word land as defined under the UIT Act, 1959 together would be, un-filled or un-occupied land and things attached to the earth or permanently fastened. Thus, it includes unfilled or unoccupied structures or building as attached to the earth. If the facts of this case are taken note of, then as admitted by both the parties, Notification for acquisition was issued in the year 1973, and as per own saying of private respondents, they were not occupying the property at that time because so far as Laxmi Vilas Hotel is concerned, it was occupied in the year 1976 whereas, Kanak Bhawan was occupied in the year 1986. It means, at the time of issuance of notification in the year 1973, the structures were lying unoccupied, rather in view of reply of respondent No.8, it was lying abandoned. Nothing exists on record to show that properties in dispute were occupied in the year 1973 also. In the aforesaid factual background, the structures/buildings in reference fall within the meaning of vacant land as explained above. Thus, even if the argument of private respondents is accepted that the acquisition was only for

vacant land, then also in view of meaning of the words discussed above, it includes the structures attached to the land. The argument of the private respondents regarding acquisition of vacant land excluding structures is required to be seen from other angle also. If the intention of official respondents was not to acquire the structures standing on the land, then there was no reason not to exclude it while issuing the Notification, moreso when aforesaid has been done for land belonging to Ashok Club etc. as there is a specific exclusion of the land and buildings of Ashok Club. However, no such exclusion exists for the structures in reference, namely, Kanak Bhawan and Laxmi Vilas Hotel etc. In absence of such exclusion, the acquisition remains for all unoccupied structures existing on the land. The entire land of khasra Nos. 75 and 77 has been acquired leaving no part out of acquisition and even khasra No.72 has been acquired entirely except 8 bighas land of Ashok Club. This is the position coming out from the documents available on record. In the award also, no part of khasra Nos.75 and 77 had been excluded from acquisition and same is the position regarding khasra No. 72 where the award was passed for entire land except for Ashok Club etc. In view of aforesaid factual position, we cannot presume that structures were kept out of acquisition by using word vacant land in the Notification. If, we accept the proposition given by the private respondents then literally we would be nullifying the judgment of the Hon'ble Apex Court upholding the acquisition for entire land measuring 322.08 bighas. Though, at this stage, argument has been raised by respondents that challenge to acquisition before the Apex Court was only on two aspects and not on the ground urged by them in reference to the word vacant land. The aforesaid argument cannot be accepted in view of the fact that private respondents cannot have better rights than Brigadier Bhawani Singh, who had earlier challenged the acquisition. If, we hold that part of land was not under acquisition, then outcome of it would be nullifying the judgment of Hon'ble Supreme Court impliedly. The judicial discipline requires that High Court should endorse the judgment rendered by the Hon'ble Apex Court moreso when it is in this case itself. If, reference of various judgments cited by the counsel showing acquisition law to be strictly construed, then aforesaid argument goes against private respondents themselves because when the entire land of khasra Nos. 75,77 and 72 (leaving part of Ashok Club) has been acquired, then this Court

cannot exclude any part thereof by taking or giving different interpretation to the word vacant land then explained. The acquisition law, being ex-proprietary legislation, is to be construed strictly. In the light of judgment referred by the counsel for respondent No.7, we have taken strict meaning of word vacant and land and in view of the judgments cited by the private respondents, no deviation can be made from the definition of word land given under the UIT Act of 1959. It would be necessary to clarify that meaning of vacant land cannot be taken from any other legislation moreso when it is not *pari materia*. Thus, reference of word vacant land as given under Section 2(q)(ii) and (iii) of Act of 1976 cannot be applied. If the said definition is used herein, then the word land defined under the UIT Act of 1959 becomes redundant.

