Delhi Administration

Vs

Gurdip Singh Uban & others etc.

Civil Appeal No. 4656 of 1999 etc.

(S.B. Majmudar and M.Jagannadha Rao, JJ.)

18.08.2000

JUDGMENT

M. Jagannadha Rao, J.:— Krishna Iyer, J said that "A plea for review, unless the first judicial view is manifestly distorted, is like asking for the moon". [Northern India Caterers (I) Ltd. vs. Lt. Governor of Delhi (1989(2) 167 (173)]. That is the prescise position in these applications. Applicant is Sri Gurdip Singh Uban, the respondent in the main appeals, who questioned the acquisition of his land in village Chatrapur, near Delhi.

2. These IAS. are filed in the following circumstances, after dismissal of the Review petition on 24.11.99.

3. The Civil Appeals 4656-4657/99 were disposed of by this Court, by a Bench of two Judges on 20.8.99. [Delhi Administration vs. Gurdip Singh Uban (1999 (7) SCC 44)] and the appeals of Delhi Administration and Delhi Development Authority were allowed. The appellant in C.A. 4656/99 was the Delhi Development Authority. The appeals were allowed and the judgment of the High Court of Delhi in CWP. 920 of 1986 dated 17.12.96 was set aside and the said Writ petition was dismissed. This Court followed the judgment of a three Judge Bench in Abhey Ram vs. Union of India (1997(5) SCC 421) relied upon by the appellants in preference to the judgment of a two judge Bench in Delhi Development Authority vs. Sudan Singh (1997(5) SCC 430), relied upon for the Ist respondents-writ petitioners (applicant in these IAS). The writ petitioners before the High Court were Mr. Gurdip Singh Uban, Mrs. Har Sharan Mishra and Mrs. Har Kiran and they were respondents in both Civil Appeals. the result was that reversing the High Court's judgment the land acquisition proceedings were upheld by this Court.

4. After the appeals were allowed by this Court on 20.8.99 as stated above, Review petitions Nos.1402-1403/99 were filed in the two Civil appeals by Sri Gurdip Singh Uban and they were dismissed in circulation by a reasonsed order on 24.11.99. (Another Review Petition No. 21/2000 filed by Mrs. Har Kiran Commar is yet to the circulated).

5. So far as Mrs. Har Kiran Commar is concerned, she filed IA 3 on 4.11.99, before the dismissal of Review petition of Sri Gurdip Singh Uban on 24.11.99. Her IA came up before another Bench of this Court on 3.12.99. By that date, review petition of Gurdip Singh Uban was dismissed on 24.11.99 by this Bench, as stated earlier. Therefore, the Court before which the IA.3 was listed, directed the Review petition of Mrs. Har Kiran Commar to be

placed before this Bench which disposed of the Review petition of Mr. Gurdip Singh Uban. IA.3 was for the following reliefs: (i) to direct the matter to be referred to a large Bench in view of certain alleged conflict between Abhey Ram vs. Union of India (1997(5) SCC 421) and some judgments of 1968 and 1991, (ii) for modification of the order dated 20.8.1999 to allow the said Gurdip Singh Uban to submit a representation to the authority for releasing the land from land acquisition and (iii) clarify that the applicant was free to approach the authority and the judgment was to be modified to that extent. (We shall deal with this IA under Point 8).

6. By 31.1.2000, when the IA.3/99 was again listed before this Bench, two other IAS. 4 and 5 were filed on 23.12.99 by Sri Gurdip Singh Uban himself, in spite of dismissal of this review petition on 24.11.99, IAS. 4 and 5 were filed as a composite application for reliefs (i) to (x) set out therein. The principal reliefs were to direct the Civil Appeals 4656-4657 to be heard by a larger Bench because of the conflict between Abhey Ram and Sudan Singh, to direct the matter to be placed before a Constitution Bench in view of Udai Ram Sharma vs. Union of India (1968 (3) SCR 41), and to recall the order dated 24.11.99 passed in the review petitions, to modify the order dated 20.8.99 passed in the main CA, and to permit the applicant to make representation to the authority for release of the land, to declare the land acquisition proceedings as having lapsed, set aside the acquisition proceedings and to give benefit of section 10 of the Indian Soldiers (Litigation) Act, 1925.

7. Writ Petition No. 155 of 2000 was filed on 5.4.2000 by one Rajinder Pal Singh questioning the validity of an order dated 17.11.99 and circular dated 7.12.99 issued by the authority subsequent to the main judgment in Civil Appeals dated 20.8.99 and for restraining the authority from taking any action against the petitioner's land in village Raipur Khurd, as the land acquisition proceedings had allegedly lapsed. (We shall deal with this writ petition under Point 7).

We shall first deal with IAS. 4 and 5 filed by Sri Gurdip Singh Uban.

8. When these applications 4 and 5 were listed before us finally for arguments, learned Solicitor General, Sri Harish N. Salve raised a preliminary objection that these applications couched as applications for 'clarification', 'modification' or for 'recall' could not be entertained once the Review petitions filed by the application were dismissed. He contended that there must be some finality somewhere. These petitions amounted to filing a second review, which was not permissible under the Rules. In any event, a hearing of the case in open Court could not be granted in these IAS. to recalled order in the review petition, if the main review petition itself had to be dealt with in circulation. According to Sri Salve, these IAS. were an abuse of the process of Court.

