

**IN THE HIGH COURT OF MADHYA
PRADESH**

AT INDORE

BEFORE

**HON'BLE SHRI JUSTICE SUSHRUT ARVIND
DHARMADHIKARI**

&

HON'BLE SHRI JUSTICE GAJENDRA SINGH

ON THE 3rd JUNE, 2024

WRIT PETITION No. 30059 of 2023

BETWEEN:-

1. **ROOPNARAYAN PATEL S/O LATE SHRI SATYANARAYAN PATEL,
AGED ABOUT 37 YEARS, OCCUPATION: AGRICULTURIST 154/2
ARYA SAMAJ MARG, MALIPURA UJJAIN (MADHYA PRADESH)**
2. **DILIP PARMAR THROUGH POWER OF ATTORNEY HOLDER
RAMGOPAL S/O LATE SHRI PURSHOTTAM, AGED ABOUT 47
YEARS, OCCUPATION: AGRICULTURIST 10, OM SHRI GURU
KRIPA HI KEVALAM LAXMIBAI MARG PATEL GALI MALIPURA
UJJAIN (MADHYA PRADESH)**
3. **SHUBHASH PARMAR THROUGH POWER OF ATTORNEY
HOLDER RAMGOPAL S/O LATE SHRI PURSHOTTAM, AGED
ABOUT 47 YEARS, OCCUPATION: AGRICULTURIST 10/1, OM
SHRI KRIPA HI KEVALAM LAXMIBAI MARG PATEL GALI
MALIPURA UJJAIN (MADHYA PRADESH)**
4. **SUNIL PARMAR THROUGH POWER OF ATTORNEY HOLDER
RAMGOPAL S/O LATE SHRI PURSHOTTAM, AGED ABOUT 47
YEARS, OCCUPATION: AGRICULTURIST 10, LAXMIBAI MARG
PATEL GALI MALIPURA UJJAIN (MADHYA PRADESH)**
5. **RADHESHYAM PATEL THROUGH POWER OF ATTORNEY
HOLDER RAMGOPAL S/O LATE SHRI PURUSHOTTAM, AGED
ABOUT 47 YEARS, OCCUPATION: AGRICULTURIST 10,
LAXMIBAI MARG PATEL GALI MALIPURA UJJAIN (MADHYA
PRADESH)**
6. **PREM PATEL THROUGH POWER OF ATTORNEY HOLDER
RAMGOPAL S/O LATE SHRI PURSHOTTAM, AGED ABOUT 47
YEARS, OCCUPATION: AGRICULTURIST 10 LAXMIBAI MARG
PATEL GALI MALIPURA UJJAIN (MADHYA PRADESH)**

7. **JAGDISH PARMAR THROUGH POWER OF ATTORNEY HOLDER RAMGOPAL S/O LATE SHRI PURSHOTTAM, AGED ABOUT 47 YEARS, OCCUPATION: AGRICULTURIST 10, LAXMIBAI MARG PATEL GALI MALIPURA UJJAIN (MADHYA PRADESH)**
8. **RAMESHWAR PARMAR THROUGH POWER OF ATTORNEY HOLDER RAMGOPAL S/O LATE SHRI PURSHOTTAM, AGED ABOUT 47 YEARS, OCCUPATION: AGRICULTURIST 5 PATEL COLONY MALI MANDIR KE PAS MALIPURA UJJAIN (MADHYA PRADESH)**
9. **LAXMAN PARMAR THROUGH POWER OF ATTORNEY HOLDER RAMGOPAL S/O LATE SHRI PURSHOTTAM, AGED ABOUT 47 YEARS, OCCUPATION: AGRICULTURIST 10 MALIPURA UJJAIN (MADHYA PRADESH)**
10. **BHAGVAN PARMAR THROUGH POWER OF ATTORNEY HOLDER RAMGOPAL S/O LATE SHRI PURSHOTTAM, AGED ABOUT 47 YEARS, OCCUPATION: AGRICULTURIST 3, LAXMIBAI MARG GALI NO. 1 MALIPURA UJJAIN (MADHYA PRADESH)**
11. **TEJNARAYAN PARMAR THROUGH POWER OF ATTORNEY HOLDER RAMGOPAL S/O LATE SHRI PURSHOTTAM, AGED ABOUT 47 YEARS, OCCUPATION: AGRICULTURIST 1, PATEL GALI MALIPURA UJJAIN (MADHYA PRADESH)**
12. **KAILASH NARAYAN PARMAR THROUGH POWER OF ATTORNEY HOLDER RAMGOPAL S/O LATE SHRI PURSHOTTAM, AGED ABOUT 47 YEARS, OCCUPATION: AGRICULTURIST 1, PATEL GALI MALIPURA UJJAIN (MADHYA PRADESH)**
13. **KULDEEP PARMAR THROUGH POWER OF ATTORNEY HOLDER RAMGOPAL S/O LATE SHRI PURSHOTTAM, AGED ABOUT 47 YEARS, OCCUPATION: AGRICULTURIST 1, PATEL GALI MALIPURA UJJAIN (MADHYA PRADESH)**
14. **GAUTAM PARMAR THROUGH POWER OF ATTORNEY HOLDER RAMGOPAL S/O LATE SHRI PURSHOTTAM, AGED ABOUT 47 YEARS, OCCUPATION: AGRICULTURIST 1, PATEL GALI MALIPURA UJJAIN (MADHYA PRADESH)**
15. **JITENDRA PARMAR THROUGH POWER OF ATTORNEY HOLDER RAMGOPAL S/O LATE SHRI PURSHOTTAM, AGED ABOUT 47 YEARS, OCCUPATION: AGRICULTURIST 10, MALIPURA UJJAIN (MADHYA PRADESH)**
16. **DHARMENDRA PARMAR THROUGH POWER OF ATTORNEY HOLDER RAMGOPAL S/O LATE SHRI PURSHOTTAM, AGED ABOUT 47 YEARS, OCCUPATION: AGRICULTURIST 10/1 LAXMIBAI MARG MALIPURA UJJAIN (MADHYA PRADESH)**
17. **PINKESH PARMAR THROUGH POWER OF ATTORNEY HOLDER RAMGOPAL S/O LATE SHRI PURSHOTTAM, AGED ABOUT 47 YEARS, OCCUPATION: AGRICULTURIST 10/1 LAXMIBAI MARG GALI NO. 2 MALIPURA UJJAIN (MADHYA PRADESH)**