The argument of learned counsel for private respondents is considered in the light of the judgment in S.B.Civil Writ Petition No.3931/1993. The relevant paras of the aforesaid judgment is quoted hereunder for ready reference:

I have heard Mr.Ganga Lehari Pareek at length. The main contention of Mr.Pareek is that the bungalow/building situated at khasra No.77 of old Bhawanishanker Pura, village consisting of an area 3890 sq. meters was never intended to be acquired by the Notification and the Notification under Section 52(1) and 52(2), were wrongly issued with regard to these properties. It is also contended that the Special Officer, Town Planning Department exceeded its jurisdiction when he issued Notification with regard to the entire property/land of khasra No.77, as he was exercising delegated powers. Mr. Lehari submitted that a delegated authority could not exercise more powers than the powers delegated to it. In my view, this petition is wholly misconceived and the petitioners have no locus-standi to file it, challenging the acquisition proceedings. As stated earlier, land acquisition proceedings were challenged by Lt.Bhawani Singh, the owner of the properties, by filing a writ petition and his writ petition was dismissed on 21.2.1986. The Apex Court of the Country has also confirmed the judgment of the Division Bench, whereby the land acquisition proceedings were held to be void. The petitioners now claim their interest through Lt.Col. Bhawani Singh, with regard to a part of the properties/land bearing khasra No.77 of Old Bhawani Shakherpura, on the basis of two agreements dated 17.2.1986 and 21.2.1986. Apparently, the petitioners have

purchased litigation for a second inning. In my view, the petitioners are bound by the judgment in the writ petition filed by Lt. Col Bhawani Singh, as they did not have any independent right or interest to challenge the proceedings again. Further, there is no registered sale deed in their favour and they have purchased the land on the basis of agreements to sell, one of the writ petition is alleged to have been executed after dismissal of the writ petition by the Division Bench. It may be further stated that Lt. Col. Bhawani Singh had no right to alienate any building or any part of the land after commencement of land acquisition proceedings, and, specifically after the issuance/publication of Notifications under Section 52(1) of the Act in the Gazette. The Notification under sub-section (1) of Section 52 of the U.I.T. Act, was published in the official Gazette in the year 1974, and after its publication the property/land vested absolutely to the State Government free from all encumbrances. Sub-section (4) of Section 52 of the U.I.T. Act, as it stood that at the relevant time, stated as under: (4) When a notice under sub-section (1) is published in the Official Gazette, the land shall, on and from the date of such publication, vest absolutely in the State Government free from all encumbrances.

Thus, the alleged agreements to sell, executed by Lt. Col. Bhawani Singh, were hold as he was not the owner of the property in question after publication of Notification under Sec. 52(1) of the U.I.T. Act in the year 1974.

Judged from any angle, the petition is devoid of force. Consequently, it is dismissed summarily.

16. Perusal of paras quoted above clearly shows that respondents challenged inclusion of structure in Khasra No.77 while Notification was issued under Section 52(1) and 52(2) of UIT Act, 1959. Thus, they knowing about the acquisition of the structure, challenged the same and now taking a contrary plea of exclusion of structure from acquisition. Specific argument raised aforesaid was not accepted by the learned Single Judge. Since the issue decided aforesaid covers impliedly other bungalows/buildings situated at khasra Nos. 72 and 75, the judgment aforesaid has attained finality as it was not further challenged. The matter did not end here only as a suit preferred by the owners of Kanak Bhawan for specific performance

was subject matter before the Civil Court. The Civil Court therein passed an order in the year 1995 holding that agreement to sale itself is void in the light of the judgment of the High Court, thus, specific performance cannot be sought. The relevant portion of the order passed in the suit is also quoted hereunder for ready reference:

It is true that aforesaid order was passed in a suit inter se between Brigadier Bhawani Singh and owners of Kanak Bhawan but it indicates about acquisition of property in view of judgment of the High Court yet it was not challenged further.