9. On the other hand, learned senior counsel for the applicant Sri Shanti Bhushan submitted that this was a case where grave injustice would take place if the judgment of this Court in Civil Appeals dated 20.8.99 was allowed to stand without being reviewed or recalled. It was brought to our notices that the applicant had constructed a building pending proceedings pursuant to a letter issued by the DDA in favour of the applicant on 6.2.96 - representing to the applicant that the land acquisition proceedings stood quashed by an earlier judgment of the Division Bench of the High Court of Delhi and permitting him to construct the building. This representation was acted upon and a building was constructed and it was argued that hence a clear case of estoppel arose.

10. In reply, learned Solicitor General Sri Harish N. Salve submitted that first thirs Court must declare that such applications for 'clarification, modification or recall' could not be allowed to be filed endlessly after review applications were dismissed and that we must put an end to this unhealthy practice. This part of the legal position must, according to him, be firmly laid down. Once that is done, he could by way of consent, if need be, even accept that in the peculiar facts of this case and in particular in view of the letter of the DDA dated 6.2.96, this Court could issue suitable directions for exercise of power under section 48 of the Land Acquisition Act to a limited extent of saving the building. As to the extent to which he made the concession, he put it in writing before the Court on 16.8.2000 and we shall refer to it under Point 6. In other words, this Court could give a direction that the orders passed by this Court in the Civil Appeal or review petition would not come in the way for the respondents considering any representation by the application for release of part of the land under section 48.

Counsel, after having making elaborate submissions earlier on various dates, filed written submissions on 16.8.2000.

11. The following points arises for consideration: (1) Whether a party who had lost his case in Civil appeal could be permitted to by-pass the procedure of circulation in Review matters and adopt the method of filing applications for 'clarification', 'modification', or 'recall' of the said order in Civil Appeals so that the matters were not listed in circulation but could be listed in Court straightaway? Whether such applications could be filed even after dismissal of review applications? What is the procedure that can bbe followed in such cases?

(2) Whether, in any event, the judgment of this Court dated 20.8.99 allowing the appeals of the Delhi Administration and Delhi Development Authority was liable to be set aside on merits, treating this as the first review petition, and whether such a relief could be granted on the ground that the two judge Bench of this Court in these Civil appeals which followed Abhey Ram (Decided by three learned Judges) should have referred Abhey Ram to a larger Bench?

(3) Whether the order of the Division Bench in Balak Ram Gupta's case, where there are two orders, the order dated 14.10.88 allowing the writ petitions in 73 Civil Writ petitions (reasons to follow) controlled the subsequent order passed in those cases on 18.11.88 containing the reasons and whether in the latter order, the High Court could have quashed land acquisition proceedings in Writ petitions which were not before them?

(4) Whether under section 6 of the Land Acquisition Act, while dealing with an inquiry report under Section 5A, the Government (here the Lt. Governor) is required to give elaborate reasons?

(5) To what extent could a person who had not filed objection in section 5A inquiry challenge the section 6 declaration?

(6) Whether any relief could be granted under section 48 of the Act in the light of the letter of the DDA dated 6.2.96 in the light of the fair stand taken by the learned Solicitor General and, if so, to what extent?

(7) Whether in the writ petition 155 of 2000, the subsequent order of the Department dated

7.12.99 was liable to be set aside?

(8) Whether IA 3 filed by Mrs. Har Kiran Commar for 'recall' of the order dated 20.8.89 in the Civil Appeal is to be considered in open Court even though her Review Petition No. 21/2000 is pending before this Court and is yet to be circulated?

Point 1: It is first necessary to refer to the well-known concept that a review is not a re-hearing and point out that its scope is very narrow. Order XL, Rule (1) of the Supreme Court Rules provides as follows:

"The Court may review its judgment or order but no application for review will be entertained in a civil proceedings except on the grounds mentioned in Order XLVII, Rule 1 of the Code and in a criminal proceedings except on the ground of an error on the face of the review".

12. In Thungabhadra Industries Ltd. vs. Government of Andhra Pradesh (1964 (5) SCR 174), this Court stated that there was a real distinction between a mere erroneous decision and a decision which could be characterised as vitalised by 'error apparent' and that a 'review' was by no means an 'appeal' in disguise. This legal position was reiterated in subsequent judgments of this Court.

13. At the outset, we have to refer to the practice of filing review applications in large numbers in underserving cases without properly examining whether the cases strictly come within the narrow confines of Rule XL of the Supreme Court Rules. In several cases, it has become almost everyday experience that review applications are filed mechanically as a matter of routine and the grounds for review are a mere reproduction of the grounds of Special leave and there is no indication as to which ground strictly falls within the narrow limits of the Rule XL of the Rules. We seriously deprecate this practice. If parties file review petitions indiscriminately, the time of the Court is unnecessarily wasted, even it be in chambers where the review petitions are listed. Greater care, seriousness and restraint is needed in filing review applications.

14. We next come to applications described as applications for 'clarification', 'modification' or 'recall' or judgments or orders finally passed. We may point out that under the relevant rule XL of the Supreme Court Rules, 1966, a review application has first to go before the learned judges in circulation and it will be for the Court to consider whether the application is to be rejected without giving an oral hearing or whether notice is to be issued.

Order XL. R.3 states as follows:

"O.XL.R.3: Unless otherwise ordered by the Court, an application for review shall be disposed of any circulation without any arguments, but the petitioner may supplement his petition by additional written arguments. The Court may either dismiss the petition or directed notice to the opposite party..."