18. SHUBHAM PARMAR THROUGH POWER OF ATTORNEY HOLDER RAMGOPAL S/O LATE SHRI PURSHOTTAM, AGED ABOUT 47 YEARS, OCCUPATION: AGRICULTURIST 10/1 LAXMIBAI MARG GALI NO. 2 MALIPURA UJJAIN (MADHYA PRADESH)
19. MOHANLAL PARMAR THROUGH POWER OF ATTORNEY HOLDER RAMGOPAL S/O LATE SHRI PURSHOTTAM, AGED ABOUT 47 YEARS, OCCUPATION: AGRICULTURIST 10/1 LAXMIBAI MARG PATEL GALI UJJAIN (MADHYA PRADESH)
20. MAHESH PARMAR THROUGH POWER OF ATTORNEY HOLDER RAMGOPAL S/O LATE SHRI PURSHOTTAM, AGED ABOUT 47 YEARS, OCCUPATION: AGRICULTURIST 10, LAXMIBAI MARG PATEL GALI MALIPURA UJJAIN (MADHYA PRADESH)
21. SANJAY PATEL THROUGH POWER OF ATTORNEY HOLDER RAMGOPAL S/O LATE SHRI PURSHOTTAM, AGED ABOUT 47 YEARS, OCCUPATION: AGRICULTURIST 10 MALIPURA PATEL GALI UJJAIN (MADHYA PRADESH)
22. RAMGOPAL PATEL S/O LATE SHRI PURUSHOTTAM PATEL, AGED ABOUT 47 YEARS, OCCUPATION: AGRICULTURIST 10, LAXMIBAI MARG PATEL GALI MALIPURA UJJAIN (MADHYA PRADESH)

.....PETITIONERS

(SHRI AJAY MISHRA - ADVOCATE FOR THE PETITIONERS)

AND

1. THE STATE OF MADHYA PRADESH PRINCIPAL SECRETARY REVENUE DEPARTMENT VALLABH BHAWAN, BHOPAL (MADHYA PRADESH)
2. UNDER SECRETARY REVENUE DEPARTMENT VALLABH BHAWAN BHOPAL (MADHYA PRADESH)
3. COLLECTOR/LAND ACQUISITION OFFICER COLLECTOR OFFICE KOTHI MAHAL UJJAIN (MADHYA PRADESH)
4. COMMISSIONER MADHYA PRADESH HOUSING DEVELOPMENT CORPORATION 3RD-4TH FLOOR BLOCK 3 PARYAVAS BHAVAN MOTHER TERESA ROAD BHOPAL (MADHYA PRADESH)
5. ASSISTANT COMMISSIONER MADHYA PRADESH HOUSING BOARD BHARATPURI DEWAS ROAD UJJAIN (MADHYA PRADESH)
6. TEHSILDAR KOTHI MAHAL PALACE UJJAIN (MADHYA PRADESH)
7. SANJAY CONSTRUCTION THROUGH ITS OWNER F 4 FORTUNE PARK GULMOHAR COLONY BHOPAL (MADHYA PRADESH)

.....RESPONDENTS

*(SHRI SUNIL JAIN - SENIOR ADVOCATE WITH SHRI KUSHAGRA JAIN -
ADVOCATE FOR THE RESPONDENT NO. 4 & 5.*

*(SHRI BHUWAN GAUTAM - GOVT. ADVOCATE FOR THE
RESPONDENT/STATE)*

*(SHRI AYUSHMAN CHOUDHARY - ADVOCATE FOR THE RESPONDENT
NO.7)*

Reserved on : 08.05.2024

Pronounced on : 03 06.2024

*This petition having been heard and reserved for order
coming on for pronouncement this day, Hon'ble Shri Justice S.A.
DHARMADHIKARI pronounced the following*

ORDER

With the consent of parties, matter is heard finally.

The present petition has been filed challenging the illegal tender(Annexure P-9) issued by the Housing Board for construction of houses, building etc and construction raised by respondent no. 7 on the basis of tender issued by Madhya Pradesh Housing Board.

Chequered History

2. Petitioners are agriculturists and owners of land bearing Survey No. 38/min-1 admeasuring 0.844 hectare , 38/min-2 admeasuring 2.144 hectare and 42/4 admeasuring area 0.105 i.e. a total admeasuring area 3.093 hectare of land situated at Village Goyla Khurd, Teh. & Distt. Ujjain. The land in question was initially recorded in the name of Late Shri Omkar Lal and the present petitioners are the legal heirs of Late Shri Omkar Lal.

Land Acquisition

3. The said land was acquired by the Land Acquisition Officer proposed to acquire the private land of petitioners in the year 1997.

The land in question was shown to be acquired for the scheme of M.P. Housing Board for construction of old age home at Ujjain.

4. The land Acquisition Officer has passed an order dated 15.04.2005 to the effect that the scheme for which the land in question was acquired was valid till 21.09.2003 and therefore, the same stood lapsed. The Commissioner, Ujjain has issued letter dated 03.10.2005 verifying the said fact that the scheme was lapsed and if the land is required, then fresh proposal be passed. Thereafter, the Collector/Land Acquisition Officer has again passed an order on 31.10.2006 to review the aforesaid order. However, no compensation for the aforesaid Land Acquisition was ever received by the petitioners.

Litigation

5. Petitioners have filed W.P. No. 2032/2001 challenging the validity of notification issued under Section 4 and 6 of the Land Acquisition Act, 1894[referred to as 'the Act of 1894' hereinafter] which was dismissed vide order dated 03.11.2004. Against the said order, L.P.A. No. 409/2004 was filed which also stood dismissed vide order dated 23.11.2004. Thereafter, SLP No. 26275/2004 was filed which stood dismissed vide order dated 21.10.2005.

6. Thereafter against these, various proceedings were initiated and ultimately an application was preferred before the respondent no.1 on 25.07.2014 for exonerating the land of petitioners from acquisition as the new Land Acquisition Act came into force. The Revenue Department accepted the application and issued letter dated 06.12.2014 directing to mutate the name of petitioners in the revenue records. Pursuant to the said letter, directions were sought by the Collector, Ujjain and an order dated 24.06.2016 was passed cancelling the order by which the land was exonerated.

7. Being aggrieved by the said order dated 24.06.2016, petitioners filed W.P. No. 7479/2016 which is pending.

8. The Housing Board [referred to as 'the Board'] has issued tender in the month of August and September, 2023 for the project 'Shivangi Parisar' for construction of commercial building and houses. The tender was allotted to respondent no.7. Petitioners thereafter approached the State Government who has passed the order dated 11.10.2023 wherein land of petitioners was exonerated and declared free from acquisition and it was directed to the Collector to mutate the name of petitioners in the revenue records. Pursuant to the said order of State Government, petitioners have approached the revenue department for mutation of their names in the revenue records, but the revenue authorities are not mutating the name of petitioners. The Board after getting knowledge of said letter in connivance with the contractor has started the construction work day in and day out in haste. Faced with the said situation, petitioners approached the State Government for restraining the respondents from raising construction. Taking note of the situation, the Collector issued direction vide letter dated 24.11.2023. Petitioners have also submitted representations alongwith all orders to the Board requesting for restraining the respondents from raising construction.

9. Initially, when the land was acquired in the year 1997, the purpose of such acquisition was construction of old age home, but now the entire purpose of acquisition has been changed and the Board is constructing commercial complex. Hence, the present petition is filed.