17. In view of aforesaid, it becomes clear that a specific challenge in reference to bungalow/building in khasra No.77 could not sustain. Though, the argument of learned counsel for respondent No.7 is that the award was not reflecting acquisition of structure parts so as the 'Fard Kabja, thus there was no occasion to challenge the judgment in the writ petition No. 3931/1993. The aforesaid argument is of no substance because the award was passed in the year 1993 whereas the order by the Civil Court is of the year 1995 clarifying the position that the property in dispute stands acquired, hence, agreement to sale is void. The aforesaid order was passed much subsequent to the award in the year 1993. No challenge to the order was made by the respondents. It is however urged that suit was inter se between the owners of Kanak Bhawan and Brigadier Bhawani Singh. However, such argument has been made without taking note of the fact that there is a finding that property in question stands acquired. Such finding becomes final for Kanak Bhawan in expressed terms and impliedly against others. Non grant of compensation for structure can be a subject matter for reference as per Land Acquisition Act but cannot be presumed to be out of acquisition when no part of land in Khasra No.72,75 & 77 has been left out other than for Ashok Club. As per provisions of Section 52(1) (2) and (4) of the UIT Act of 1959, land vests in the Government immediately on issuance of Notification under Section 52(1), free from all encumbrances. As admitted by learned counsel for both the parties, Notifications under Sections 52(1) and 52(2) were issued followed by proceedings under Section 52(4) of the Act of 1959. On issuance of Notification, the land vests in the Government free from all encumbrances. This is moreso when the Notifications under Section 52(1) and 52(2) were unsuccessfully challenged by the

owners of Kanak Bhawan in the writ petition No.3931/1993 on the ground that Notification has wrongly included bungalow, which was not intended to be acquired. A reference of the judgment in the case of Pratap & Anr. v. The State of Rajasthan & Ors. (supra) would be relevant for this purpose. Therein, it was held that on issuance of Notification under Section 52(1) of the UIT Act, 1959, land vests in the State free from all encumbrances. Para 12 of the aforesaid judgment is relevant, thus quoted hereunder for ready reference:

18. The provisions of sub-section (4) of Section 52 are somewhat similar to Section 17 of the Land Acquisition Act, 1894. Just as publication of a notification under Section 52(1) vests the land in the State, free from all encumbrances, as provided by Section 52(4), similarly when possession of land is taken under Section 17(1) the land vests absolutely in the Government free from all encumbrances. A question arose before this Court that if there is a non-compliance with the provisions of Section 5-A and an award is not made in respect to the land so acquired, would the acquisition proceedings lapse. In Satendra Prasad Jain and Ors. v. State of U.P. and Ors. [JT 1993(5) SC 385 = (1993) 4 SCC 369] this Court held that once possession had been taken under Section 17(1) and the land vested in the Government then the Government could not withdraw from acquisition under Section 48 and the provisions of Section 11-A were not attracted and, therefore, the acquisition proceedings would not lapse on failure to make an award within the period prescribed therein. It was further held that non-compliance of Section 17(3-A), regarding part payment of compensation before taking possession, would also not render the possession illegal and entitle the Government to withdraw from acquisition. The aforesaid principle has been reiterated by this Court in P. Chinnanna and Ors. v. State of A.P. And Ors. [JT 1994 (5) SC 320 = (1994) 5 SCC 486] and Awadh Bihari Yadav and Ors. v. State of Bihar and Ors. [JT 1995 (6) SC 248 = (1995) 6 SCC 31]. In view of the aforesaid ratio it follows that the provisions of Section 11A are not attracted in the present case and even if it be assumed that the award has not been passed within the stipulated period, the acquisition of land does not come to an end. Perusal of aforesaid para shows that Section 52 (4) of UIT Act, 1959 is somewhat similar to Section 17(1) of the Central Act. The only difference is that as per Section 52(4) of the Act of 1959, land vests in the State, free from all encumbrances on issuance of

