SUPREME COURT OF INDIA

Delhi Administration

Vs.

Madan Lal Nangia

C.A.No.4722 of 1997

(S. N. Variava and H. K. Sema, JJ.)

08.10.2003

JUDGEMENT

S. N. VARIAVA, J.:-

1. This appeal is against a portion of the judgment dated 14th December, 1995 (passed by a Full Bench of the Delhi High Court) whereunder Writ Petition 1543 of 1982, filed by the respondents, has been allowed.

2. Briefly stated the facts are as follows :

Large tracts of land were acquired for the planned development of Delhi. A large number of writ petitions were filed challenging the acquisition. By the judgment dated 14th December, 1995 the acquisition proceedings were upheld. Appeals against this judgment have been dismissed by this Court. However, in this judgment a few writ petitions, where the lands were evacuee properties,

were allowed and the acquisition in respect of those lands was set aside on the following reasoning :

"Civil Writ Petition No. 783/81

In this petition, the notification under Section 4 is dated 13th November, 1959 and declaration under Section 6 is dated 2nd January, 1969. The award had been given on 17th January, 1983. The land use prescribed in the Master Plan is Zonal Park and in the revised plan is District Park. In the original notification dated 13th November, 1959, it is mentioned that it would not cover the evacuee land. The petitioner had purchased this property from its previous owner on 6th August, 1962. However, on the date of notification issued under Section 4 of the Act, this land was evacuee property and vested in the Custodian and stood excluded from the said notification. The name of the previous owner is Kailash Chand Gupta.

Reliance is placed on a judgment of single Bench of this Court given in Civil Writ Petition No. 155/83, Harbans Kaur v. Land Acquisition Collector decided on August 12, 1991 in which, on similar facts, it was held that as the original notification issued under Section 4 excluded its application to the evacuee land, mere fact that the land ceases to be evacuee after the issuance of notification under Section 4 of the Act would not validate the subsequent proceedings taken under Sections 6 and 11 of the Act for acquiring the land as notification under Section 4 did not pertain to the evacuee land.

It is quite evident that if there is no notification issued under Section 4 of the Act pertaining to a particular land, then any declaration issued under Section 6 would be by itself not valid in respect of the land which was not subject-matter of notification issued under Section 4 of the Act.

It has been urged before us that the writ petition has been brought belatedly as Section 6 declaration had been issued in 1969 whereas the writ petition had been filed in 1981. It is not the case where any defect in the Section 4 notification is being highlighted like that the same was not published in accordance with the provisions of the Act. What has been pointed out is that the notification issued on 13th November, 1959 did not at all pertain to the land in question as it was evacuee land at that time. If the notification on the face of it is not applicable to the land in question, the same is non est and any proceedings taken for acquiring the land on the basis of such a notification issued under Section 4, which did not pertain to the land in question, would be void ab initio and without jurisdiction.

In our view, once it is shown that there was no notification issued under Section 4 pertaining to the particular land, the subsequent proceedings being void, the petitioner would not be debarred from challenging such proceedings even belatedly. So, this petition is liable to be allowed.

In the first two cases, the notification under Section 4 had been issued on 13th November, 1959 while in C.W.P. No. 1543/82, the notification had been issued on 23rd January, 1965 but notifications themselves excluded the evacuee lands. It is evident that on the date of the notifications, the land of these petitioners was evacuee land and it is only later on that the land has been auctioned or transferred by the competent officer in favour of the petitioners. It is, hence, evident that notification issued under Section 4 could not possibly apply to the land of these petitioners when at the time of the notification, the land in question was evacuee land or composite land. The land obviously belonged to the Government and in case the Government needed the land for public purpose, they could have easily retained the possession of the land and there was no need to resort to Land Acquisition Act for acquiring this land. At any rate, when the land of the petitioners, being evacuee land, was not covered by the notifications issued under Section 4, any subsequent proceedings of acquisition taken in respect of the said land on the basis of the said notification under Section 4 were on the face of it illegal.

Hence, the acquisition proceedings in respect of the land of these petitioners are liable to be quashed."

Thus these acquisitions were set aside on the grounds: (a) They were pursuant to a Notification dated 13th November, 1959, under Section 4 of the Land Acquisition Act; (b) that tis Notification did not cover evacuee lands and, therefore, further proceedings would not be valid; (c) that evacuee lands or composite lands belong to the Government and in case the Government needed the land for public purpose they could have easily retained the possession of the land and there was no need to resort to Land Acquisition Act for acquiring this land; (d) that once it was shown that there was no Notification issued under Section 4 pertaining to these lands, the subsequent proceedings being void, the petitioners were not debarred from challenging such proceedings even belatedly.

