SUPREME COURT OF INDIA

National Thermal Power Corporation Ltd.

Vs.

Mahesh Dutta

C.A.Nos.6228-6229 of 2002

(S.B. Sinha and Cyriac Joseph JJ.)

16.07.2009

JUDGMENT

S.B. SINHA, J :

1. As all the cases involve similar questions of fact and law, they were taken up for hearing together and are being disposed of by this common judgment.

2. We may, however notice the fact of the matter involved in Civil Appeal Nos.6228-6229 of 2002. Appellant is a Government of India Undertaking (NTPC). It is engaged in the business of generation of electricity. It, for the purpose of setting up of a Thermal Power Station at Village Sarna in the District of Ghaziabad in the State of Uttar Pradesh, submitted a proposal to the State of Uttar Pradesh for acquisition of lands situated in Village Dadri, Tehsil Ghaziabad, District Ghaziabad.

3. Pursuant or in furtherance of the said request, a Notification was issued in terms of Section 4 of the Land Acquisition Act, 1894 (for short `the Act') notifying the intention of State to acquire 105 Bighas 2 Biswas and 16 Biswanis (equivalent to 65.7125 acres) of lands situated at the aforementioned village. It was published in the Official Gazette on 8th September, 1984

4. On the premise that generation of electricity was extremely urgent and National Capital Region faced acute shortage of electricity, the emergency provisions contained in Sections 17(1) and 17(4) of the Act were invoked. A declaration in terms of Section 6 of the Act was issued on 26th September, 1984. As the provisions of sub-section (4) of Section 17 of the Act were applied, notices were issued on 27th October, 1984 under Section 9 of the Act to the claimants for payment of compensation in respect of the acquired land.

5. However, admittedly prior to taking over possession of land under the emergency powers, the Collector disbursed 80% of the amount of compensation determined in terms of Section 17(3A) of the Act. A possession certificate was issued by the Collector on 16th January, 1984, w

hich reads as under :-

" POSSESSION CERTIFICATE

LAND PERMANENT REQUIRED FOR THE

PLANNED Industrial Construction of NTPC

Plant, District Ghaziabad through the NTPC Ltd.,

Ghaziabad

Certified that I on behalf of the Collector, Ghaziabad have on this day the 16.11.1984 taken over the possession of the land detailed below comprising an area 105 B - 2Bs-16B or 6751.3 acres and (not legible (name not ligible) of D.L.A.O's Office to hand over the possession of the same land to the NTPC Ltd., Ghaziabad. Through Sri. D.V. (not ligible), village Sarna, Muradnagar, Pargana Jalalabad, District, Ghaziabad.

Sd/-

(District Land Acquisition Officer, Ghaziabad)

Notification u/s. 6 :- 7574/P-3-84-23-26

Land P-84__264-84 published

on 29.9.84.

Certified that I on behalf of the Manager, NTPC Ltd., Ghaziabad have to take over possession of the abovementioned land through _____ today."

Khasra numbers and area of the plots, possession whereof had been taken, were specified therein.

6. Despite the same, the appellant contended that it had obtained the requisitioned physical possession of land admeasuring 10.215 acres only and the rest of the land continued to remain in possession of the land owners. It is stated that the Ministry of Environment made recommendations that the choice of place for setting up a Thermal Power Station, having regard to its proximity to the National Capital being incorrect, the site thereof should be shifted. Pursuant thereto or in furtherance thereof, the site of the plant was shifted from Sarna, Murad Nagar to Dadri Tehsil. However, the Land Acquisition Officer despite the same proceeded to determine the amount of compensation payable for the acquisition of land.

7. An Award was made on 24th September, 1986.

A reference in terms of Section 18 of the Act was made which was answered by the learned Additional District Judge, Ghaziabad by a order dated 22nd October, 1993 determining the amount of compensation @ Rs.155/- per sq. yards and Rs.115/- per sq. yds. in respect of two references made separately before it. .

8. First appeals were preferred thereagainst in February, 1984 by NTPC before the High Court. Inter alia on the premise that possession of the entire land of 65.713 acres had not been obtained, the District Magistrate was approached for issuance of a notification denotifying the acquisition of the balance area i.e. for withdrawal of acquisition of land admeasuring 55.498 acres.