Notification under Section 52(1), whereas under Section 17 of the Central Act, it is on taking possession. It would be gainful to quote Sections 52(1) (2) (3) and (4) of the Act of 1959 for ready reference: 52. Compulsory acquisition of land: (1) Where on a representation from the Trust [or otherwise] it appears to the State Government that any land is required for the purpose of improvement or for any other purpose under this Act, the State Government may acquire such land by publishing in the official Gazette a notice specifying the particular purpose for which such land is required and stating that the State Government has decided to acquire the land in pursuance of this section. (2) Before publishing a notice under sub-section (1), the State Government shall by another notice call upon the owner of the land and any other person who in the opinion of the State Government may be interested therein to show cause, within such time as may be specified in the notice, why the land should not be acquired. Such notice shall be individually served upon the owner of the land, any other person who in the opinion of the State Government may be interested therein, it shall also be published in the official Gazette at least 30 days in advance and shall be pasted on some conspicuous place in the locality, where the land to be acquired is situated. Such publication and pasting of notice shall be deemed as sufficient and proper service of notice upon the owner of the land and upon all other persons who may be interested therein. (3) Within the time specified in the notice, the owner of the land or any other person interested therein may show cause and make objections, why the land should not be acquired. Every such objection to the notice given under sub-section (2) shall be made in writing to the officer-on-special duty, or any other officer appointed by the State Government for the purpose. Such officer shall give the objector an opportunity of being heard, either in person or by pleader, and after hearing all such objections and after making such enquiry, as he deems necessary, shall submit the case for the decision of the State Government together with the record of the proceedings held by him and a report containing his recommendations on the objections. Thereafter, the State Government may pass such orders as it deems fit. The decision of the State Government thereon shall be final. (4) When a notice under sub-section (1) is published in the Official Gazette, the land shall, on and from the date of such publication, vest absolutely in the State Government free from all encumbrances.

Perusal of sub-section (4) of Section 52 of the Act of 1959 shows that land vests in the State on publication of notification under sub-section (1) of Section 52 of the Act of 1959 free from all encumbrances. In view of aforesaid, the land in dispute, being part of acquisition proceedings, vested in the Government in the year 1973 itself when Notification under Section 52(1) was published. In the light of aforesaid, argument of learned counsel for private respondents that award does not include property in dispute, hence, they did not challenge the judgment in the writ petition No. 3931/1993 remains of no substance because the award does not exclude any part of land, which was subject matter of notification under Sections 52(1) and 52(2) of the Act of 1959. If the award does not grant compensation for structure, then also acquisition does not become illegal rather remedy to seek reference for getting compensation exists and is sought by Brigadier Bhawani Singh. Owner of Kanak Bhawan knowing about inclusion of property for acquisition unsuccessfully challenged the Notification issued under Section 52(1)(2) of UIT Act of 1959, thus plea raised by them for exclusion of property in dispute does not arise. The question now comes regarding dispute pertaining to possession of property.

It is stated that Fard kabja does not show the possession of the property in dispute and in absence of possession, it becomes clear that Government was never intended to acquire the property in question.

We have perused the Fard Kabja. Perusal of it shows that against the land of village Bhojpura, it is mentioned that possession of structures has not been taken, however, similar indication does not exist against the land of village Bhawani Shankerpur. Thus, Fard Kabja does not support the contention of private respondents as submitted. If, for the sake of argument, it is assumed that possession of property in question was not taken by the official respondents after passing of the award, then allegations against the Government authorities are strengthened without any effect on the acquisition. The process for acquisition of land was initiated under UIT Act, 1959 and not under the Central Act though completed therein. The private respondents have given reference to case of Balwant Narayan Bhagde v. M.D.Bhagwat(supra). Therein, it was held that possession of land under acquisition cannot be symbolic rather actual possession on the spot has to be taken. The aforesaid judgment however clarifies that how the

possession may be taken, would depend on the nature of the land. There cannot be any hard and fast rule laying down as to what act would be sufficient to constitute taking of possession of land. The aforesaid judgment was later on considered in various judgments and recently in the case of Sita Ram Bhandar Society, New Delhi vs. Lieutenant Governor, Government of NCT, Delhi & Ors. reported in (2009) 10 SCC 501. Para 28,29,30,39 & 40 are reproduced hereunder for ready reference: 28.A cumulative reading of the aforesaid judgments would reveal that while taking possession, symbolic and notional possession is perhaps not envisaged under the Act but the manner in which possession is taken must of necessity depend upon the facts of each case. Keeping this broad principle in mind, this Court in T.N.Housing Board v. A. Viswam after considering the judgment in Narayan Bhagde case, observed that while taking possession of a large area of land (in this case 339 acres) a pragmatic and realistic approach had to be taken. This Court then examined the context under which the judgment in Narayan Bhagde case had been rendered and held as under:(Viswam case, SCCp.262,para 9) 9 It is settled law by series of judgments of this Court that one of the accepted modes of taking possession of the acquired land is recording of a memorandum or panchnama by the LAO in the presence of witnesses signed by him/them and that would constitute taking possession of the land as it would be impossible to take physical possession of the acquired land. It is common knowledge that in some cases the owner/interested person may not be cooperative in taking possession of the land. 29.In Balmokand Khatri Educational and Industrial Trust v. State of Punjab yet again the question was as to the taking over of the possession of agricultural land and it was observed thus:(SCC p.215, para 4)