15. In case notice is issued, the review petition will be listed for hearing, after notice is served. This procedure is meant to save the time of Court and to preclude frivolous review petitions being filed and heard in open Court. However, with a view to avoid this procedure of 'no hearing', we find that sometimes applications are filed for 'clarification', 'modification' or 'recall' etc. not because any such clarification, modification is indeed

necessary but because the application in reality wants a review and also wants a hearing, thus avoiding listing of the same in chambers by way of circulation. Such applications, if they are in substance review applications, deserve to be rejected straightway inasmuch as the attempt is obviously to by-pass O.XL.R3 relating to circulation of the application in Chambers for consideration without oral hearing. By describing an application as one for 'clarification' or 'modification', - though it is really one of review — a party cannot be permitted to circumvent or by-pass the circulation procedure and indirectly obtain a hearing in the open Court. What cannot be done directly cannot be permitted to be done indirectly. [See in this connection a detailed order of then Registrar of this Court in Sonelal and Ors. vs. State of UP (1982 (2) SCC 398) depreciating a similar practice.]

We, therefore, agree with the learned Solicitor General that the Court should not permit hearing of such an application for 'clarification', 'modification' or 'recall' if the application is in substance one for review. In that event, the Court could either reject the application straightaway with or without costs or permit withdrawal with leave to file a review application to be listed initially in chambers.

16. What we have said above equally applies to such applications filed after rejection of review applications particularly when a second review is not permissible under the Rules. Under Order XL. R5, a second review is not permitted. The said Rule reads as follows:

O.XL.R5: Where an application for review of a judgment or order has been disposed of, no further application for review shall be entertained in the same matter".

17. We should not however be understood as saying that is no case an application for 'clarification', 'modification' or 'recall' is maintainable after the first disposal of the mater. All that we are saying is that once such an application is listed in Court - the Court will examine whether it is, in substance, in the nature of review and is to be rejected with or without costs or requires to be withdrawn with leave to file a review petition to be listed in chambers bby circulation. Point 1 is decided accordingly.

Points 2 and 3

18. We now come to the main points raised in these applications. Though, in the light of what we have said under point 1 and when particularly these IAS 4 and 5 are filed by Sri Gurdip Singh Uban after dismissal of the review petitions, they deserve to be rejected, we felt that in view of the pendency of another Review Petition 21/2000-by another party Mrs. Har Kiran Commar (who was not a petitioner in Review Petition 1402-1403/99) arising out of the same judgment in Civil Appeal wherein the same questions are raised (and which review petition is yet to be circulated), — we could as well deal with matter on merits as if we are dealing with the first review and give a quietus to these questions. We are also not going into the question of error apparent because we want to give a quietus to these issues. To this course, respondents have agreed that we may deal with the points on merits so as to put an end to the questions.

19. Learned senior counsel for the appellant, Sri Shanti Bhushan initially made a vehement plea for justice and contended that in every case where there was injustice', this Court should not feel shackled by rules of produce nor constrained by

the limited scope of a review application. We are unable to agree.

20. The words ‘justice’ and ‘injustice’, in our view, are sometimes loosely used and have different meanings to different persons particularly to those arrayed on opposite sides. "One man’s justice is another’s injustice’ (Ralph Waldo Emerson, Essays, (1803-1882) first series, 1841 ‘Circles’). Justice Cardozo said: ‘The web is tangled and obscure, shot through with a multitude of shades and colours, the skeins irregular when analyzed, to be a complex and uncertain blend. Justice itself, which we are wont to appeal to as a test as well as an ideal, may mean different things to different minds and at different times. Attempts to objectify its standards or even to describe them, have never wholly succeeded". (Selected writings of Cardoze. PP. 223-224, Fallon publications, 1947).

21. While the man who succeeds may think justice is on his side, the man who loses is prone to think that injustice has been done to him. Most litigants who have not won, presume that injustice has been unreasonably inflicted upon them. Their approach is subjective and personalized. Therefore, this appeal by Sri Shanti Bhushan for ‘justice’ can take us nowhere. The State and the DDA which are on the other side are impersonal bodies and if they are exercising statutory powers for public good and acquiring land for public purposes, the Court has to balance the rights of parties and this has to be done within the four corners of the law. We are not lay courts meting out justice according to our whims and fancies but are governed by law as well as by binding precedent.

At this juncture it is necessary to state a few more facts leading upto the judgment dated 20.8.99 of this Court in the Civil appeals which is sought to be recalled.

22. The notification under section 4(1) of the Land Acquisition Act for the planned development of Delhi was issued on 25.11.80 and it covered 13 villages but the bulk of the land was in 12 villages and covered around 50,000 bighas. The acquisition in these 12 village was questioned in a batch of writ petitioners and initially the matter was referred, on a question of law, to a Full Bench of the Delhi High Court which gave its opinion on 25.7.1987 [vide Balak Ram Gupta vs. Union of India (AIR 1987 Delhi 239 (FB)]. The question there was whether the section 6 declaration dated 7.6.85 was issued in time or not. In between section 4 and section 6 notifications, there were several stay orders passed in earlier writ petitions. The Full Bench held that, the period covered by the said stay orders was to be excluded for the entire acquisition and for the entire land even though the said orders were passed in some of the individual writ petitions and that section 6 declaration was to be treated as in time.

23. After the Full Bench of the Delhi High Court gave its opinion on the question of limitation, it remitted the batch of cases to the Division Bench for deciding on other points, — including the question as to whether section 5A inquiry was properly conducted and whether section 6 declaration was properly issued. We are told that among that writ petitioners - which were more than 70 - there were some where the petitioners had not filed objection in the section 5A inquiry, as in the case before us.