9. By its letter dated 24th February, 1986, NTPC submitted a proposal as regards denotification of the land, which reads as under :-

" Kindly refer to our letter No.08/GM/13 dated January 8, 1986, on the above subject, addressed to District Land Acquisition Officer and copy endorsed to you (copy enclosed for ready reference). In continuation of para 2 of that letter this is to inform you that there are five cases in which

delivery of possession is shown to have been given. These are of villages Sarna, Khurrampur, Sultanpur, Jalalpur and Mohiuddinpur. In Sarna, advance compensation has been paid to most of the persons affected while in Khurrampur only a few persons have been paid the advance compensation. In cases of Sultanpur, Jalalpur and Khurrampur villages - we did not get physical possession and the land owners continue to be in possession their lands even now. In many cases, their crops are standing on the land in question. Further, it may be added that the Land Acquisition Amendment Act 1984 came into force w.e.f. 24.9.1984. As per sub-section (3A) to Section 17 of the Land Acquisition Act it is made obligatory that before taking possession of any land the Collector shall pay 80% of the compensation to the interested persons. This mandatory provision not having been complied with, the delivery of possession on paper has no legal force and that is why land owners did not allow NTPC to take possession of these lands. Any possession without such 80% compensation are likely to be vitiated even if the land is proposed to be acquired. Similarly, in the village of Mohiuddinpur Hissali, no compensation has been paid.

It is understood that some mutations in respect of lands of these villages in favour of NTPC have been made in the revenue records. Obviously there appears to be some discrepancy. Since no legally valid possession has been given to NTPC nor land owners have allowed NTPC to take possession of these lands, mutations in revenue records made need to be set right by necessary correction proceedings. It is, therefore, requested that the possession certificates of these villages may please be cancelled and original entries in the revenue records may be ordered to be restored.."

10. The said proposal was forwarded to the Commissioner and Director (Land Acquisition), Directorate, Board of Revenue by the District Magistrate by his letter dated 11th August, 1994. NTPC issued a clarification to the Commissioner and Director, Board of Revenue, by its letter dated 13th August, 2004. On or about 18th August, 1994 an inspection was carried by the Land Acquisition Amin, Naib Tehsildar together with the representatives of NTPC and as per the report submitted pursuant thereto, the appellant is said to have been found in possession of only 10.215 acres of land.

11. On 11th November, 1994 the State of U.P. issued a Notification in terms of Section 48 of the Act.

Aggrieved, respondents filed a writ application before the High Court on or about 29th August, 1995 and a Division Bench of the High Court stayed the consequential effect of the Notification dated 11th November, 1994. On or about 9th September, 1997 the appellant filed an application for vacating the stay which having been refused, a Special Leave Petition was filed before this Court, which was dismissed by an order dated 14th October, 1997.

By reason of a judgment and order dated 21st July, 1998 the said writ petition was allowed.

12. Indisputably on the same day, the same Bench passed judgment in the First Appeals preferred by appellant (NTPC) against the order of the Reference Court dated 22nd October, 1993. We shall deal with the said matter separately.

13. Mr. Raju Ramachandran, learned senior counsel appearing on behalf of the NTPC would contend that although in the event possession had been taken by the Collector from the land owners, Section 48 of the Act will have no application but in view of the fact that possession of 55.498 acres of land had not been delivered in favour of NTPC and merely a symbolic possession had been delivered, the High Court must be held to have committed a serious error in passing the impugned judgment.

14.Mr. Ranjit Kumar, learned senior counsel appearing on behalf of the respondents, on the other hand, would contend :-

(i) Having regard to the provisions contained in Section 17(1) of the Act, as the vesting of the acquired land takes place immediately, the impugned Notification dated 1th November, 1994 has rightly been held to be illegal and without jurisdiction.

(ii) Having regard to the certificate of possession issued by the Collector on 16th November, 1984 under the provisions of the Act, stating possession of entire land had been taken and the details thereof having been mentioned in the said certificate itself, it is too late in the day for the appellant/NTPC to contend that possession of a major portion of the land had was not taken over.

(iii) The fact that the possession of the entire land had been taken over not only would appear from the materials brought on record during the land acquisition proceedings culminating in passing of the Award but also from the award of the Reference Court as also the judgment of the High Court in the First Appeals and in that view of the matter, it would not be correct to contend that the High Court could not have entered into such disputed questions of fact, particularly when the validity or otherwise of the proceedings is not in question.