4. It is seen that the entire gamut of the acquisition proceedings stood completed by 17-4-1976 by which date possession of the land had been taken. No doubt, Shri Prakash Parekh has contended that the appellant still retained their possession. It is now well-settled legal position that it is difficult to take physical possession of the land under compulsory acquisition. The normal mode of taking possession is drafting the panchnama in the presence of panchas and taking possession and giving delivery to the beneficiaries is the accepted mode of taking possession of the land. Subsequent thereto, the retention of possession would

tantamount only to illegal or unlawful possession.

30. It would, thus, be seen from a cumulative reading of the aforesaid judgments, that while taking possession of a large area of land with a large number of owners, it would be impossible for the Collector or the revenue official to enter each bigha or biswa and to take possession thereof and that a pragmatic approach has to be adopted by the Court. It is also clear that one of the methods of taking possession and handling it over to the beneficiary Department is the recording of a panchnama which can in itself constitute evidence of the fact that possession had been taken and the land had vested absolutely in the Government.

39. Mr.Gupta has, with great emphasis, pointed out that from the affidavit dated 30-7-1996 sworn by Mr.G.S.Meena, Under-secretary, Land and Building Department, it was clear that the appellant continued to remain in possession on account of the stay of dispossession granted by the High Court on 15-7-1981 in WP No.2220 of 1981 and the confirmation of the said order on 16-9-1982 and as such stand of the appellants that possession had been taken was not correct. We have, however, already observed that possession had been taken between 20-6-1980 and 24-6-1980, and the acquired land thus stood vested in the State free from all encumbrances under Section 16 of the Act. It is also relevant that the aforereferred writ petition was dismissed meaning thereby that the said order should automatically be vacated as well. Even assuming for a moment that the petitioner had repossessed the acquired land at some stage would be of no consequence in view of the provisions of Section 16 *ibidem*.

40. In Narayan Bhagde case, one of the arguments raised by the landowner was that as per the communication of the Commissioner the land was still with the landowner and possession thereof had not been taken. The Bench observed that the letter was based on a misconception as the landowner had re-entered the acquired land immediately after its possession had been taken by the Government ignoring the scenario that he stood divested of the possession, under Section 16 of the Act. This Court observed as under:(Narayan Bhagde case, SCC p.712 para 29) 29..... This was plainly erroneous view, for the legal position is clear that even if the appellant entered upon the land and resumed possession of it the very next

moment after the land was actually taken possession of and become vested in the Government, such act on the part of the appellant did not have the effect of obliterating the consequences of vesting.

The same aspect was earlier considered by the Honb'le Apex Court in the case of Balmokand Khatri Educational and Industrial Trust, Amritsar v. State of Punjab & Ors. reported in (1996) 4 SCC 212. Para 5 of the aforesaid judgment is quoted hereunder for ready reference:

Under these circumstances, merely because the appellant retained possession of the acquired land, the acquisition cannot be said to be bad in law. It is then contended by Shri Parekh that the appellant-Institution is running an educational institution and intends to establish a public school and that since other land was available, the Government would have acquired some other land leaving the acquired land for the appellant. In the counter-affidavit filed in the High Court, it was stated that apart from the acquired land, the appellant also owned 482 canals 19 marlas of land. Thereby, it is seen that the appellant is not disabled to proceed with the continuation of the educational institution which it seeks to establish. It is then contended that an opportunity may be given to the appellant to make a representation to the State Government. We find that it is not necessary for us to give any such liberty since acquisition process has already been completed. The view aforesaid was reiterated even in the case of National Thermal Power Corporation Ltd. v. Mahesh Dutt & Ors. reported in (2009) 8 SCC 339.