3. At this stage it must be noticed that the acquisition of petitioners' lands was not under Notification dated 13th November, 1959. Petitioners' lands were acquired under proceedings pursuant to Section 4 Notification dated 23rd January, 1965. The Notification dated 23rd January, 1965 did not exempt evacuee properties. The High Court fell in error in stating that a Notification dated 23rd January, 1965 exempted evacuee lands. Thus the factual basis on which acquisition of other evacuee lands was set aside did not exist in this case. This aspect appears to have not been noticed by the High Court. One cannot blame the High Court as there were so many matters before it. It is only natural that facts of this particular case may not have been noticed.

4. Dr. Dhavan submitted that this Civil Appeal should be dismissed because Delhi Development

Authority had also filed a Special Leave Petition against this portion of the judgment whereby writ petition of the respondents had been allowed. He pointed out that in that Special Leave Petition the Union of India and Delhi Administration were respondent Nos. 10 and 13 respectively. He submitted that that Special Leave Petition was dismissed on 18th November, 1996. He pointed out that the Review filed by Delhi Development Authority was also dismissed on 7th November, 2000. He submitted that in this Special Leave Petition the Union of India and the Delhi Development Authority have not been made parties obviously with an intention of hiding the fact that the Delhi Development Authority's Special Leave Petition had been dismissed. We are unable to accept this submission. We have seen the Orders dated 18th November, 1996 whereby the Delhi Development Authority's Special Leave Petition was summarily dismissed. It is settled law that if a Special Leave Petition is summarily dismissed such a dismissal does not bar other parties from filing a AIR 2000 SC 2587 : 2000 AIR SCW 2608, AIR 2002 SC 3484 : 2002 AIR SCW 4076 Special Leave Petition against the same judgment. No authority is required for this proposition but if any is required, then the cases of Kunhayammed and others v. State of Kerala, reported in (2000) 6 SCC 359 and S. Shanmugavel Nadar v. State of Tamil Nadu, reported in (2002) 8 SCC 361, may be looked at. Even otherwise, the order dated 7th November, 2000 is very clear. On this date Delhi Development Authority's Review Petition is being dismissed, but this order specifically delinks this Civil Appeal along with two other Civil Appeals. Once this Court has specifically chosen to keep this Appeal alive, we do not consider it correct or proper to now dismiss this Appeal only on the ground that the Special Leave Petition and Review Petition of the Delhi Development Authority have been dismissed.

5. Mr. Rohtagi submitted that the writ petition should have been dismissed on the grounds of delay and laches. He pointed out that Section 4 Notification was issued on 23rd January, 1965 and Section 6 Notification was issued on 13th January, 1969. He submitted that this writ petition was filed only in 1982. He pointed out that the High Court in the Judgment dated 14th December, 1995 has held as follows :

"It is evident that if challenge is made belatedly to such notifications obviously it would become difficult for the authorities to meet such a challenge as the records of such old notifications may not be available and also if challenge had been made expeditiously and some deficiencies were found in publicizing the notifications, the notifications could have been withdrawn and fresh notifications could have been issued. By allowing such notifications to remain unchallenged for years together the petitioners had allowed the authorities to proceed on the basis that there would not be any challenge to such notifications. Mere fact that in some cases acquisition proceedings have not been completed and possession had not been taken would not entitle the petitioners to get the notifications set aside on such a ground. Even if there is no counter filed in some of these cases rebutting the factual averments with regard to notifications being not published in the locality as required by law even then the respondents are not debarred from taking the plea in arguments that the writ petitioners in challenging these notifications belatedly are guilty of laches and delay. In the case of Ramjas Foundation and others v. Union of India and others, (1993) 50 DLT 23 (SC), on similar grounds the belated challenge was negatived. So there is no merit in such a plea and such challenge has to be negatived." AIR 1993 SC 852 : 1992 AIR SCW 3460