15. A Notification under Section 4 of the Act was issued. Emergency provisions contained in Section 17 of the Act were resorted to. Sub-sections (1), (3A) and 4 of the Act read as under :-

"17. Special powers in cases of urgency.-

(1) In cases of urgency, whenever the Appropriate Government so directs, the Collector, though no such award has been made, may, on the expiration of fifteen days from the publication of the notice mentioned in section 9, sub-section (1), 1 [take possession of any waste or arable land needed for a public purpose]. Such land shall thereupon vest absolutely in the Government, free from all encumbrances.

(2) ....

(3) ....

(3A) Before taking possession of any land under sub-section (1) or sub-section (2), the Collector shall, without prejudice to the provisions of sub- section (3),--

(a) tender payment of eighty per centum of the compensation for such land as estimated by him to the persons interested entitled thereto, and (b) pay it to them, unless prevented by some one or more of the contingencies mentioned in section 31, sub-section (2), and where the Collector is so prevented, the provisions of section 31, sub-section (2), (except the second proviso thereto), shall apply as they apply to the payment of compensation under that section. (4) In the case of any land to which, in the opinion of the appropriate Government, the provisions of sub-section (1) or sub-section (2) are applicable, the appropriate Government may direct that the provisions of section 5A shall not apply, and, if it does not so direct, a declaration may be made under section 6 in respect of the land at any time 4 [after the date of the publication of the notification under section 4, sub-section (1)."

16. Indisputably the said provisions were been taken recourse to and, thus, the lands under acquisition vested absolutely in the Government.

17. Concedingly, a declaration in terms of Section 6 of the Act was issued whereafter notices to persons interested under Section 9 thereof had also been issued. Award had also been published.

Section 16 of the Act providing for taking over possession of the land after making the Award would not be applicable in this case as possession is said to have already been taken over in terms of sub-section (1) of Section 17 thereof.

It is in the aforementioned backdrop of factual matrix, the power of the State to withdraw the Notification of acquisition as envisaged under Section 48 of the Act falls for our consideration. The said provision is as under :-

"Section 48 - Completion of acquisition not compulsory, but compensation to be awarded when not completed

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

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

(3) The provisions of Part III of this Act shall apply, so far as may be, to the determination of the compensation payable under this section."

18. It is a well settled proposition of law that in the event possession of the land, in respect whereof a Notification had been issued, had been taken over, the State would be denuded of its power to withdraw from the acquisition in terms of Section 48 of the Act.

19. Whether actual or symbolic possession had been taken over from the land owners is essentially a question of fact. Taking over of possession in terms of the provisions of the Act would, however, mean actual possession and not symbolic possession. The question, however, is as to whether the finding of fact arrived at by the High Court that physical possession, indeed, had been taken over by the Collector is correct or not.

20. We have noticed hereinbefore the background facts. The emergency provisions were resorted to. Even 80% of the compensation had been paid way back in 1984. Had possession of the vacant land been not taken, the question of payment of 80 % of compensation would not have arisen. All other legal requirements to invoke the said provision have been complied with.

21. Mr. Raju Ramachandran, however, would draw our attention to a letter dated 24.2.1986 issued by the appellant to the District Magistrate to contend that even payment of 80% of the compensation had not made and, thus, the purported delivery of possession was merely a papr transaction. Our attention had further been drawn to the written statement filed on behalf of the appellant before the reference court, which reads as under : "That out of the total acquired area in question the respondent utilized only a portion of the land by construction of their Satellite building while remaining area could not be put into use by the respondent, since the land is in actual physical possession of the land owners and they are deriving all the benefits from the land thereof and the respondent is having only a symbolic possession over the same."

22. We, however, have not been able to persuade ourselves to agree with the aforementioned submissions. The Officers of the appellant themselves were parties in regard to the process of actual physical possession obtained on its behalf by the Collector.

23. Even in the award made by the Special Land Acquisition Collector, the invocation of the provisions of Section 17 of the Act as also obtaining of possession of the land in question had clearly been found. We may notice some of the statements recorded therein :

"10. Whether Sec.17 is in force : Yes

11. Date of the right : 16.11.84

XXX XXX XXX

18. Amount of Interest : 9% payable from
16.11.84 i.e. from the
date of acquisition
15% further from that
date payable to and
owner."