In view of aforesaid judgments, keeping possession cannot nullify acquisition rather it shows mala fides of official respondents to allow possession of private respondents even after acquisition and in ignorance of provisions of Section 52(4) of UIT Act of 1959 which is somewhat different than Act of 1894 on the issue of possession. To vest the land in Government, therein no condition for possession under Section 52(4) of the UIT Act of 1959.

19. The argument aforesaid is not otherwise available to private respondents because they entered into an agreement to sale much subsequent to the issuance of the Notification for acquisition. As per Section 52(4) of the UIT Act, 1959, land vested in the Government in the year 1973 itself and therein, taking of possession

is not a pre-requirement. In nay case, owners of Kanak Bhawan challenged the Notification issued under Section 52(1) and 52(2) of UIT Act, 1959 on the ground of inclusion of structures therein, challenge was not accepted and land vested in the Government in the year 1973 itself then subsequent lease or sale remains of no meaning. It was held in the case of S.K.Jain v. Kishan & Ors. reported in (1995) 4 SCC 147, that agreement to sale subsequent to notification is not binding on the Government. Para 2 of the aforesaid judgment is quoted hereunder for ready reference: Learned counsel appearing for the petitioner contended that the under the agreement of sale dated 5th December, 1981 the respondents had received consideration and kept the petitioner in possession of the land and that, therefore, by operation of Section 53-A of the Transfer of Property Act, the petitioner is entitled to the compensation. We are unable to agree with the learned counsel. In a reference, the dispute is to the title to receive the compensation. It is settled law that the agreement of sale does not confer title and, therefore, the agreement holder, even assuming that the agreement is valid, does not acquire any title to the property. It is seen that the agreement is subsequent to the notification under Section 4(1). The Government is not bound by such an agreement. The inter-se dispute is only with respect to the title as on the date of notification under Section 4(1). The respondent is the undoubted owner of the property as per Section 4 notification and that, therefore, the compensation was directed to be paid to the respondent since he is one of the members. We cannot find any illegality in the order passed by the Courts. However, if the petitioner has got any claim under s.30 of the Land Acquisition Act, it is open to him to take such action as open to him under law. Same view was reiterated in case of Yadu Nandan Garg v. State of Rajasthan & Ors. (supra). Para 3 of the aforesaid judgment is quoted hereunder for ready reference:

We do not find any substance in any of these contentions. It is seen that long after the notification under Section 4 [1] was published in the Gazette, the appellant had purchased the property and constructed the house thereon. Therefore, as against the State his purchase was not lawful and it could not be used against the State to cloth it with a colour of title as against the State. It is an encumbrance against the State and when the acquisition was finalised and the possession is taken, the State under Section 16 is entitled to have the possession with absolute title free

from all encumbrances. The appellant cannot get any title much less valid title to the property. It would further be gainful to quote Section 4 of the Rajasthan Lands (Restrictions on Transfer) Act, 1976. Thus, Section 4 of the Act of 1976 is quoted hereunder for ready reference:

4.Restriction on transfer of lands in relation to which acquisition proceedings have been initiated.- No person shall, except with the previous permission in writing of the competent authority, transfer or purport to transfer by sale, mortgage, gift, lease or otherwise any land or part thereof situated in the State of Rajasthan, which is proposed to be acquired in connection with the scheme and in relation to which a declaration to the effect that such land or part thereof is needed for a public purpose having been made by the State Government under Section 6 of the Rajasthan Land Acquisition Act, 1953 or under the corresponding provision of any other law providing for acquisition of land for a public purpose, and the State Government has not withdrawn from the acquisition under Section 48 of that Act or under any such law. In light of the aforesaid provision, any agreement to sale after issuance of notification is not valid. The possession thereupon by private respondents remains illegal. Land vested in the Government on issuance of Notification under Section 52(1) of the Act of 1959. This is moreso when, in the survey report, land sought to be acquired was noticed and includes the properties in question.