Mr. Rohtagi submitted that the High Court has thus negatived the challenge to the acquisition proceedings on grounds of delay and laches and yet thereafter given relief to the respondents. He submitted that in view of the High Court's own findings, on delay and laches, the High Court should have dismissed this writ petition also. Mr. Rohtagi relied upon the case of Ramjas Foundation v. Union of India, reported in (1993) Supp (2) SCC 20, wherein this Court has held that if there is no explanation for the delay or the explanation is unacceptable then the writ petition challenging acquisition proceedings must be dismissed on grounds of delay and laches. He also relied upon the case of Vishwas Nagar Evacuees Plot Purchasers Association v. Under Secretary, Delhi Administration, reported in (1990) 2 SCC 268, wherein again this Court has held that the writ petition must be dismissed on grounds of delay and laches. It must be mentioned that both the above cases, relied upon by Mr. Rohtagi, were in respect of the same Notifications. AIR 1993 SC 852 :1992 AIR SCW 3460, AIR 1990 SC 849

6. On the other hand, Dr. Dhavan submitted that whether there is delay and/or laches is a question of fact. He submitted that so far as evacuee lands are concerned the High Court, in its judgment dated 14th December, 1995, has held that once the Notification under Section 4 did not cover evacuee lands then all subsequent proceedings are void and that the respondents were thus entitled to challenge the acquisition proceedings even belatedly. He submitted that the factual aspect is not before this Court, the submissions of Mr. Rohtagi should not be accepted.

7. In our view, it is not necessary for us to decide this point as, for reasons set out hereinafter, we propose to remit the matter back to the High Court for a fresh hearing in respect of some of the lands. It will be open to the parties to urge their respective contentions before the High Court. The High Court shall decide this question on merits.

8. Dr. Dhavan then took this Court through the provisions of the Administration of Evacuee Properties Act, 1950; the Evacuee Interest (Separation) Act, 1951, and the Displaced Persons (Compensation and Rehabilitation) Act, 1954 and the averments made in the writ petition which are as follows:

"5. That the petitioners are the actual owners and occupants with physical possession of the land bearing Khasra Nos. 322(2-17), 323(2-16), 329/1/1(0-14), 318/2(3-12), 324(4-12) 319/3(2-13) and 321(2-17), total measuring 20 Bighas, 2 Biswas situated in the Revenue Estate of Village Pul Pehlad, Tehsil Mehrauli in the Union Territory of Delhi, hereinafter referred to as "the said lands". The petitioners are in actual physical possession of the said land and are running their stone hot-mix plants on the said lands for the last about 10 years. The name of the petitioners has been duly entered in the Revenue record. True English translation of the latest Khasra Girdawari are filed herewith and marked as Annexure F.

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8. That on the partition of the country in the year 1947, certain Muslims of village Pul Pehlad, Delhi went to Pakistan and left their land and property. Thus, the whole of the said land was declared as Evacuee Land. In fact, there was a joint Khewat of land of many persons in village Pul Pehlad, the interests of evacuee and non-evacuee were composited under the Evacuee Interest (Separation) Act, 1951. In the year 1950-51, Hamdard Dawakhana (Wakf), Delhi purchased the said land and thus the interest of Non-evacuee and evacuee were composited. Thus, the said land was initially being a composite evacuee property under the Evacuee Interest (Separation) Act and when the Displaced Persons (Rehabilitation and Compensation) Act, 1954, by the Government of India on 7-7-1955 by a Notification No. S.R.O. 1535 dated 7-7-1955, issued by the Ministry of Rehabilitation and such the interest of the Evacuee vested in the Government. The Hon'ble Supreme Court of India in Collector of Bombay v. Naussorwanji reported as AIR 1955 SC 298 held that "When Government possesses an interest in the land which is the subject of acquisition under the Act, that interest is itself outside such acquisition, because there can be no question of Government acquiring what is its own."

9. That the said land of the petitioner continued to be evacuee acquired composite property under the Evacuee Interest (Separation) Act, vide orders dated 24-8-1959 of the Competent Officer, Delhi in Case No. 735/C.O. passed according to the order of Chief Commissioner of Delhi dated 23-12-1958 in Case No. 262 of 1957.

It is respectfully submitted that the interest of evacuee and non-evacuee were finally separated by the Court of Competent Officer, Delhi appointed under S. 4 of the Evacuee Interest (Separation) Act, 1951, by an Order dated 16-5-1968. A true copy of the said Order is Annexed herewith and marked as Annexure 'G'. Thus till 16-5-1968, the said land remained as composite evacuee property or acquired land vesting in Government on the date of issue of Sec. 4 Notification i.e. 23-1-1965, therefore, the said land could not be legally acquired on the basis of the said Notification dated 23-1-1965 and as such, any declaration under S. 6 of the Acquisition Act is illegal, invalid and inoperative and void-ab initio."