10. Learned counsel for the petitioners has raised various grounds which are as follows:

(i) The first and foremost contention of learned counsel for the

petitioners is that the notification u/S 4 is defective and vague in as much as, it has been issued without complying the mandatory requirements of the Act of 1894. The object of issuing a notification under Section 4 of the Act is two fold. First, it is a public announcement by the Government and a public notice by the Collector to the effect that the land, as specified therein is needed or is likely to be required by the Government for the 'public purpose' mentioned therein; and secondly, it authorizes the departmental officers or officers of the local authority, as the case may be to do all such acts as are mentioned in Section 4(2) of the Act. The notification has to be published in the locality and particularly persons likely to be affected by the proposal have to be on notice that such an activity is afoot. The notification which has completely violated in case in hand. In support of his contentions, learned counsel for the petitioners has placed reliance on the judgments passed in the case of **Madhya Pradesh Housing Board Vs. Mohd Shafi and Others** reported in **(1992) 2 SCC 168** and **Om Prakash Sharma and Others Vs. M.P. Audhyogik Kendra Vikas Nigam and Others** reported in **(2005) 10 SCC 306.**

(ii) Secondly, the action initiated by the Board is illegal and against the facts and documents. The respondent/Board is one of the department of State Government and when the State Government has passed the order exonerating the land of petitioners and declaring the same free from acquisition, then question of raising construction does not arise and the manner in which the construction is being raised clearly reveals the ill-intention of the Board who is hand in glove with the respondent no. 7 in constructing commercial complex. The Board has failed to consider the fact that proposal was initially given in the

year 1997 for construction of old age home and now in the year 2023, the Board is trying to construct a commercial complex which is not permissible under law as the said scheme has already been lapsed in the year 2003. Moreso, the Board is not a land acquisition authority. When the purpose of acquisition has been diverted and the scheme has been lapsed and specific direction was issued for mutating the name of petitioners by the State Government itself, then raising construction is illegal and arbitrary. The entire machinery of Government is hand in glove with the respondent no. 7 in as much as the Board is permitting the respondent no. 7 to raise construction. In utter disregard to the order passed by the State Government, the revenue authority is not mutating the name of petitioners. Hence, the award passed by respondent no.3 is illegal and deserves to be quashed.

11. In support of his contentions, learned counsel for the petitioners has pressed into service various other judgments which are as follows:

Anand Singh and Another Vs. State of Uttar Pradesh and Others reported in (2010) 11 SCC 242.

Laxman Lal(Dead) Through LRS and Another Vs. State of Rajasthan and Others reported in (2013) 3 SCC 764.

Prabhawati and Others Vs. State of Bihar and Others reported in (2014) 13 SCC 721.

Manoharlal & Ors. Vs. Land Acquisition Officer & Others passed in W.P. No. 514/2006.

12. Learned counsel for the petitioner submitted that Board invoking urgency clause under Section 17(4) of the Act of 1894 had dispensed with the procedure under Section 5-A of the Act of 1894. No doubt public interest must receive primacy when it conflicts with

private interest. However, even if there is a public purpose for the acquisition of land, the urgency justifying invoking the power under Section 17(4) of the Act of 1894 must be shown. While invoking Section 17(4) of the Act of 1894, the authority concerned has to form a subjective opinion and the said opinion cannot be capricious. The material before the authority for invoking urgency clause must be relevant. The authority must apply his mind to the material. Though the purpose of acquisition is found to be a public purpose, but the duty of the authority does not end and he must satisfy that there is real urgency such that the invaluable right granted to a person to ventilate his grievances against the acquisition is not unjustifiably extinguished. The power under Section 17(4) is discretionary. Being a discretion, it must be exercised with due care and caution.

13. Learned counsel for the respondent no.1 and 2/State contended that though petitioners are portraying the present matter to be relating to tender, but disputed questions of fact are involved in the present petition, which cannot be gone into by this Court in this writ petition and the same can be decided in civil suit. Hence, under such circumstances, the petitioners have to avail the efficacious remedy of approaching civil Court by filing civil suit for adjudication and, therefore, petition is not maintainable and deserves to be dismissed *in limine* on this ground alone.

14. On the other hand, learned counsel for the respondent no.4 and 5 vehemently opposed the petition raising various grounds which are as follows:

(i) No documents to prove ownership - contended that petitioners have filed the present petition through a power of attorney holder namely Ramgopal S/o Late Purushottam claiming themselves to be the owner of the property in question. But they have not filed any

document to establish that they are the owners of the property in question as on today.

(ii) Not a tender matter - It is further submitted that petitioners have challenged the allotment of tender in favour of respondent no.7. Petitioners have nothing to do with allotment of tender or process of awarding the tender or they are alleging any irregularity in award of tender. The basic contention of petitioners is that the State Government vide letter dated 11.10.2023 has exonerated the land in question from acquisition and directed the revenue authorities to mutate their names in the revenue records and despite the orders of State Government, the Board has allotted tender for development of land in question for the purpose of residential colony. Hence, the matter does not appear to fall under the category of tender matter.

(iii) Suppression of material facts - It is submitted that petitioners herein have not come before this Court with clean hands as they have suppressed material facts in as much as that petitioners have unsuccessfully challenged the acquisition proceedings which travelled upto the Apex Court. The petitioners after passing of the award have approached the High Court in W.P. No. 1688/2007 challenging the same on the ground that the award has been passed after expiry of period of two years after publication of declaration under Section 6 of the Act of 1894. The said writ petition was dismissed by this Court and affirmed by the Division Bench in W.A. No. 18/2008. Petitioners have also filed reference case which stood dismissed on 17.08.2012. Petitioners suppressing all these material facts have filed the petition and later on filed application for amendment to bring on record these material facts. Moreso, the father of power of attorney holder had already filed W.P. No. 7479/2016 wherein prayer for interim relief was rejected. Petitioners have not chosen to disclose this fact in the instant

petition. In support of his contention, learned counsel for the respondent has placed reliance on the judgment passed by the Apex Court in the case of **K. Jayaram and Others Vs. Bangalore Development Authority and Others** reported in **(2022) 12 SCC 815**.

“39. If the primary object as highlighted in Kensington Income Tax Commrs.(supra) is kept in mind, an applicant who does not come with candid facts and “clean breast” cannot hold a writ of the court with “soiled hands”. Suppression or concealment of material facts is not an advocacy. It is a jugglery, manipulation, manoeuvring or misrepresentation, which has no place in equitable and prerogative jurisdiction. If the applicant does not disclose all the material facts fairly and truly but states them in a distorted manner and misleads the court, the court has inherent power in order to protect itself and to prevent an abuse of its process to discharge the rule nisi and refuse to proceed further with the examination of the case on merits. If the court does not reject the petition on that ground, the court would be failing in its duty. In fact, such an applicant requires to be dealt with for contempt of court for abusing the process of the court.”