If we consider the matter further assuming that possession of land was not taken in any manner, then allegations as levelled by the petitioner are strengthened and stands proved without effect on acquisition in view of the provisions of UIT Act of 1959 as explained.

20. The private respondents have made much emphasis on various letters issued by the Government from time to time, which includes a note by the then Chief Minister as well as order passed by the Settlement Committee. The letters issued by the Government are not orders and cannot be accepted to nullify acquisition of land as affirmed by Hon'ble Apex Court and this Court. As per last communication, even matter is pending consideration with the State Government and now for the first time, the State has made its stand clear. In view of affidavit of the Chief

Secretary, State of Rajasthan, the entire part of property in question has been acquired. Though for J.D.A., it has been urged that they have taken contradictory stand because initially, they had stated that property in question was not the part of acquisition but in subsequent affidavit filed by Mr.Solanki, there exists change in the stand. In reference of few judgments, it is submitted that the J.D.A. cannot take contradictory stand. Aforesaid material aspect has to be considered in the light of the allegation of favouritism and malafides by the petitioner. Herein, we have considered even the order passed with regard to Laxmi Vilas Hotel under the provisions of ceiling laws and leaving a land for the road to connect Laxmi Vilas Hotel to the main road which shows how private respondents have been favoured for land vests in the Government. The entire material has been considered in the light of the allegations made by the petitioner and the defence taken by the respondents to show that so far as the State Government is concerned, they had issued letters showing land in question to be out of acquisition in ignorance to the judgment of Apex Court and of this Court in the case of Kanak Bhawan. Issuance of the letter based on legal opinion sought by the private respondents indicates favour to private respondents. Issuance of letters by Government does not debar this Court to take proper view based on material. We are thus not guided by the contradictory stand, if taken by the J.D.A. rather we have drawn our conclusion based on material on record. The material available on record proves allegation against official respondents. If the reply given by J.D.A. is taken into consideration, then we can observe that reply goes contrary to record and otherwise we have to decide the matter based on material and on the basis of reply by the J.D.A. only. So far as the State of Rajasthan is concerned, they had not filed reply earlier and the only affidavit filed by the Chief Secretary, State of Rajasthan shows that entire land, which includes the private property in question, has been acquired. The stand taken by the Chief Secretary, State of Rajasthan concludes the controversy from the side of the State and nullifies any conclusion given earlier by the State. So far as the order passed under ceiling laws in respect of Laxmi Vilas Hotel is concerned, it cannot nullify the acquisition or affect it in any manner and same is the position regarding notice under Section 32 and 33 of the J.D.A. Act. So far as the order passed by the J.D.A. Tribunal in the case of Gandhi Grah Nirman Co-operative Society is concerned, it find place in the affidavits filed by Mr.Solanki and

the Chief Secretary, State of Rajasthan. Suffice is to say that independent to the aforesaid decision by the J.D.A.Tribunal, we have drawn our own conclusions, hence, if the judgment of the J.D.A. Tribunal is subject matter of challenge in other writ petition, it has no impact on the present writ petition as we are not relying upon on the order passed by the J.D.A. Tribunal and are deciding the matter independently. The respondents have further submitted that in reference to Section 83-A (4) of the J.D.A. Act, decision given by the Settlement Committee is binding on the Authorities.

We have considered the aforesaid argument also. It would be gainful to refer the order passed by the Settlement Committee, which is quoted hereunder for ready reference:

(1) Laxmi Vilas hotel area of the applicants is not included in the acquired land as it is evident from the letter dated 25.06.1998 of the State Government and an area of 18000 sq.mt. Stood exempted from the provisions of Urban Land Ceiling Act vide order dated 08.09.89 of the Government for the purpose of hotel.