He pointed out that in reply to these averments all that was stated was as follows :

"Para 5 : The contents admitted in respect of petitioner Nos. 1 to 6. Petitioner Nos. 7 to 9 are neither the owner nor occupant of the land under petition. Petitioners Nos. 1 to 6 are the occupant of Kh. Nos. 322, 323/2. Petitioner No. 6 is owner in possession of Kh. No. 321(2-14), (2-17) (2-16), petitioner No. 3 is owner in possession of Kh. No. 324/2 (4-13). Petitioner No. 2 is occupant of Kh. No. 318/2 (3-12) on behalf of Gaon Sabha. Petitioner No. 1 is owner in possession of Kh. No. 329/1/1(0-4) and petitioners Nos. 4 and 5 are the owners in possession of Kh. No. 319/3(2-12) possession of the petitioners has been entered in Kh. No. 1980 according to Revenue record.

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Para 8 : In reply to the contents of this part, it is submitted that Kh. Nos. 304, 305 and 306 belongs to Ham Dard Dawakhana Waqf and Kh. No. 310 to Gaon Sabha Pul Pahlad as owner according to the record and tenants have been discussed in Para 5. The legal submissions are denied. These shall, however, be suitably replied at the time of arguments.

Para 9 : The contents being mis-conceived are, therefore, denied. There is no provision in the notification under S. 4 made on 23-1-1965 that the said notification is not applicable on the evacuee or any other specific property. The legal submissions shall be suitably replied at the time of arguments."

He submitted that therefore there was no denial to the averments in the petition. He submitted that the composite lands were required to be separated under the provision of Evacuee Interest (Separation) Act, 1951. Dr. Dhavan showed to this Court a copy of an Order dated 16th May, 1968 in support of his submission that this separation of interest only took place on that date. It must immediately be mentioned that a perusal of this Order shows that except for Khasra Nos. 321 and 322, none of the other lands set out in Para 5 of the writ petition are covered by this Order.

9. Dr. Dhavan submitted that even though the Notification under Section 12, was issued such a Notification did not put an end to rights which were pre-existing. He submitted that the rights of the respondents continued to exist until there was a separation of interest under Section 10 of the Evacuee Interest (Separation) Act, 1951 on 16th May, 1968. In support of this proposition he relied upon the case of State of Punjab v. Suraj Parkash Kapur reported in 1962 (2) SCR 711, wherein the question was whether on an acquisition under Section 12 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 the pre-existing rights came to an end. The facts of this case were that under a Draft Scheme, framed by the Consolidation Officer, certain lands allotted to the respondents therein, were substituted by poorer lands. Thus a writ petition challenging the Scheme was filed. Pending the writ petition a Notification under Section 12 of the Displaced Persons (Compensation and Rehabilitation) Act was issued, wherein all evacuee properties were acquired. The question before the Court was whether the writ petition challenging the consolidation scheme was maintainable after the Notification under Section 12 had been issued. It was held that even though there was no right to property but still there was an interest in the land which enabled respondents (therein) to maintain the writ petition. The observation that the interest in land continued was based on Section 10 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 which specifically provided that even after an acquisition under Section 12 the displaced person to whom the property was leased or allotted could continue in possession of that land. Thus the observation relied upon are based on the provision of Section 10 which permitted retention of possession. There is no such provision in the Land Acquisition Act. Thus once an acquisition takes place under the Land Acquisition Act all prior rights would stand terminated. The principles laid down in Suraj Kapur's case could thus have no application. AIR 1963 SC 507

10. Dr. Dhavan further submitted that there was no denial that on 7th July, 1955 there was a Notification under Section 12 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954. A copy of this Notification was also shown to this Court. Dr. Dhavan submitted that by virtue of the AIR 2003 SC 942 : 2003 AIR SCW 425 : 2003 AIR -- Jhar HCR 283, Paras 31, 32, 33, 34, 35 and 36 Notification dated 7th July, 1955 the Central Government became the owner of these lands. He submitted that there could then be no acquisition by the Central Government of its own lands. In respect of the submission that the Central Government cannot acquire its own land reliance was placed on the following observations made in the case of Sharda Devi v. State of Bihar reported in (2003) 3 SCC 128.