(iv) Petition is based on sham Document - The entire petition of petitioners is based on an alleged order passed by the State Government dated 11.10.2023 portraying that the upon representation preferred by the petitioners, the State Government has ordered the Collector, Distt. Ujjain to release the land from acquisition and mutate names of petitioners in the revenue records. On clarification sought from the State Government regarding the alleged letter issued on 11.10.2023, it surfaced that under reference No. 158/1512073/2023/ dated 11.10.2023, some other letter was issued and not the letter on the

basis of which petitioners are claiming that the land has been declared as free from acquisition and, therefore, the same is sham document. Relying on the said forged letter, petitioners are helbent upon to get their land exonerated from acquisition despite loosing their case from every forum thereby playing fraud.

(v)Development already carried out on land in question - It is also submitted that the respondents have developed the entire land after obtaining necessary permissions and an amount of Rs. 7,88,36,270/- has already been spent for carrying out development of the land. The respondents have issued advertisement for allotment of plots in the Shivangi Parisar Colony being developed on the land in question. In response to the said advertisement, as many as 384 people have applied for allotment of plot and after following the process, respondents have made allotment in favour of 27 persons till now thereby creating third party right.

15. Learned counsel for the respondent no.4 and 5 further submitted that the Board had acquired the land in question after following due process of the Act of 1894. The compensation in respect of the land in question was duly deposited by them. Possession was duly delivered to respondents. Petitioners after exhausting all the remedies at various levels i.e. upto the Apex Court challenged the acquisition and awards and despite pendency of W.P. No. 7479/2016 have again tried to reopen the issue by filing the instant petition. The acquisition proceedings were challenged after filing of preliminary reply to the petition raising various objections, the petitioners have filed an application for amendment in the petition and brought some new facts and grounds challenging the acquisition in respect of the land in question. The petition filed by petitioners is thoroughly misconceived. Learned counsel also submits that present writ petition

under Article 226 of the Constitution is a classic example of misuse and abuse of process of law which is only meant for protection of fundamental rights and prayed that the same may be dismissed with exemplary costs.

16. Learned counsel for the respondent no. 7 submits that petitioners have primarily challenged the acquisition proceedings and the award passed in respect thereof under the garb of challenging the tender without any of grounds viz evaluation process, effectiveness, violation of rules of natural justice etc. It is further submitted that respondent no.7 after taking part in the tender process has infused a major portion of its assets, man power and funds for completion of tender work on the land in question. Respondent is already suffering huge loss in view of interim relief being granted in favour of petitioners. By way of present petition, petitioners are re-agitating the grounds which are available to them during earlier rounds of litigation before this Court wherein land acquisition proceedings were put to challenge by the petitioners unsuccessfully. Since, the orders in earlier rounds of litigation have attained finality, the principle of *res-judicata* comes into play.

17. So far as the contention of learned counsel for the petitioners that the very purpose of scheme has been changed by the Board is concerned, it is clear that the said scheme was floated for residential purpose wherein the Board intended to develop residential colony/premises. The documents related to land acquisition never whispered the purpose of the scheme to develop an old age home as canvassed by the petitioners in the petition. The purpose of land acquisition is public and still it is being used for public purpose by developing and constructing residential colony. Once, the land is acquired by the State, it is the prerogative of the State where the same

has to be utilized. Petitioners have become *persona non grata*, once the land is vested in the State. The present petition is blatant abuse of process of law and wastage of precious time of this Court which could be utilized for more pressing matters and, therefore, the same deserves to be dismissed.

18. In this regard, learned counsel for the respondent no. 7 has pressed into service, various the judgments passed by the Apex Court which are as follows:

(i) **Northern Indian Glass Industries Vs. Jaswant Singh and Others** reported in **(2003) 1 SCC 335** wherein it has been held that land, if not used for the purpose acquired held after land vests in State under S. 16 following taking of possession by Collector, owner has no right to seek to re-vest the land in himself even if the land is not used for the purpose for which it was acquired.

(ii) **Chandragauda Ramgonda Patil and Another Vs. State of Maharashtra and Others** reported in **(1996) 6 SCC 405** wherein it has been specifically held that land acquired for a public purpose can be utilized for any other public purpose.

(iii) **Sulochana Chandrakant Galande Vs. Pune Municipal Transport and Others** reported in **(2010) SCC 467** wherein it has been summarized that once the land is acquired, it vests in the State free from all encumbrances. It is not the concern of the landowner how his land is used and whether the land is being used for the purpose for which it was acquired or for any other purpose. He becomes *persona non grata* once the land vests in the State. He has a right to get compensation only for the same. The person interested cannot claim the right of restoration of land on any ground, whatsoever.

19. Learned counsel for the petitioner in rejoinder to the

contention of learned counsel for the respondent no. 4 and 5 regarding the letter dated 11.10.2023 (Annexure P-10) relied upon by the petitioner being a sham document, referring to list of document No. 121/2024 dated 04.01.2024, it is submitted that the petitioners have obtained the entire set of proceedings comprising about 311 pages. Both the letters were supplied by the department i.e. letter dated 11.10.2023 (Annexure P-10) and letter (Annexure R/4-4). So far as the question of genuineness is concerned, the same can be ascertained from the State Government. The Under Secretary State Government has written letter dated 29.11.2023 about the correctness of said letter, but for reasons best known to the respondent no.4 and 5, the same has not been placed on record which clearly depicts that respondents have not come up before this Court with clean hands.

20. That apart, the respondents no.4 and 5 as regards their contention about concealment of unsuccessful litigation is concerned, the same is incorrect, in the averments made in the petition itself has clearly mentioned as well as annexed the orders passed by this Court as well as the Hon'ble Apex Court. Hence, there is no concealment in the matter. The writ petition and other orders annexed in R-4/1 could not be filed as there are several litigation with regard to acquisition and petitioners being villagers are not having proper documentation due to which those documents were left to be filed.

21. The present matter whether falls under the category of tender matter or not, petitioners have clearly challenged the tender dated 20.09.2023 for the reason that construction work has commenced on petitioners' land on the basis of tender being allotted to the respondent no.7. The objections raised by the respondents are without any basis and deserves to be over ruled.

22. Heard, learned counsel for the parties and perused the record.

23. So far as invoking Section 17(4) of the Act of 1894 is concerned, this Court is in consonance with the submissions advanced by the counsel for petitioner that exercise of Section 17(4) to dispense with procedure under Section 5-A is discretionary. Undoubtedly, besides showing public purpose, the Board should have shown the urgency for invoking Section 17(4) of the Act of 1894. There is non-application of mind and failure to form a subjective opinion regarding urgency required.

24. There is no doubt that public interest must receive primacy when it conflicts with private interest. However while invoking power under Section 17(4) to dispense with procedure under Section 5-A, the urgency justifying such invocation must be revealed.

25. This Court finds support in its view by the judgment rendered by Apex Court in the case of Hamid Ali Khan (Dead) through legal representatives and another Vs. State of Uttar Pradesh and Others reported in (2021) 20 SCC 65 wherein it has been held that notification under Section 17(4) dispensing with the inquiry under Section 5A was unjustified and the said provision was invoked without any material and application of mind by the authority concerned.