We may quote hereinbelow the relevant portions from the said award :

"4. 12% additional from 8.9.84
i.e. from the date of
notification till date
of possession i.e. on

16.11.84 : Rs.1,46,531.69"

24. From a perusal of the award, therefore, it is evident that not only the provisions of Section 17 of the Act were found to have been implemented but even interest had been granted from the date of acquisition, namely, from the date of taking over of possession. Interest had also been granted in terms of Section 23A of the Act from the date of notification till the date of actual taking over of possession. The Reference Court also, in its judgment, held :

"(2) The petitioners will get 12% per annum as additional amount on the above market value for the period commencing from the date of publication of the notification u/s. 4(1) dated 6.9.84 to the date of possession dated 16.11.84."

25. In the memo of appeal preferred by the appellant before the High Court a statement was made that the possession of the land was taken by invoking Section 17 of the Act on 16.11.1984 and, thus, interest at the rate of 15% per annum on the excess amount under the provisions of Section 28 of the Act would be payble only in the case where such excess payment had not been made before the expiry of one year period from the date on which the possession has been taken and as determined by the Court. In view of the stand taken by the appellant before the Land Acquisition Authorities as also the reference court and the High Court, in our opinion, it is estopped and precluded from raising a plea contra. The Reference Court, in paragraph 4 of its judgment, also noticed that the possession of the land has been taken over on 16.11.1984. No objection was taken before the Reference Court that possession had not been taken and, thus, interest was not payable. No issue was also framed in that regard.

Even before us, the only ground taken was that the land could not be put to use which is a non-issue.

26. Strong reliance has been placed upon a decision of this Court in Balwant Narayan Bhagde v. M.D. Bhagwat, [AIR 1975 SC 1967 = (1976) 1 SCC 70], wherein it has been held :-

"We think it is enough to state that when the Government proceeds to take possession of the land acquired by it under the Land Acquisition Act, 1894, it must take actual possession of the land, since all interests in the land are sought to be acquired by it. There can be no question of taking "symbolical" possession in the sense understood by judicial decisions under the Code of Civil Procedure. Nor would possession merely on paper be enough. What the Act contemplates as a necessary condition of vesting of the land in the Government is the taking of actual possession of the land. How such possession may be taken would depend on the nature of the land. Such possession would have to be taken as the nature of the land admits of. There can be no hard and fast rule laying down what act would be sufficient to

constitute taking of possession of land. We should not, therefore, be taken as laying down an absolute and inviolable rule that merely going on the spot and making a declaration by beat of drum or otherwise would be sufficient to constitute taking of possession of land in every case. But here, in our opinion, since the land was lying fallow and there was no crop on it at the material time, the act of the Tehsildar in going on the spot and inspecting the land for the purpose of determining what part was waste and arable and should, therefore, be taken possession of and determining its extent, was sufficient to constitute taking of possession. It appears that the appellant was not present when this was done by the Tehsildar, but the presence of the owner or the occupant of the land is not necessary to effectuate the taking of possession. It is also not strictly necessary as a matter of legal requirement that notice should be given to the owner or the occupant of the land that possession would be taken at a particular time, though it may be desirable where possible, to give such notice before possession is taken by the authorities, as that would eliminate the possibility of any fraudulent or collusive transaction of taking of mere paper possession, without the occupant or the owner ever coming to know of it."

This decision, therefore, itself is an authority for the proposition that no absolute rule in this behalf can be laid down. In Larsen & Toubro Ltd. v. State of Gujarat & Ors. [(1998) 4 SCC 387] and P.K. Kalburqui v. State of Karnataka & Ors. [(2005) 12 SCC 489], the same view has been reiterated.

27. These decisions, as noticed hereinbefore, do not lay down an absolute rule. The question as to whether actual physical possession had been taken in compliance of the provisions of Section 17 of the Act or not would depend upon the facts and circumstances of each case.

28. When possession is to be taken over in respect of the fallow or Patit land, a mere intention to do so may not be enough. It is, however, the positive stand by the appellant that the lands in question are agricultural land and crops used to be grown therein. If the lands in question are agricultural lands, not only actual physical possession had to be taken but also they were required to be properly demarcated. If the land had standing crops, as has been contended by Mr. Raju Ramachandran, steps in relation thereto were required to be taken by the Collector. Even in the said certificate of possession, it had not been stated that there were standing crops on the land on the date on which possession was taken. We may notice that delivery of possession in respect of immoveable property should be taken in the manner laid down in Order XXI Rule 35 of the Code of Civil Procedure.