"27 . . . . . .The State does not acquire its own land for it is futile to exercise the power of eminent domain for acquiring rights in the land, which already vests in the State. It would be absurdity to comprehend the provisions of the Land Acquisition Act being applicable to such land wherein the ownership or the entirety of rights already vests in the State. In other words, the land owned by the State on which there are no private rights or encumbrances is beyond the purview of the provisions of the Land Acquisition Act. The position of law is so clear as does not stand in need of any authority for support. Still a few decided cases in point may be referred since available.

28. In Collector of Bombay v. Nusserwanji Rattanji Mistri (AIR 1955 SC 298) this Court held that when the Government acquires lands under the provisions of the Land Acquisition Act, it must be for a public purpose, and with a view to put them to that purpose, the Government acquires the sum total of all private interests subsisting in them. If the Government has itself an interest in the land, it has only to acquire the other interests outstanding thereof so that it might be in a position to pass it on absolutely for public user. An interesting argument was advanced before the Supreme Court. It was submitted that the right of the Government to levy assessment on the lands is an "encumbrance" and that encumbrance is capable of acquisition. The Court held that the word "encumbrance" as occurring in Section 16 can only mean interests in respect of which a compensation was made under Section 11 or could have been claimed. It cannot include the right of the Government to levy assessment on the lands. The Act does not contemplate the interest of the Government in any land being valued or compensation being awarded therefor.

29. In Secy. of State v. Sri Narain Khanna (AIR 1942 PC 35) it was held that where the Government acquires any property consisting of land and buildings and where the land was the subject-matter of the Government grant, subject to the power of resumption by the Government at any time on giving one month's notice, then the compensation was payable only in respect of such buildings as may have been authorized to be erected and not in respect of the land.

30. In the matter of the Land Acquisition Act : Govt. of Bombay v. Esufali Salebhai (ILR (1910) 34 Bom 618) (at p. 636) Batchelor, J. held that the Government are not debarred from acquiring and paying for the only outstanding interests merely because the Act, which primarily contemplates all

interests as held outside the Government, directs that the entire compensation based upon the market value of the whole land must be distributed among the claimants. The Government was held liable to acquire and pay only for the superstructure as it was already the owner of the land.

31. In Dy. Collector, Calicut Division v. Alyavu Pillay (9 IC 341 : (1911) 2 MWN 367 : 9 MLT 272) Wallis, J. observed that the Act does not contemplate or provide for the acquisition of any interest which already belongs to the Government in land which is being acquired under the Act but only for the acquisition of such interests in the land as do not already belong to the Government.

32. In Collector of Bombay v. Nusserwanji Rattanji Mistri the decisions in Esufali Salebhai case and Aiyavu Pillay case were cited with approval. Expressing its entire agreement with the said views, the Court held that when the Government possesses an interest in land which is the subject of acquisition under the Act, that interest is itself outside such acquisition because there can be no question of the Government acquiring what is its own. An investigation into the nature and value of that interest is necessary for determining the compensation payable for the interest outstanding in the claimants but that would not make it the subject of acquisition. In the land acquisition proceedings there is no value of the right of the Government to levy assessment on the lands and there is no award of compensation therefor. It was, therefore, held by a Division Bench of Judicial Commissioners in Mohd. Wajeeh Mirza v. Secy. of State for India in Council (AIR 1921 Oudh 31 : 24 Oudh Cas 197) that the question of title arising between the Government and another claimant cannot be settled by the Judge in a reference under Section 18 of the Act. When the Government itself claims to be the owner of the land, there can be no question of its acquisition and the provisions of the Land Acquisition Act cannot be applicable. In our opinion the statement of law so made by the learned judicial Commissioners is correct."

11. There can be no dispute with this proposition. The only question is whether it has any application to facts of this case.

12. At this stage it is necessary to set out that none of these documents were shown to the High Court or considered by the High Court. However, as they had been referred to in the writ petition we looked at the documents. The picture which emerges is that by Notification dated 7th July, 1955 the Central Government acquired all evacuee properties in the State of Delhi, under Section 12 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954, except the following categories of properties, viz;

"(1) any such property,

(i) in respect of which proceedings are pending before any authority at the date of this notification

under the Administration of Evacuee Property Act, 1950 (XXXI of 1950) in which the question of issue is whether the property is or is not evacuee property; or

(ii) in respect of which the period of limitation if any, fixed for an appeal or revision under the said Act for disputing to vesting of the property in the Custodian as evacuee property has not expired.