26. On perusal of the letter sent by Board dated 02.05.2001 to the Collector Distt. Ujjain regarding invoking the urgency clause as per the provisions of Section 17(1) of Act of 1894, it appears that the Board has not shown any urgency for invoking the said clause. Mere mentioning the same in the letter addressed to the Collector, Distt Ujjain to invoke the urgency clause would not be sufficient to meet the provisions of Section 17(4) of the Act of 1894 as neither any relevant material has been produced before the Collector nor any justifiable reason has been assigned by the Board for invoking the said clause.

Hence, invoking urgency clause is not sustainable in the eyes of law.

27. The contention of counsel for petitioner as regards change of purpose of scheme is concerned, there is no iota of doubt that initially when the scheme was introduced, the public purpose of construction of old age home was shown. However, by the efflux of time, the very purpose of scheme has been changed to development and construction of residential colony on the acquired land.

28. In the considered opinion of this Court, it is a clear case of diversification of purpose. It requires to be carefully noted that it is not for any public purpose. But it is a diversification to a private purpose. In the instant case, under the cover of public purpose, the petitioners are dispossessed and there is diversification and thus, this Court holds that it is transcend power of eminent domain.

29. It is also pertinent to mention here that learned counsel for the respondents have raised the objection regarding reopening of the case by filing this petition. Petitioners herein have challenged the tender by allotted to respondent no. 7 by the Board for development and construction of residential colony thereby giving a fresh cause of action as the very purpose of the scheme has been changed from public to private by creating third party rights as respondents by their own showing revealed that allotment of plots in the Shivangi Parisar Colony being developed on the land in question has already been started. Hence, a fresh cause of action has arisen for the petitioners who were divested of their land under the garb of public purpose which does not exist as on today and has been completely changed to private. On the one hand, respondents have changed the very purpose of scheme thereby giving a fresh cause of action to the petitioners and on the other hand they are raising the principle of res-judicata which does not at all comes into play in the case of petitioners.

30. The judgments rendered by the Apex Court in the case of Royal Orchid Hotels Limited and Another Vs. G. Jayarama Reddy and Others reported in (2011) 10 SCC 608 as well as the in the case of Savitri Devi & Others Vs. State of U.P. reported in (2015) 7 SCC 21 are worthy of reference in this regard.

31. Relevant excerpts of the judgment in the case of Savitri Devi (Supra) are reproduced below for convenience and ready reference:

This leads to an incidental issue as to whether development of land for residential purposes is impermissible and could have given a fresh cause of action to the land owners to approach the Court. Here, we would like to refer to the judgment of this Court in [Nand Kishore Gupta and Ors. v. State of U.P. and Ors.](#)[9] which concerns the same Act viz. [U.P. Industrial Area Development Act, 1976](#). In that case, for Yamuna Express Project, the land was acquired setting it to be 'public purpose'. The land was utilised for construction of Yamuna Expressway and along therewith development of the part of the land was undertaken for commercial, amusement, industrial, institutional and residential purposes as well. It was accepted that construction of Yamuna Expressway was work of public importance. However, the utilisation of land for development of other purposes, namely, commercial, amusement, industrial, institutional and residential etc. was challenged, as not amounting to acquisition for 'public purpose'. There was another feature namely for the development of the land in the aforesaid manner Public Private Partnership (PPP) was formed and private parties were asked to undertake the development on BOT (Built, Operate and Transfer) basis. Such PPP on BOT basis was also challenged as colourable exercise of power in which private parties were involved. The challenge was repelled by this Court holding that acquisition

of land along Yamuna Express for development of the same for commercial, amusement, industrial, institutional and residential purposes was complimentary to creation of Expressway. Such complimentary purpose was also treated as 'public purpose'. It was also contended by the land owners that the acquisition was not for "public purpose" because: (a) its object was not covered by [Section 3\(f\)](#) of the Act, (b) it really fell not under [Part II of the Act](#) but under Part VII thereof as it virtually amounted to acquisition of land for the contractor Company J, (c) the compensation was coming wholly from J and not from the Government or YEIDA, (d) the acquisition for so-called interchange was not at all necessary and was a colourable exercise of power. They further contended that the application of [Sections 17\(1\) and 17\(4\)](#) of the Act was wholly unnecessary and therefore, the enquiry under Section 5-A could not have been dispensed with. All the aforesaid contentions were rejected. Going by the dicta in the aforesaid judgment, it is contended by the authorities that merely because the part of the land is utilised for residential purpose, it cannot be said that the respondents- authorities have not adhered to the purpose for which the land is acquired. As per them, this would be complimentary purpose to the main purpose.

We have to keep in mind that in all these cases, after the land was acquired, which was of very large quantity and in big chunks, further steps were taken by passing the award, taking possession and paying compensation. In many cases, actual possession was taken and in rest of the cases, paper possession was taken where because of the land under Abadi, actual possession could not be taken on spot immediately. Fact remains that in many such cases where possession was taken, these land owners/appellants even received compensation. All these petitions have been filed only

thereafter which may not be maintainable stricto sensu having regard to the law laid down by the Constitution Bench of this Court in [Aflatoon and Ors. v. Lt. Governor of Delhi and Ors.](#)[10] and the dictum of this judgment is followed consistently by this Court in various cases [See [Murari and Ors. v. Union of India and Ors.](#)[11], [Ravi Khullar and Anr. v. Union of India and Ors.](#)[12], [Anand Singh and Anr. v. State of U.P. and Ors.](#)[13]] Once we look into the matter from the aforesaid prospective, the argument of the appellants that giving away of the land by allotment to the private developers for construction of residential units gave them the fresh cause of action, gets dented to a great extent. No doubt, following [Royal Orchid Hotels Limited](#) case and other similar cases, the High Court has not dismissed the writ petitions filed by the appellants on the ground of delay and laches accepting the plea of the appellants that they felt aggrieved on coming to know that the land was sought to be given to the private persons for development. In this way, discretion is exercised by the High Court in entertaining the writ petitions on merits. Since such a discretion is exercised, we would not like to interfere with that discretion, more so, when a very fair stand is taken by Mr. Rao, learned senior counsel appearing for the Noida authority, as mentioned above. However, the aforesaid position in law is stated to highlight that it was equally possible to dismiss these writ petitions as the same were filed belatedly after passing of the award and when in most of the cases, possession was taken and compensation paid. When we examine the matter from the aforesaid angle, we reach an irresistible conclusion that the High Court has gone an extra mile in finding the solution to the problem and balancing the equities in a manner which is favourable to the land owners.

32. Learned counsel for the respondents have raised objection as

regards letter dated 11.10.2023 to be a sham document fraudulently obtained by the petitioners to fulfill their ulterior motive of getting the land mutated in their names by presenting the said letter. Citing another letter bearing same number issued under the signatures of same authority i.e. the Additional Secretary, Revenue Department Govt. of M.P.

33. Before advertng to the issue of letter dated 11.10.2023 (Annexure P-10) being a sham document, it would be apt to reproduce the letter dated 11.10.2023 as well as letter Annexure P-16 and Annexure R/4-4 signed by the same authority.