24. The Division Bench heard the arguments on the validity of the Section 5A

inquiry and the section 6 declaration. On their conclusion, the Bench allowed the writ petitions and made the "rule absolute" by a brief order on 14.10.1988 in each of the 73 writ petitions in the following terms:

"The orders of Land Acquisition Collectors under Section 5-A and the notifications issued by the Lt. Governor under Section 6 of the Land Acquisition Act together with further land acquisition proceedings in all the above writ petitions are quashed and set aside with cost. There shall be two sets of counsel's fees at Rs. 1500 each as the group of petitions were heard mainly in the two writ petitions. The respondents have also not filed the counter-affidavits in all the petitions as it was agreed to complete two sets of petitions with counter-affidavits. The rule is made absolute. Reasons to follow".

25. But thereafter the Division Bench supplied reasons by an elaborate order delivered on 18.11.88 [B.R. Gupta vs. Union of India (1989 (37) DLT 150 (DB)]. In the latter order, very wide observations were made by the Bench. It referred to the manner in which section 5A inquiry was conducted. It noticed that while the inquiry was conducted by one offficer, the report was submitted by another officer to the Lt. Governor. It also felt that the Lt. Governor had not applied his mind while accepting the report. It observed that no reasoned order was passed by the Lt. Governor in his section 6 declaration adverting to the various objections raised by each claimant. On the said reasoning, the Bench made observations that the entire section 5A inquiry was vitiated in respect of all the 50,000 bighas and that the entire section 6 notification was liable to be quashed. These sweeping observations were made by the Division Bench when it supplied reasons for its earlier operative order dated 14.10.1988.

26. While the State relied before us, on the earlier order dated 14.10.88 as governing the rights of parties in each writ petition, the petitioners before us relied on the latter order dated 18.11.88 containing reasons to contend that that the said order superseded the brief order dated 14.10.88 and that the quashing was not restricted to the land covered by the 73 writ petitions. In fact, another Division Bench of the High Court, in the judgment under appeal, in the Civil Appeals 4656/99 and 4657/99 described the latter order dated 18.11.88 of the earlier Division Bench, as a judgment in rem , a new species beyond what is stated in section 41 Indian Evidence Act, 1872. That section of the Evidence Act only deals with judgments in probate, matrimonial, admiralty and insolvency jurisdictions as judgments in rem.

29. The crucial question therefore is whether in a situation where each of the seventy and odd writ petitioners of 1985 covered specific areas and the brief order dated 14.10.88 allowed the writ petitions, - the said order could be treated as one affecting the entire notification under section 6 and even cases where objections were not filed under section 5A as in the case before us. Question also arises whether the final order dated 18.11.88 containing reasons as reported in B.R. Gupta vs. Union of India [(1989) 37 DLT 150 (DB)], could have covered the entire area in the 12 villages, about 50,000 bighas even with regard to the other claimants whose writ petitions were not before the Division Bench and even other cases where no objections were filed in Section 5A inquiry?

30. In our view, if the Court allows a writ petition and reasons were to follow later, the first order allowing the writ petition and issuing the writ absolute is the operative order. If reasons therefor are supplied later, as a matter of convenience, the latter order containing reasons cannot go beyond the four corners of the rule absolute already issued.

31. In this connection, it is necessary to keep in mind the meaning of the words 'rule absolute' and 'rule nisi'. The words 'rule nisi' and 'rule absolute' are words frequently used by the High Courts every day in the writ jurisdiction. As stated in Ramanatha Iyer's Law Lexicon (p.1698, 2nd Ed., Reprint, 2000): 'Rule absolute' means a rule to show cause upon which, on hearing, the Court has made a peremptory order, that the party shall do as the rule requires.' A court may issue rule nisi initially which is in the nature of a show cause. After hearing, the Court may discharge the rulle if it is inclined to reject the writ petition. If, on the other, the rule is made absolute, the court order is a direction for the performance of the act forthwith. (Quoting 3, Step.Com 628).

32. Obviously, in law, the order dated 14.10.88 extracted above is the operative order as the rule was made absolute in each of the 73 cases only. Thus, this operative order dated 14.10.88 could apply in each of the 73 writ petitions to the land covered thereby.

We shall now refer to the controversy between the three judge ruling in Abhey Ram and the two judge ruling in Sudan Singh.

33. In the writ petition out of which the present Civil appeals arose filed by Gurdip Singh Uban and others, namely, CWP. 920/86, the Division Bench of the High Court of Delhi in its order dated 17.12.96 applied the latter order dated 18.11.88 passed in Balak Ram Gupta treating it as a judgment in rem, and proceeded on the assumption that the 18.11.88 order had quashed the entire land acquisition proceedings, even if the Bench was dealing only with 73 writ petitions. On that assumption, the writ petition CWP 920/86 was allowed on 17.12.96. It is against the said judgment dated 17.12.96 that the Delhi Administration and the Delhi Development Authority filed the two Civil appeals 4656 and 4657/99 in this Court which came to be allowed on 20.8.99.

34. By the time arguments were heard in the two Civil appeals in the present cases in 1999, the judgment dated 22.4.97 of three learned judges in Abhey Ram vs. Union of India (1997 (5) SCC 421), which arose out of the same notification was available to the appellants, Delhi Administration and the DDA. The said judgment was relied upon by appellants. The respondents-writ petitioners on the other hand contended that the case was governed not by Abhey Ram but by an earlier two judge judgment dated 20.9.91 in yet another case in Delhi Development Authority vs. Sudan Singh (1997 (5) SCC 430), where this Court had decided in favour of the claimants by referring to the latter order of the Division Bench of the High Court dated 18.11.88 in Balak Ram Gupta's case containing reasons, where the Court said that the entire land acquisition proceedings were quashed. But this Court, in the present Civil Appeals 4656 and 4657 of 1999 felt bound by the three judge ruling in Abhey Ram. In the present IAS, it is contended that this Court should have followed Sudan Singh.