(2) any such property in respect of which an application for the grant of a certificate under sub-section (1) of Section 16 of the Administration of Evacuee Property Act, 1950 (XXXI of 1950) is pending at the date of this notification or in respect of which the period of limitation fixed for making such application has not expired :

(3) any such property which has been restored under Section 16 of the Administration of Evacuee Property Act, 1950 (XXXI of 1950) or in respect of which an application under sub-section (2) of that section for its restoration is pending at the date of this notification, or in respect of which a certificate under sub-section (1) of that section has been granted but no application under sub-section (2) of that section for its restoration has been made;

(4) any such property which before the date of this notification has been transferred and the transfer is effective under Section 40 of the Administration of Evacuee Property Act, 1950 (XXXI of 1950) or in respect of which any proceedings are pending at the date of this notification under that section;

(5) any such property which is a composite property within the meaning of the Evacuee Interest (Separation) Act, 1951 (LXIV of 1951);

(6) any such property in respect of which any proceedings are pending in a Civil Court wherein the question at issue is whether the property is evacuee property or not;

(7) any such property which at the date of this notification is being treated or is being managed as a trust property for a public purpose of a religious or charitable nature under sub-section (1) of Section 11 of the Administration of Evacuee Property Act, 1950 (XXXI of 1950)."

13. As per the averments of the petitioner, which as Dr. Dhavan pointed out, are not controverted, all the lands claimed by the respondents were composite properties. If that is so then none of the properties mentioned in para 5 of the writ petition (reproduced hereinabove) were covered by

Notification dated 7th July, 1955. They were thus not acquired by this Notification.

14. Faced with this situation, Dr. Dhavan submitted that evacuee properties vest in the Custodian. He submitted that the Custodian was appointed by the Central Government. He submitted that properties which vest in the Custodian are properties belonging to the Central Government. He pointed out that the High Court has accepted this submission. He submitted that this Court should not interfere with the finding.

15. We are unable to accept the submission of Dr. Dhavan. Merely because a property is an evacuee property does not mean that it vest in the Central Government. The Custodian is a statutory authority appointed under the Acts. The Custodian is a distinct person from the Central Government. Merely because a property vests in the Custodian does not mean that the property vest in the Central Government. It must be noted that the Custodian is appointed for each case. Further, if, as contended, the property vests in the Central Government then there would be no question of Section 12 of the Displaced Persons (Compensation and Rehabilitation) Act providing that the Central Government could acquire such property. The Central Government can never acquire its own property. Thus the very fact that Section 12 of the Displaced Persons (Compensation and Rehabilitation) Act provides for acquisition by the Central Government clearly indicates that evacuee properties are not properties of the Central Government. As they are not properties of the Government they can be acquired, not just under Section 12 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954, but even under the Land Acquisition Act.

16. Even if the Notification dated 7th January, 1955 applied to these lands, what was acquired was the interest of the evacuee. A property is a composite property because a private party has an interest in that property. The scheme of separation, to be framed under Section 10 of the Evacuee Interest (Separation) Act, is for purposes of separating the interest of the evacuee from that of the private party. Therefore, even if the evacuee interest was acquired under Section 12, the interest of the private person could have been acquired under the Land Acquisition Act. Further if the land stood acquired by the Notification dated 7th January, 1955 then the question would arise as to how the respondents acquired title to these lands. If they purchased after the date of Notification dated 7th January, 1955, they would get no title. They then would not be able to maintain the writ petition. Dr. Dhavan submitted that the appellants had admitted the title of the respondents and thus this question would not arise. We are unable to accept the submission. It is only a person, who has an interest in the land who can challenge acquisition. When a challenge is made, to an acquisition, at a belated stage, then even if the Court is inclined to allow such a belated challenge, it must first satisfy itself that the peson challenging acquisition has title to the land. Very significantly, in their writ petition the respondents do not state when they acquired title.