(2)The applicants should be given permission for construction of boundary walls around area in question as per pre-sanctioned site plan dated 18.10.93 and approach road should also be given.

(3)If Laxmi Vilas area is considered to be included in acquisition proceedings (because acquisition notification is for whole of Khasra No.72,75 and 77) then as per above mentioned situation and in confirmation of previous clarification/recognition of State Government, formal order should be issued for exemption from acquisition.

(4) Jaipur Development Authority has not any solid and undisputed ground to cancel the approved site plan dated 18.10.93, therefore, Jaipur Development Authority should not take any such kind of proceeding.

(5)Learned member secretary of the Committee (Sh.B.M.Kapoor) did not concur with the above mentioned conclusion. In his opinion the entire land of Laxmi Vilas hotel stood acquired and compensation of the same had been given and as per

validity of land utilization of Rambagh campus by State level settlement dated 11.08.2001 it is desired for use of Golf Club, Polo Club and City Level Park only, we have analyzed both the aspect thoroughly and we are not concur with the view of the member secretary due to above mentioned reasons. Therefore, the decision is based on majority(2:1). Perusal of aforesaid order shows that even after conclusion at para No.1, the Settlement Committee itself held that if Laxmi Vilas area is considered to be included in acquisition proceedings, then to issue formal order for exemption from acquisition. This clearly shows that only conclusion does not exists holding property in question to be out of acquisition. The finding in Para (1) above is otherwise based on the letter/orders passed by the State Government. This is apart from the fact that finding aforesaid is not final in nature because property, worth more than Rs.50 lacs, was out of jurisdiction of the Settlement Committee, thus matter was referred to the State Level Committee wherein only interim order was passed and not the final order. Thus, it is not a case where the final order exists by a competent Settlement Committee i.e. State Level Committee. In view of detailed discussion made above, it becomes clear that the property in question was the part of acquisition as entire land of khasra Nos. 72,75 & 77 except the part of land belonging to Ashok Club has been acquired. After passing of the award, compensation was also deposited, which includes compensation of the land of disputed property. A reference against the award has also been sought by Brigadier Bhawani Singh where compensation can be claimed for structures also, if not granted. In the light of the judgment of the Hon'ble Apex Court in the case of Pratap & Anr. v. The State of Rajasthan & Ors. (supra), entire land vests in the State Government from the date of issuance of the notification under Section 52(1), i.e., from the year 1973 itself, and if any person occupied a part of the acquired land, is to be treated as trespasser. In the light of the judgment in the case of Sita Ram Bhandar Society, New Delhi vs. Lieutenant Governor, Government of NCT, Delhi & Ors.(supra) so as the judgment in the case of Balmokand Khatri Educational and Industrial Trust, Amritsar v. State of Punjab & Ors. (supra) and also in the case of Executive Engineer, Jal Nigam Central Stores Division, U.P. v. Suresh Nand Juyal @ Musa Ram (Deceased) by LRs Ors. reported in (1997) 9 SCC 224, the private respondents are not having rightful possession over the land rather for respondent No.7, even their suit for

specific performance and also challenge to the acquisition was not accepted with a clear finding that land in dispute is under acquisition, thus agreement to sale is void. In that situation, private respondents have no authority to possess the property. In the circumstances, the J.D.A. is free to take action to remove the encroachment. This is more specifically when the private respondents are possessing not only the building area but even the open land, which even according to them was subject matter of acquisition because as per the arguments of the private respondents, only structures were excluded from acquisition. At the end, we further hold that act of the official respondents was not proper at the initial stage rather it shows favour to private respondents for a land worth crores. However, the affidavits given by the Chief Secretary, State of Rajasthan clarifies the position, thus we need not to make

observation regarding the act of the official respondents.

21. The writ petition is accordingly allowed holding that the private respondents are not in rightful possession of the property in question, thus official respondents are directed to take action against those respondents in accordance to the provisions of law so as to remove the encroachment. Necessary action in that regard may be initiated and completed within the time frame. The land thereupon be developed and be used for the purposes, it was acquired. Costs, however, made easy.

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