35. It is true that Sudan Singh is in favour of the applicants before us in stating that the entire land acquisition proceedings stood quashed. But we may point out that Sudan Singh was explained in Abhey Ram and was distinguished in para 12 on the ground that the brief operative order of the High Court in Balak Ram Guppta dated 14.10.88 passed in each of the 73 writ petitions was not noticed in Sudan Singh and that it was that order dated 14.10.88 that was material and not the wide observations in the latter order dated 18.11.88 wheere reasons were given. In fact, in the judgment under review in Civil Appeals on 20.9.99, this Court agreed with the above reasonsing in Abhey Ram and followed the same in preference to Sudan Singh. This Court also agreed with Abhey Ram that a landowner who failed to file objections in section 5A inquiry, could not be allowed in arise these questions.

36. It is argued for the applications that Abhey Ram was wrongly decided and should have been referred to a larger Bench. We do not agree. We shall, however, refer to the contentions raised in this behalf for the applicants.

37. A contention was raised in the written submissions of the applicants on 16.8.2000 that the operative order dated 14.10.88 in each of the 73 writ petitions disposed of by the Division Bench does not restrict itself to the land of the writ petitioners and it was wrongly assumed in Abhey Ram that that order said so. Therefore, Abhey Ram is a judgment per incuriam. It is contended that though the petitioner in each of the 73 writ petitions might be concerned only with the piece of land owner by him, the Court could strike down the entire notification and that it did so in the first order dated 14.10.88 and also in the latter reasoned order dated 18.11.88.

38. We are unable to agree with any such generalisation. In our view, it depends on the fact situation. Supposing it is held in one case that the purpose is not a public purpose or that the notification under section 4(1) is malafide or that the notification under Section 4(1) is a colourable exercise of power then, it can perhaps be legitimately contended that the entire notifications has been struck down and that the notification cannot be said to be operative in cases not covered by the writ petition.

39. But that is not the position here. A reading of the judgment of the Division Bench in Balak Ram Gupta dated 18.11.88 - the one containing reasons - shows that the Court held that there was non-application of mind by the land acquisition officer to the objections filed by the various claimants. In our view, that is not a situation where it can be said that the Court struck down the entire section 6 declaration on a matter going to the root of the land acquisition such where it is held that there is not public purpose involved. According to the above Division Bench, the non-application of mind by the land acquisition officer is to the ‘objections’ in each case raising issues-personal to each objector. In fact, no argument has been advanced before the Division Bench of the High Court or even before us that the purpose is not a public purpose. In our view, it is not possible for the applicants to contend that the land acquisition officer failed to apply his mind to objections which were indeed never filed before him.

40. On fresh consideration of the matter, we are of the opinion that Abhey Ram was decided correctly - if we may say so with great respect - and that the latter order of Divison Bench in the writ petitions in the batch in Balak Ram Gupta must be

confined to the writ absolute orders dated 14.10.88 in each of those 73 writ petitions and to the land covered thereby, because the objections filed were personal to each case and there was no argument before the Division Bench or even before us that there was no public purpose or that there was colourable exercise of power. We are of the view that the Division Bench of the High Court in its latter order dated 18.11.88 containing reasons could not in law have quashed the section 5A inquiry and section 6 declaration covering all other cases not before the Division Bench when no question going to the root and covering all cases arose, and contrary to the Writ absolute issued in each case. The order dated 14.10.88, in our view, would control the order dated 18.11.88 and would restrict the same.

41. Yet another argument for the applications was that in Sudan Singh this Court referred to another unreported judgment of the High Court in CWP. 1373/89 etc. dated 15.5.89 where similar general directions to the DDA applicable to all cases were given - that possession be not taken if not already taken or if possession was taken, it be restored if the compensation is paid back with 12% interest. It was submitted by Sri Shanti Bhushan that this mandamus was based on an undertaking of counsel and could not have been ignored in Abhey Ram. We are unable to agree. The above observations in CWP. 1373/89, in our opinion, did not and could not have come in the way of the learned Judges who disposed of Abhey Ram when they were dealing with the question as a matter of law. Abhey Ram decided the principle as to which order in Balak Ram Gupta governs and as to what is the effect of the two orders. No such exercise was ever made in CWP. 1373/88. If the 73 cases or CWP. 1373/89 or other cases were decided differently against the Government and DDA, they would operate as res judicata only between those parties.

42. It was argued for the applicants that the writ petitioner in Abhey Ram, raised only a limited question in the High Court, namely, that their case was governed by the decision of the Full Bench judgment dated 25.7.87 in Balak Ram Gupta. Therefore, when Abhey Ram's case came to this Court by way of appeal, this Court ought not have and need not have gone into the correctness of the latter order of the Division Bench dated 18.11.88, rendered long after the Full Bench decision on 25.7.87 and, therefore, the said decision in Abhey Ram was obiter. The quashing of the notifications could not be confined to the 73 writ petitions. We are unable to agree with the above contentions.