(16)

Annexure-R-4/4

मध्यप्रदेश शासन
राजस्व विभाग
मंत्रालय, वल्लभ भवन - 462004

R.No - 1580/1512073/2023/सात-2 भोपाल, दिनांक 11/10/2023

प्रति,

कलेक्टर,
जिला - उज्जैन,
मध्यप्रदेश।

विषय :- ग्राम गोयलाखुर्द तहसील व जिला उज्जैन की भूमि सर्व क्रमांक 38 एवं 42/4 को अधिग्रहण से मुक्त कराये जाने के संबंध में।
संदर्भ :- आवेदक श्री रामगोपाल पिता स्व. श्री पुरुषोत्तम आदि, जिला उज्जैन से प्राप्त पत्र की छायाप्रति।

विषयान्तर्गत संदर्भित पत्र (छायाप्रति संलग्न) का कृपया अवलोकन करने का अनुरोध है जिसका विधिवत परीक्षण कराकर इसके संबंध में नियमानुसार आवश्यक कार्यवाही कर, कृत की गई कार्यवाही का रिपोर्ट विभाग को उपलब्ध कराने का कष्ट करे।
संलग्न :- उपरोक्तानुसार

(राजेश कुमार कौल)

अवर सचिव

मध्यप्रदेश शासन, राजस्व विभाग

c/c

सचिव

Under Secretary (Revenue) Under Secretary (Revenue)
of Madhya Pradesh of Madhya Pradesh
Revenue Department, Revenue Department,
BHPAL BHPAL

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मध्यप्रदेश शासन

राजस्व विभाग

मंत्रालय, वल्लभ भवन - 462004

R.No - 1580/1512073/2023/सात-2 भोपाल, दिनांक 11/11/2023

प्रति,

कलेक्टर,

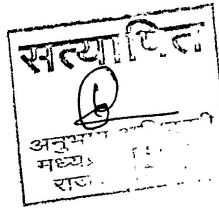
जिला - उज्जैन,

मध्यप्रदेश।

विषय :- ग्राम गोयलाखुर्द तहसील व जिला उज्जैन की भूमि सर्वे क्रमांक 38 एवं 42/4 को अधिग्रहण से मुक्त कराये जाने के संबंध में।
संदर्भ :- आवेदक श्री रामगोपाल पिता स्व. श्री पुरुषोत्तम आदि, जिला उज्जैन से प्राप्त पत्र की छायाप्रति।

विषयान्तर्गत संदर्भित पत्र (छायाप्रति संलग्न) का कृपया अवलोकन करने का अनुरोध है जिसका विधिवत परीक्षण कराकर इसके संबंध में नियमानुसार आवश्यक कार्यवाही कर, कृत की गई कार्यवाही का रिपोर्ट विभाग को उपलब्ध कराने का कष्ट करे।

संलग्न :- उपरोक्तानुसार



(राजेश कुमार कौल)

अवर सचिव

मध्यप्रदेश शासन, राजस्व विभाग

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मध्यप्रदेश शासन
राजस्व विभाग
मंत्रालय, बल्लभ भवन - 462004

R.No. 1580/1512073/2023/सात-2

भोपाल, दिनांक 11/10/2023

प्रति,

कलेक्टर,
जिला-उज्जैन,
मध्यप्रदेश।

विषय :- ग्राम गीयलखुर्द तहसील कोठी मण्डल, जिला-उज्जैन की भूमि सर्वे क्र.38 गीम एवं 42/4 एकका 3.093 हेक्टेयर को अधिग्रहण से मुक्त कर नामांतरण किये जाने बाबत।

संदर्भ :- आवेदक श्री रामगोपाल पिता स्व. श्री पुरुषोत्तम आदि, जिला-उज्जैन से प्राप्त पत्र की छायाप्रति।

उपरोक्त विषयांतर्गत रामगोपाल पिता स्व. पुरुषोत्तम आदि निवासी-10 लक्ष्मीबाई मार्ग, मालीपुरा उज्जैन की उक्त भूमि को अधिग्रहण से मुक्त करते हुए इनकी पैतृक व निजी संपत्ति का नामांतरण करने की कार्यवाही कर, कृत की गई कार्यवाही का रिपोर्ट विभाग को उपलब्ध कराने का कष्ट करें।

संलग्न :- उपरोक्तानुसार

(राजेश कुमार कौल)
अधर सचिव
मध्यप्रदेश शासन, राजस्व विभाग

XV-DR-108

भारत शासन सेवाधरं



सुश्रावित अमानवीय तथा असंवैधानिक है

संख्या- 23-राजस्व/2023-27-अ-23-9

क्रमांक 1580/1512073/23/7-2

अधीक्षक
कार्यालय

राजस्व विभाग-2A
मंत्रालय, बल्लभ भवन, भोपाल

कलेक्टर
30-10-23

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34. Learned counsel for the respondents asserted that since the document is forged and fabricated, they are also moving an application u/S 340 of Cr.P.C. for prosecuting the petitioners under the provisions of IPC.

35. Testing the veracity of all these three documents on the anvil of the same being sham or not, first this Court has to examine the signatures affixed on the same. On perusal of all the three documents, it surfaced that all these three letters have been signed by the same authority i.e. the Additional Secretary, Revenue Department Govt. of M.P. and bear the same reference number and the same date. This Court is competent enough to compare the disputed signatures of a person with others which are admitted or proved to be his signatures. It may not be safe for a Court to record a finding about a person's signature on a certain document merely on the basis of comparison, but a Court can itself compare the signature in order to appreciate properly the other evidence produced before it in that regard i.e. the envelope in which the letter Annexure P-10 has been received also bear the same reference number marked to the Collector Distt. Ujjain with a seal affixed of the revenue department on it, which makes it clear that such letter has not been obtained fraudulently.

36. In this regard, this Court is supported in its view by the judgment rendered by Kerela High Court in the case of Jhony Vs. State of Kerela. Relevant excerpts of the said judgment are reproduced below for convenience and ready reference:

10. The extent to which reliability could be attributed upon the conclusions arrived by a court on the basis of a comparison of the disputed signatures and handwritings with the admitted signatures and handwritings by invoking Section 73 of the Indian Evidence Act, has been laid down by a catena of decisions of the Apex Court.

12. *In State of Gujarat v. Vinaya Chandra Chhota Lal Pathi [AIR 1967 SC 778]* the Apex Court held that a court can itself compare the writings in order to appreciate properly the other evidence produced before it in that regard.

The relevant portion in paragraph 10 of the aforesaid decision reads as follows:

10. “..... A Court is competent to compare the disputed writing of a person with others which are admitted or proved to be his writing. It may not be safe for a Court to record a finding about a person's writing in a certain document merely on the basis of comparison, but a Court can itself compare the writings in order to appreciate properly the other evidence produced before it in that regard. The opinion of a handwriting expert is also relevant in view of S. 45 of the Evidence Act, but that too is not conclusive. It has also been held that the sole evidence of an handwriting expert is not normally sufficient for recording a definite finding about the writing being of a certain person or not. It follows that it is not essential that the handwriting expert must be examined in a case to prove or disprove the disputed writing. It was therefore, not right for the learned Judge to consider it unsafe to rely upon the evidence of the complainant in a case like this, i. e., in case in which no handwriting expert had been examined in support of his statement..”