17. Dr. Dhavan next submitted that properties which are evacuee properties vest in the Custodian for the purposes of distribution as per the provisions of the various Acts. He submitted that considering the historical background and the partition of the country the properties were vested in the

Custodian with the intention of serving a public purpose, i.e. rehabilitation of persons, who had come to India after leaving all their properties behind in Pakistan. He submitted that this was a very important public purpose and as the properties were vested for a public purpose there was no question of the Government acquiring these properties for some other public purpose. He submitted that it is for this reason that in the Notification dated 13th November, 1959 evacuee properties were excluded. He submitted that the Government while issuing the Notification on 13th November, 1959 recognized the fact that evacuee properties were required for a public purpose. He submitted that the same position continued even when the Notification dated 23rd January, 1965 was issued. He submitted that there is no reason to distinguish the cases of evacuees arising out of the 1959 Notification from the cases of evacuees arising out of the 1965 Notification. He submitted that they were similar cases which should be treated alike in order to avoid suspect classification. He submitted that thus it must be held that the evacuee properties were impliedly excluded from the Section 4 Notification dated 23rd January, 1965. We are unable to accept this submission of Dr. Dhavan. Undoubtedly, the evacuee properties vested in the Custodian for the purposes of distribution as per the provisions of the various Acts. However, it is to be noted that under the various Acts in lieu of properties, compensation in terms of money can also be paid. Thus merely because the properties vest in the Custodian as evacuee properties does not mean that the same cannot be acquired for some other public purpose. The moment that the property is acquired for another public purpose the compensation payable under the Land Acquisition Act would be paid to the Custodian who would then distribute it under the provisions of the various Acts.

18. We see no substance in the submission that the cases of evacuees under the 1959 Notification and under the 1965 Notification must be treated similarly. It is not possible to accept the submission that impliedly evacuee properties were excluded by the Notification dated 23rd January, 1965. There can be no such implied exclusion. In our view, it is for the Government to decide whether or not an evacuee property is to be left with the Custodian for the purposes of distribution under the various Acts or whether some other public purpose is more important. It would be open to the Government to acquire evacuee property and give to the Custodian compensation for such acquisition. Section 4 Notification dated 23rd January, 1965 not having excluded evacuee properties the respondents can get no benefit from the fact that the 1959 Notification evacuee properties had been excluded.

19. Dr. Dhavan next submitted that it was not very clear whether all the properties mentioned in the Writ Petition were composite properties or acquired properties. He drew the attention of this Court to Para 9 of the Writ Petition wherein it is averred as follows :

"..... the said land remained as composite evacuee property or acquired land vesting in Government....."

He submitted that it was for the Government to clarify the position as all the documents would be available with the Government. He submitted that this Court should therefore remit the matter back

to the High Court and let the High Court decide whether these were composite properties which remained vested in the Custodian and/or whether they were acquired properties under the Notification dated 7th January, 1955. Mr. Rohtagi submitted that since the challenge was at a very belated stage and since there were a large number of Writ Petitions it was not possible for the Government to deal with each case at its own merits. He submitted that old records would now be not available. He submitted that this Court should act on the averments of the respondents in their Writ Petitions which averments had not been denied by the Government. He submitted that on the basis of those averments this Court must take it that all these properties were composite properties and therefore Notification under Section 4 could be issued.

20. As has been set out hereinabove, in the Writ Petition, the respondents themselves are not very clear as to whether these lands remained as composite properties or became the acquired lands vesting in the Government. We have, however, seen the Order dated 16th May, 1968. That Order contains Khasra Nos. 321 and 322. This Order makes it very clear that Khasra Nos. 321 and 322 were composite properties. As they were composite properties right up to 16th May, 1968 they could have been acquired under the Notification dated 23rd January, 1965. Thus, so far as these two Khasras are concerned the principles enunciated in the impugned judgment dated 14th December, 1995, wherein the acquisition proceedings have been upheld, must apply and the Writ Petition challenging their acquisition must stand dismissed.

21. In the case of Murari and Ors. v. Union of India and Ors. reported in (1997) 1 SCC 15, in respect of this very acquisition this Court has held as follows :-