43. It will be noticed that when ABhey Ram was decided in the High Court, the Full Bench decision alone was there and not the subsequent Division Bench judgment in Balak Ram Gupta's case. But by the time Abhey Ram's case came up before the three learned judges in this Court on 20.8.99, the latter order of Division Bench dated 18.11.88 in Balak Ram Gupta was also available and naturally the appellant raised a plea based on the latter order of the Division Bench judgment daed 18.11.88 which said that entire section 5A inquiry and the entire land acquisition proceedings stood quashed. The appellant in Abhey Ram, in our view, was certainly entitled to do so. His contention was however repelled in Abhey Ram holding that notwithstanding the broad language used in the latter reasoned order dated 18.11.88, its area of operation was to be confined to what was stated by the same Division Bench earlier on 14.10.88 when a brief operative order was passed in the 73 cases allowing the writ petitions. We have already held that the writ absolute dated 14.10.88 in each case was

based on non-consideration of objections and not on the basis of there being no public purpose and that the decision in each case must, therefore, be confined to the land covered therein. The three Judge Bench in Abhey Ram held that the reasonsed order dated 18.11.88 of the Divison Bench could not travel beyond the earlier operative order dated 14.10.88 and could not have covered land other than the land involved in the said batch of writ petitions. In our view, the question of the correctness or interpretation of the orders dated 14.10.88 and 18.11.88 in Balak Ram Gupta was put in issue directly in Abhey Ram in this Court and the said decision in Abhey Ram can neither be characterised as uncalled for nor as being obiter nor as a decision per incuriam. Sudan Singh had not gone into this question at all and would not help the applicant.

44. Yet another argument was raised that the Division Bench of the High Court in its order dated 18.11.88 also held that the Lt. Governor had not applied his mind. Even here, when no issue going to the root of the acquisition such as lack of a public purpose was argued, the satisfaction of the Lt. Governor must also obviously relate to the rejection of the personal objections raised by each owner. This argument also cannot help the applicants. (We shall revert back to this aspect under Points 4 and 5).

For the above reasons, we hold that Abhey Ram was correctly decided and it was rightly followed in the present Civil appeals and no case is made out for referring the matter to a larger Bench. Points 2 and 3 decided against the applicants.

Point 4 and 5:

45. A contention was raised by Sri Shanti Bhushan that the Lt. Governor had not applied his mind while issuing section 6 declaration. Council relied upon certain observations made by the Division Bench in Balak Ram Gupta's case on 18.11.88 (1989) 37 DLT 150 (DB). In that judgment, the High Court extracted the declaration made under section 6 by the Lt. Governor. It reads as follows:

"I have carefully gone through the Report of the Land Acquisition Collector under section 5-A of the Land Acquisition Act in respect of village Chattarpur. I have also considered the objections received against the proposed acquisition.

2. The lands were notified under section 4 of the Land Acquisition Act for a public purpose, namely 'Planned Development of Delhi'.

3. I do not find substance in any of the objections. I, therefore, direct that notification under section 6 of the Land Acquisition Act for a public purpose, namely, 'Planned Development of Delhi' be issued in respect of 7142 bighas 18 biswas land of village Chattarpur as per draft furnished by the Land Acquisition Collector.

The Division Bench of the Delhi High Court in its order dated 18.11.88 referred to the manner in which the Lt. Governor should have expressed his satisfaction under section 6. The Bench observed:

"Similar orders are passed in relation to all the eleven villages as if there was a prescribed proforma. Section 6(1) requires that the appropriate Government, in this case Administrator/Lt. Governor of Delhi should consider the report under section 5-

A. After consideration he has to satisfy himself that particular land is needed for the public purpose. The consideration of the report including the objections of the objectors must be based on facts as disclosed in the order."

The Division Bench went on to say:

"A mere statement, as is made in the present case, that the Lt. Governor has carefully gone through the Report and also considered the objections is not sufficient compliance of Section 6 of the Act. His satisfaction that particular land is required to be acquired is also to be arrived at on cogent and intelligent appreciation of the objections and the Section 5-A report. Mere statement that he is satisfied about the acquisition of particular land without stating any reasons will be mindless exercise of the powers under section 6 of the Act. The order of the Lt. Governor must disclose as to what were the objections and why he has rejected them."

46. In addition, learned senior counsel for the applicants argued that the use of the word ‘particular’ in section 6 required that the Lt. Governor must, in his satisfaction under section 6, have referred every piece of particular land.

47. In our view, the above observations of the Division Bench do not lay down the law correctly and in fact run counter to earlier decisions of this Court. In Ganga Bishnu vs. Cal. Pinjrapole Society [1968 (2) SCR 117 = AIR 1968 sC 615], the words used were that the "Governor is satisfied that the land is need for a public purpose". It was argued that the said words did not ex facie show satisfaction of the Government which was a condition precedent. It was argued that the Amendment by Act 38/1923 omitted the words `appears’ and used the words `satisfied’ instead. Even so, this Court held that the law before the Amendment, and thereafter was the same. It was held that section 6 specified the manner in which the declaration should be made and if it was so made, it was conclusive. It was held that it was not necessary that the notification should even refer to the `satisfaction’. If the satisfaction was challenged, it would be sufficient if such satisfaction is proved by producing the record on the basis of which the section 6 declaration was issued. Therefore, the argument that section 6 declaration must contain reasons or refer to the objections for every particular land, is not correct. Again in Ratilal Shakarabhai vs. State of Gujarat [1970 (2) SCC 264], the plea that the Government had not applied its mind was rejected by this Court in the following circumstances. The Court observed:

"Before issuing that notification (i.e. section 6), there was an inquiry under Section 5A. The Government had issued that notification after examining the report submitted by the concerned officer, there is no material on record from which we can reasonably come to the conclusion that the Government had acted blindly in issuing that notification."

48. No reasons or other facts need be mentioned in the section 6 declaration on its face. If the satisfaction is challenged in the Court, the Government can show the record upon which the Government acted and justify the satisfaction expressed in the Section 6 declaration.