14. *In Lalit Popli v. Canara Bank and Others [AIR 2003 SC 1796]* it has been held by the Apex Court that courts can compare the admitted writings with disputed writings and come to its own independent conclusion irrespective of the opinion of handwriting

expert. Paragraph 13 of the aforesaid decision of the Apex Court reads as follows:

“ It is to be noted that under S.45 and 47 of the Evidence Act, the Court has to take a view on the opinion of others, whereas under S.73 of the said Act, the Court by its own comparison of writings can form its opinion.

Evidence of the identity of handwriting is dealt with in three Sections of the Evidence Act. They are S.45, 47 and 73. Both under S.45 and 47 the evidence is an opinion. In the former case it is by a scientific comparison and in the latter on the basis of familiarity resulting from frequent observations and experiences. In both the cases, the Court is required to satisfy itself by such means as are open to conclude that the opinion may be acted upon. Irrespective of an opinion of the Handwriting Expert, the Court can compare the admitted writing with disputed writing and come to its own independent conclusion. Such exercise of comparison is permissible under S.73 of the Evidence Act. Ordinarily, S.45 and 73 are complementary to each other. Evidence of Handwriting Expert need not be invariably corroborated.

It is for the Court to decide whether to accept such an uncorroborated evidence or not. It is clear that even when experts' evidence is not there, Court has power to compare the writings and decide the matter. [See MurariLal v. State of Madhya Pradesh (1980 (1) SCC 704).”

37. During the course of arguments, it was asserted by the learned counsel for petitioners that the documents have been obtained under Section 6 of the Right to Information Act and therefore the letter Annexure P-10 dated 11.10.2023 has been filed with the petition and thereafter on an objection raised by the respondents regarding the same being a sham document, petitioners have again produced true copies of the documents alongwith official proceedings vouching for the fact that the same have not been obtained fraudulently and issued by the Revenue authority itself i.e. the Additional Secretary, Revenue

Department which indicates that the petitioners have come before this Court with documentary evidence for claiming the relief which they have been denied and there is no ulterior motive of them to play fraud. Hence, it is concluded that letter Annexure P-10 dated 11.10.2023 is not a sham document.

38. It is a very sorry state of affairs that Revenue Department is one of the department dealing with precious public land and despite issuance of letter dated 11.10.2023, no action has been taken regarding restoring the land in the name of petitioners who have left no stone unturned to get their land back. Their right to property as enshrined under Article 300A of the Constitution of India has been evaded for so long under the garb of acquisition proceedings.

39. While it is true that after the 44th Constitutional Amendment, the right to property drifted from Part III to Part XII of the Constitution, there continues to be a potent safety net Constitution (Forty-Fourth Amendment) Act, 1978 against arbitrary acquisitions, hasty decision-making and unfair redressal mechanisms. Despite its spatial placement, Article 300A which declares that “*no person shall be deprived of his property save by authority of law*” has been characterized both as a constitutional and also a human right. To assume that constitutional protection gets restricted to the mandate of a fair compensation would be a disingenuous reading of the text and, shall we say, offensive to the egalitarian spirit of the Constitution. The constitutional discourse on compulsory acquisitions, has hitherto, rooted itself within the ‘power of eminent domain’. Even within that articulation, the twin conditions of the acquisition being for a public purpose and subjecting the divestiture to the payment of compensation in lieu of acquisition were mandated. Although not explicitly contained in Article 300A, these twin requirements have been read in

and inferred as necessary conditions for compulsory deprivation to afford protection to the individuals who are being divested of property. The binary reading of the constitutional right to property must give way to more meaningful renditions, where the larger right to property is seen as comprising intersecting sub-rights, each with a distinct character but interconnected to constitute the whole. These sub-rights weave themselves into each other, and as a consequence, State action or the legislation that results in the deprivation of private property must be measured against this constitutional net as a whole, and not just one or many of its strands.

40. These sub-rights of procedure have been synchronously incorporated in laws concerning compulsory acquisition and are also recognized by our constitutional courts while reviewing administrative actions for compulsory acquisition of private property. These seven principles have seamlessly become an integral part of our Union and State statutes concerning acquisition and also the constitutional and administrative law culture that our courts have evolved from time to time.

41. To curb the situation where land owners were divested of their right to property enshrined under Article 300A of Constitution of India, as the same has been acquired by the State/Union, recently, the Hon'ble Apex Court has laid down seven principles in the case of **Kolkata Municipal Corporation & Anr. Vs. Bimal Kumar Shah & Ors.** reported in **2024 INSC 435**, which ought to have been followed while dealing with the matters of land acquisition.

42. The said seven principles are as follows:

30.1. ***The Right to notice:*** (i) A prior notice informing the bearer of the right that the State intends to deprive them of the right to property

is a right in itself; a linear extension of the right to know embedded in Article 19(1)(a). The Constitution does not contemplate acquisition by ambush. The notice to acquire must be clear, cogent and meaningful. Some of the statutes reflect this right.

(ii) Section 4 of the Land Acquisition Act, 1894, Section 3(1) of the Requisitioning and Acquisition of Immovable Property Act, 1952, Section 11 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, and Section 3A of the National Highways Act, 1956 are examples of such statutory incorporation of the right to notice before initiation of the land acquisition proceedings.

(iii) In a large number of decisions, our constitutional courts have independently recognised the right to notice before any process of acquisition is commenced.

30.2. ***The Right to be heard:*** (i) Following the right to a meaningful and effective prior notice of acquisition, is the right of the property-bearer to communicate his objections and concerns to the authority acquiring the property. This right to be heard against the proposed acquisition must be meaningful and not a sham.

(ii) Section 5A of the Land Acquisition Act, 1894, Section 3(1) of the Requisitioning and Acquisition of Immovable Property Act, 1952, Section 15 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, and Section 3C of the National Highways Act, 1956, are some statutory embodiments of this right.

(iii) Judicial opinions recognizing the importance of this right are far too many to reproduce. Suffice to say that that the enquiry in which a land holder would raise his objection is not a mere formality.

30.3. ***The Right to a reasoned decision:*** i) That the authorities have

heard and considered the objections is evidenced only through a reasoned order. It is incumbent upon the authority to take an informed decision and communicate the same to the objector.

(ii) Section 6 of the Land Acquisition Act, 1894, Section 3(2) of the Requisitioning and Acquisition of Immovable Property Act, 1952, Section 19 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 and Section 3D of the National Highways Act, 1956, are the statutory incorporations of this principle.

(iii) Highlighting the importance of the declaration of the decision to acquire, the Courts have held that the declaration is mandatory, failing which, the acquisition proceedings will cease to have effect.