"In the present case as stated earlier after issuance of the notifications and notices under Sections 9 and 10 of the Act not only a large number of objections were filed by the landowners whose land was sought to be acquired but a number of writ petitions were filed in the Delhi High Court challenging the validity of the notification under Section 4 as well as the declaration under Section 6 in which interim orders of stay were passed by the High Court which resulted in considerable delay. Thus the authorities alone were not responsible for the delay but the landowners were equally responsible for the same. In such circumstances and on consideration of several decisions of this Court including those rendered in the case of Bihar State Housing Board v. Ban Bihari Mahato and Ujjain Vikas Pradhikaran v. Raj Kumar Johri , this Court in the case of Ram Chand v. Union of India took the view that in any case there was no justification for the authorities to make the award in 1980/1981/1983 when the declaration AIR 1988 SC 2134, AIR 1992 SC 1538 : 1992 AIR SCW 1698, 1993 AIR SCW 3479, AIR 1974 SC 2077, 1993 AIR SCW 3479 under Section 6 was made in 1966-69, but at the same time, in view of the facts of delay caused by the landowners themselves in approaching the Courts and the developments already made on the lands for public use, quashing of acquisition proceedings would not be appropriate. But at the same time in the said decision this Court also took the view that the landowners alone were not responsible for the entire delay that was caused in completing the acquisition proceedings. This Court in the said decision pointed out that all those writ petitions were dismissed by this Court on 23-8-1974 in the case of Aflatoon v. Lt. Governor of Delhi yet no effective steps were taken by the respondents till 1980-81 and in some cases even till 1983 for which the respondents could give no justification for that delay

on their part in completing the acquisition proceedings even after the judgment of this Court in Aflatoon case. This Court having regard to the fact that the Delhi Administration and Delhi Development Authority after taking possession of the lands various developments have been made and third party interest have also been created and, therefore, having regard to the larger public interest declined to quash the acquisition proceedings on the ground of delay but at the same time having regard to the interest of the landowners who were likely to suffer loss in rating the price of the land with reference to the date of notification under Section 4, directed payment of an additional amount of compensation to be calculated at the rate of 12 per cent. per annum after expiry of two years from 23-8-1974, the date of judgment of this Court in Aflatoon case till the date of the making of the awards by the Collector to be calculated with reference to the market value of the lands in question on the date of notification under Section 4(1) of the Act. We do not find any inconsistency in the said decision (Ram Chand case), and find ourselves in respectful agreement to the view taken by this Court in the case of Ram Chand. The same principle has to be applied in those cases in which the possession is not taken and there is no reason to distinguish such cases from the application of the principles laid down in Ram Chand case merely on the ground that possession is not taken from some of the landowners. In this connection the fact could not be lost sight of that the landowners have enjoyed possession all these years and have taken the benefit of the usufruct and other advantages out of the said land and, therefore, they stand even in an advantageous position than those landowners from whom the possession was taken earlier. ..... After overall consideration of the issues involved in these transfer cases and the appeals we find no ground to take a different view than the one taken by the High Court in the impugned judgment. Consequently, the acquisition proceedings could not be quashed on any grounds. We also find ourselves in respectful agreement with the view taken by this Court in the case of Ram Chand. Consequently, the appeals fail and are hereby dismissed. The transfer cases are allowed in terms of the order made in the case of Ram Chand directing that the transfer petitioners and the appellants shall be paid an additional amount of compensation to be calculated at the rate of 12 per cent. per annum, after the expiry of two years from the date of decision of Aflatoon case, i.e. 23-8-1974 till the date of making of the awards by the Collector, to be calculated with reference to the market value of the land in question on the date of notification under Section 4(1) of the Act."

22. As this order is in respect of the same acquisition proceedings, we consider it fair and proper that the respondents also get the benefit on the same basis. We therefore direct that the appellants shall pay to the respondents who are owners of Khasras Nos. 321 and 322 an additional amount of compensation to be calculated at the rate of 12% per annum, after the expiry of two years from the date of decision of Aflatoon case i.e. 23rd August, 1974 till date of making of Award by the Collector, to be calculated with reference to the market value of these Khasras on the date of Notification under Section 4(1) of the Land Acquisition Act.

23. So far as the other Khasras are concerned, i.e. Khasra Nos. 313, 319, 323, 324 and 329, there appears to be a doubt as to whether they were, on the date of Notification dated 23rd January, 1965, composite properties and/or whether they were acquired properties by Notification dated 7th January, 1955. If these are acquired properties under this Notification, a further question would arise as to whether respondents had acquired title to these lands before this date or thereafter. In our view, this is a matter which should have been considered by the High Court. Therefore, so far as these Khasra numbers are concerned, the Writ Petition is sent back to the High Court.

24. We clarify that it will be open for the parties to file additional affidavits/documents and urge all contentions available to them in law. The High Court to decide on the principle set out above.

25. The Civil Appeal stands disposed of accordingly. There will be no order as to costs.

Order accordingly.