49. It is true that section 6 uses the word ‘particular land’ but in our view while

referring to its satisfaction in regard to the need to acquire the entire land, the Government need not refer to every piece of particular land. It is sufficient if the authority which conducts the section 5A inquiry has considered the objections raised in relation to any particular land. Even where the said authority accepts the objections, that is not binding on the Government which can take a different view for good reasons. Where the Government agrees with the report under section 5A, the declaration under section 6 need not advert to the reasons or facts concerning each piece of land. Hence, the wide observations made in Balak Ram Gupta's case cannot be accepted.

50. In Abhey Ram as well as in the judgment in the Civil Appeals, it has been clearly stated that those claimants who have not filed objections to the section 4 notification cannot be permitted to contend before Court that the section 5A inquiry is vitiated so far as they are concerned. Nor can they be permitted to seek quashing of section 6 declaration on that ground. We shall elaborate this aspect further.

51. Now objections under section 5A, if filed, can relate to the contention that (i) the purpose for which land is being acquired is not a public purpose (ii) that even if the purpose is a public purpose, the land of the objector is not necessary, in the sense that the public purpose could be served by other land already proposed or some other land to which the objector may refer or (iii) that in any event, even if this land is necessary for the public purpose, the special fact-situation in which the objector is placed, it is a fit case for omitting his land from the acquisition. Objection (ii) is personal to the land and objection (iii) is personal to the objector.

52. Now in the (ii) and (iii) type of objections, there is a personal element which has to be pleaded in the section 5A inquiry and if objections have not been filed, the notification must be conclusive proof that the said person had "waived" all objections which were personal and which he could have raised. However, so far as objection (i) is concerned, even in case objections are not filed, the affected party can challenge in Court that the purpose was not a public purpose.

53. Learned Solicitor General Sri Salve rightly argued that in respect of each land owner whose land is acquired, the section 4 notification if it is sought to be avoided on personal grounds as stated in (ii) and (iii) above, it is necessary that objection be filed to avoid a viodable notification. Otherwise, the notification which is not avoided on personal grounds, remains operative and personal objections are deemed to be waived.

54. In the extracts from the Division Bench judgment set out earlier, it will be seen that two different concepts are unfortunately mixed up. Satisfaction regarding public purpose, it was said must be expressed in respect of each 'particular land'. This view, as already stated, is not correct. If the entire land is needed for a public purpose, it is not necessary for the Government (or here the Lt. Governor) to say in the section 6 declaration that each piece of land is required for the public purpose. The Division Bench then mixed up this question with individual objections in each writ petition. Obviously, these individual objections of the type (ii) and (iii) mentioned above can only be personal to each writ petitioner or peculiar in respect of each of the pieces of land owned. In that event, the rejection of the objections by the land acquisition

officer and the "Satisfaction" of the Government/Lt. Governor can relate only to each of these pieces of land and not the whole. Therefore, there is no question of the Division Bench holding in its order dated 18.11.88 that the satisfaction of the Lt. Governor in respect of the entire land is vitiated. As already stated, the satisfaction regarding public purpose was never in issue.

55. It was then argued that satisfaction under section 6 for the rest of the land not covered by the 73 writ petitioner or even where no objections are filed under Section 5A, must be held vitiated because the objections filed in certain other cases were not properly considered by the officer and hence the section 6 satisfaction of the Lt. Governor for the rest of the land is also vitiated.

56. We are unable to agree that in the cases not before the Division Bench and in particular in cases where no objections are filed, the satisfaction under section 6 is vitiated because in some other cases, the objections which were filed were not properly disposed of. As to rejection of personal grounds of each writ petitioner, - other than the 73 writ petitioners - there was no occasion for the Lt. Governor to apply his mind if objections were not indeed filed. The only question then could have been about the public purpose.

57. In the present cases there is no dispute that the purpose is a public purpose. The applicant had not filed objections on grounds personally applicable to him or to his land seeking exclusion from acquisition, and the objections in that behalf must be deemed to have been waived. Such a person cannot be allowed to file a writ petition seeking the quashing of section 5A inquiry and section 6 declaration on personal grounds if he had not filed objections. Points 4 and 5 are decided accordingly against the applicants.

Point 6:

This point would not have fallen for consideration because we have held that the earlier judgment of this Court in Civil appeals is correct and does not warrant any review or recall. We are, however, considering this point because of the fair concession made by the learned Solicitor General of India.

Learned Solicitor General of India, Sri Harish Salve, has placed before us in written words, the scope and extent of the concession he is making on behalf of the government. It reads as follows:

"In a case where the Joint Director (New Lease) of the Delhi Development Authority (DDA) has expressly represented that the proceedings stand quashed, then the government would consider the question of de-notification under section 48 provided

(a) The applicant who has constructed upon the land is the original owner and was the owner prior to the issuance of the notification under section 4. It is made expressly clear that even those transferees who have acquired the land with permissions/NOCs under the Delhi Land (Restrictions on Transfer) Act, 1972 are not covered by this.

(b) The construction has been made after obtaining the approval of the MCD for the

building plans.

(c) The construction as exists is in strict compliance with the sanctioned plans and does not exceed the maximum built up area permissible in respect of farm houses - which is the applicable norm under the Building by-laws.

(d) The extent of deacquisition would be in the discretion of the Govt.

(e) If compensation has not been paid."

On the basis of the above concession, we have considered the case of Sri Gurdip Singh Uban.

In the case of Sri Gurdip Singh Uban, the DDA had, during the pendency of the proceedings, issued a letter on6.2.96 (F9(2) 90/CRC/South/S-7) signed by the Joint Director representing as follows:

"Acquisition proceedings/Notification has been quashed by the Hon'ble High Court in case of Shri B.R. Gupta and Ors.