30.4. *The Duty to acquire only for public purpose:* (i) That the acquisition must be for a public purpose is inherent and an important fetter on the discretion of the authorities to acquire. This requirement, which conditions the purpose of acquisition must stand to reason with the larger constitutional goals of a welfare state and distributive justice.

(ii) Sections 4 and 6 of the Land Acquisition Act, 1894, Sections 3(1) and 7(1) of the Requisitioning and Acquisition of Immovable Property Act, 1952, Sections 2(1), 11(1), 15(1)(b) and 19(1) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 and Section 3A(1) of the National Highways Act, 1956 depict the statutory incorporation of the public purpose requirement of compulsory acquisition.

(iii) The decision of compulsory acquisition of land is subject to judicial review and the Court will examine and determine whether the acquisition is related to public purpose. If the court arrives at a conclusion that that there is no public purpose involved in the

acquisition, the entire process can be set-aside. This Court has time and again reiterated the importance of the underlying objective of acquisition of land by the State to be for a public purpose.

30.5. ***The Right of restitution or fair compensation:*** (i) A person's right to hold and enjoy property is an integral part to the constitutional right under Article 300A. Deprivation or extinguishment of that right is permissible only upon restitution, be it in the form of monetary compensation, rehabilitation or other similar means. Compensation has always been considered to be an integral part of the process of acquisition.

(ii) Section 11 of the Land Acquisition Act, 1894, Sections 8 and 9 of the Requisitioning and Acquisition of Immovable Property Act, 1952, Section 23 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, and Sections 3G and 3H of the National Highways Act, 1956 are the statutory incorporation of the right to retribute a person whose land has been compulsorily acquired.

(iii) Our courts have not only considered that compensation is necessary, but have also held that a fair and reasonable compensation is the *sine qua non* for any acquisition process.

30.6. ***The Right to an efficient and expeditious process:*** (i) The acquisition process is traumatic for more than one reason. The administrative delays in identifying the land, conducting the enquiry and evaluating the objections, leading to a final declaration, consume time and energy. Further, passing of the award, payment of compensation and taking over the possession are equally time consuming. It is necessary for the administration to be efficient in concluding the process and within a reasonable time. This obligation must necessarily form part of Article 300A.

(ii) Sections 5A(1), 6, 11A, and 34 of the Land Acquisition Act, 1894, Sections 6(1A) and 9 of the Requisitioning and Acquisition of Immovable Property Act, 1952, Sections 4(2), 7(4), 7(5), 11(5), 14, 15(1), 16(1), 19(2), 25, 38(1), 60(4), 64 and 80 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 and Sections 3C(1), 3D(3) and 3E(1) of the National Highways Act, 1956, prescribe for statutory frameworks for the completion of individual steps in the process of acquisition of land within stipulated timelines.

(iii) On multiple occasions, upon failure to adhere to the timelines specified in law, the courts have set aside the acquisition proceedings.

30.7. ***The Right of conclusion:*** (i) Upon conclusion of process of acquisition and payment of compensation, the State takes *possession* of the property in normal circumstances. The culmination of an acquisition process is not in the payment of compensation, but also in taking over the actual physical possession of the land. If possession is not taken, acquisition is not complete. With the taking over of actual possession after the normal procedures of acquisition, the private holding is divested and the right, title and interest in the property, along-with possession is vested in the State. Without final vesting, the State's, or its beneficiary's right, title and interest in the property is inconclusive and causes lot of difficulties. The obligation to conclude and complete the process of acquisition is also part of Article 300A.

ii) Section 16 of the Land Acquisition Act, 1894, Sections 4 and 5 of the Requisitioning and Acquisition of Immovable Property Act, 1952, Sections 37 and 38 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, and Sections 3D and 3E of the National Highways Act, 1956, statutorily recognize this right of the acquirer.

iii) This step of taking over of possession has been a matter of great judicial scrutiny and this Court has endeavoured to construe the relevant provisions in a way which ensures non-arbitrariness in this action of the acquirer. For that matter, after taking over possession, the process of land acquisition concludes with the vesting of the land with the concerned authority. The culmination of an acquisition process by vesting has been a matter of great importance. On this aspect, the Courts have given a large number of decisions as to the time, method and manner by which vesting takes place.

43. The above seven principles which discussed above are integral to the authority of law enabling compulsory acquisition of private property. State statutes ought to have adopt these principles and incorporate them in different forms in the statutes provisioning compulsory acquisition of immovable property so that no person shall be deprived of his property save by authority of law.

44. The State and its department dealing with the cases of land acquisition should bear in mind and follow these principles to curtail the situation of land acquisition without following due process of law as the ultimate sufferers in the matter of land acquisition are the land owners who are even sometimes poor rustic villagers not very well aware of the rules and being deprived of their rightful claim over the land thereby leading to flooding of Courts with such matters and even after running from pillar to post, it would take years altogether to get justice due to lack of proper knowledge.

45. In the case in hand, initially the land was acquired in the year 1997. Thereafter the Commissioner has declared the scheme as lapsed in the year 2005. The Land Acquisition Officer has passed an order dated 31.10.2006 for reviewing the said order. The land was acquired by the Land Acquisition Officer invoking the urgency clause for the

scheme floated by the Board for the purpose of construction of Old Age Home and passed award dated 05.03.2007. Several round of litigation took place since the year 2007 and matter travelled upto Supreme Court. However, with the elapse of time, the purpose of scheme has been changed by floating of tender for the purpose of development of colony named as 'Shivangi Parisar' which is uncalled for as the very purpose of the whole acquisition proceedings has been changed.

46. In view of the above discussion and in the light of the various enunciation of law by the Apex Court as discussed above, we are of the considered view that the acquisition proceedings are void-ab-initio thereby rendering the subsequent tender process as arbitrary and illegal. Accordingly, the writ petition is allowed with the following directions:

(i) The acquisition proceedings i.e. the award passed by the Land Acquisition Officer/Collector Distt. Ujjain dated 05.03.2007 in respect of land bearing survey no(s). 38/min-1 admeasuring 0.844 hectare , 38/min-2 admeasuring 2.144 hectare and 42/4 admeasuring area 0.105 i.e. a total admeasuring area 3.093 hectare of land situated at Village Goyla Khurd, Teh. & Distt. Ujjain are hereby quashed.

(ii) The Land Acquisition Officer/Collector Distt. Ujjain is directed to handover the possession of 38/min-1 admeasuring 0.844 hectare, 38/min-2 admeasuring 2.144 hectare and 42/4 admeasuring area 0.105 i.e. a total admeasuring area 3.093 hectare of land situated at Village Goyla Khurd, Teh. & Distt. Ujjain to their respective land owners i.e. the

petitioners and also get their names mutated in the revenue records within a period of two weeks from the date of receipt of certified copy of this order.

(iii) In the result, the tender dated 20.09.2023 (Annexure P-9) and all subsequent proceedings/action arising therefrom are also hereby quashed and be treated as null and void.

Petition stands disposed off. No order as to cost.

(S.A. Dharmadhikari)
Judge

(Gajendra Singh)
Judge

sh/-