You are, therefore, requested to kindly approach, the MCD for approval of the building plans and ADM(R) for getting N.O.C. for construction on the said land".

58. Later, after completing formalities, the applicant constructed a house. In our view, there isa clear representation by the DDA to the applicant and he has acted upon it. Having regard to the principles in section 115 of the Evidence Act, a question of estoppel prima facie arises in favour of the applicant. We aer sure that the applicants' case for release under section 48 will be sympathetically considered in the light of the various factors mentioned in the concession of the learned Solicitor General set out above. As to the extent of land that can be released under Section 48 in addition to the building, it has to be left to the reasonable discretion of the competent authority. We, therefore, direct that the applicant's application, if made within 15 days from today, the same be considered within 8 weeks after such filing, in the light of the observations made above and a reasoned order be communicated to Sri Gurdip Singh Uban.

Status quo as to possession will be maintained as of today till disposal of the representation and its receipt thereof by Sri Gurdip Singh Uban and for a further period of two weeks after such receipt.

Point 6 is decided accordingly.

Point 7:

We now come to the Writ petition filed under Article 32 of the Constitution of India.

It appears that after the judgment in the present Civil Appeals, an order was passed by the DDA on 7.12.99 as follows:

"1. DDA should go ahead with taking possession of Land Acquisition Collector

concerned and there is no Court order to the contrary and where no objections have been filed by the land owners under section 5A of the Land Acquisition Act, 1894 in pursuance of section 4 notification dated 5.11.1980 and 25.11.1980.

2. It is learnt that there are several cases where the compensation amount paid to the petitioners has not been paid back to the Government either by the party and in some cases due to lapse of six months time to deposit cheque by the Land Acquisition Collector, thereby resulting in double benefit to some petitioners for which detailed investigation called as for large amount of money is involved.

3. The action in respect of lands for which the notification under section 6 did not demise in terms of the Supreme Court's order dated 20.8.99 but for which the acquisition proceedings could not be concluded by making of an Award should be gone into a careful manner and appropriate action taken.

4. It has to be seen what contention discrimination between persons situated similarly can be valid considering that it is only now that a clear view/order or the Supreme Court has become available on 20.9.1999.

59. OLM may seek information from the SDM/Land Acquisition Collector concerned regarding the availability of acquired land of which possession can be taken, which is from any litigation - details of Khasra numbers, area and village etc."

60. It is this order that is challenged in this Writ Petition. It is argued that this order is unwarranted inasmuch as this Court while deciding the Civil Appeal on 20.8.99 gave no directions to take action in this manner.

61. A counter has been filed justifying this letter dated 7.12.99 and also pointing out that the petitioner is not the original owner but a person who claims purchaser under a power of attorney. It is also pointed out that the land of 1 bigha and 17 biswas could not have been sold and that NOC under the Delhi Land (Restriction and Transfer) Act, 1972 does not have the effect of releasing the land for acquisition. Sales are illegal, it is said, because of sections 1 and 2 of Delhi Land Revenue Act, 1954 read with section 1(2) clause (c) of the Delhi Land Reforms Act, 1954 (act 8/1954).

62. We do not propose to go into these questions. It will be for the petitioner to move the High Court and raise the contentions in that Court. We dismiss the writ petition with leave to move the High Court. We should not be understood as having said anything on the merits. Point 7 is held accordingly.

Point 8:

63. This point concerns Mrs. Har Kiran Commar whose Review Petition 21/2000 is pending and is yet to be circulated under O.XL.R.3 while the said application is pending for review, the same applicant has filed this IA3 for the reliefs already set out at the beginning of this judgment. The points raised in the IA3 are clearly in substance points which are raised in the pending review application. By describing this application as one for 'recall' of the order in the Civil Appeals, the applicant cannot be allowed to circumvent the O.XL.R.3 and obtain personal hearing in open

Court of the issues which the Court has to consider in Chambers where no oral hearing is permitted. We may also point out that in this court, it is normally customary to file IAs for 'recall' when SLPs are dismissed for default. But we are unable to understand how submissions in the nature of a request for review can be made by describing the IA as one for 'recall'. To permit this request which is a review in disguise would become a bad precedent in future cases. Otherwise, in every case parties will start filing applications for 'recall' in addition to 'review' and raise the same grounds and seek an oral hearing in the IA for 'recall'. In fact, learned senior counsel Sri C.S. Viadyanathan proceeded to hand over certain fresh documents in this IA to contend that the case of this applicant is also one where section 48 could be favourably applied in her favour. The handing over of these documents in this manner is seriously objected to by the respondents. If the applicant is so advised, she may file these documents in the pending review application. But we cannot pass orders in this IA which virtually amounts to giving a disposal to her pending review petition 21/2000. We, therefore, reject this application, however permitting the applicant to move the Registry to have the Review application listed in Chambers. IA 3 is disposed of accordingly. Point 8 is decided accordingly.

64. In the result, the IAS. 3 to 5 are disposed of as stated above and the W.P. 155/2000 is rejected permitting petitioner to move the High Court. The directions given under Point 6 shall be taken note of by the applicant Sri Gurdip Singh Uban and the respondents. The observations made under Point 8 will be taken note of by Mrs. Har Kiram Commar and the Respondents. In the normal course, we should have imposed heavy costs on the applicant Sri Gurdip Singh Uban for filing application for 'recall' 'modify' and 'recall' after dismissal of review petition. But, as some relief is granted, on concession, we are not imposing costs.