29. It is beyond any comprehension that when possession is purported to have been taken of the entire acquired lands, actual possession would be taken only of a portion thereof. The certificate of possession was either correct or incorrect. It cannot be partially correct or partially incorrect. Either the possession had actually been delivered or had not been delivered. It cannot be accepted that possession had been delivered in respect of about 10 acres of land and the possession could not be taken in respect of the rest 55 acres of land. When the provisions of Section 17 are taken recourse to, vesting of the land takes effect immediately.

30. Another striking feature of the case is that all the actions had been taken in a comprehensive manner. The Collector in his certificate of possession dated 16th November, 1984 stated that the possession had been taken over in respect of the entire land; the details of the land and the area thereof had also been mentioned in the certificate of possession; even NTPC in its letter dated 24th February, 1986 stated that possession had not been delivered only in respect of land situated in four villages mentioned therein. Indisputably NTPC got possession over 10.215 acres of land. It raised constructions thereover. It is difficult to comprehend that if the NTPC had paid 80% of the total compensation as provided for under sub-section (3A) of Section 17 of the Act, out of 65.713 acres of land it had obtained possession only in respect of about 10.215 acres of land and still for such a long time it kept mum. Ex-facie, therefore, it is difficult to accept that merely symbolic possession had been taken.

In Lt. Governor of Hmachal Pradesh & Anr. v. Sri Avinash Sharma [(1970 (2) SCC 149], this Court has stated the law, thus :

"But these observations do not assist the case of the appellant. It is clearly implicit in the observations that after possession has been taken pursuant to a notification under Section 17(1) the land is vested in the Government, and the notification cannot be cancelled under Section 21 of the General Clauses Act, nor can the notification be withdrawn in exercise of the powers under Section 48 of the Land Acquisition Act. Any other view would enable the State Government to circumvent the specific provision by relying upon a general power. When possession of the land is taken under Section 17(1), the land vests in the Government. There is no provision by which land statutorily vested in the Government reverts to the original owner by mere cancellation of the notification."

The said view was affirmed in Satendra Prasad Jain & Ors. v. State of U.P. & Ors. [(1993) 4 SCC 369], in the context of applicablility of Section 11A of the Act, it was stated :

"When Section 17(1) is applied by reason of urgency, Government takes possession of the land prior to the making of the award under Section 11 and thereupon the owner is divested of the title to the land which is vested in the Government. Section 17(1) states so in unmistakable terms. Clearly, Section 11-A can have no application to cases of acquisitions under Section 17 because the lands have already vested in the Government and there is no provision in the said Act by which land statutorily vested in the Government can revert to the owner."

In Pratap & Anr. v. State of Rajasthan & Ors. [(1996) 3 SCC 1], a Three Judge Bench of this Court opined as under :

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

In Sanjeevnagar Medical & Health Employees' Cooperative Housing Society v. Mohd. Abdul Wahab & Ors. [(1996) 3 SCC 600], it was held :

"...In Satendra Prasad Jain v. State of U.P.6, the question arose: whether notification under Section 4(1) and the declaration under Section 6 get lapsed if the award is not made within two years as envisaged under Section 11-A? A Bench of three Judges had held that once possession was taken and the land vested in the Government, title to the land so vested in the State is subject only to determination of compensation and to pay the same to the owner. Divesting the title to the land

statutorily vested in the Government and reverting the same to the owner is not contemplated under the Act. Only Section 48(1) gives power to withdraw from acquisition that too before possession is taken. That question did not arise in this case. The property under acquisition having been vested in the appellants, in the absence of any power under the Act to have the title of the appellants divested except by exercise of the power under Section 48(1), valid title cannot be defeated. The exercise of the power to quash the notification under Section 4(1) and the declaration under Section 6 would lead to incongruity."

31. Yet again, in Tamil Nadu Housing Board v. A. Viswam(Dead) by Lrs. [(1996) 8 SCC 259], this Court has categorically laid down that when the accepted mode of taking possession of the acquired land is resorted to, that would constitute taking possession of the land.

The said principle has been reiterated in Bangalore Development Authority & Ors. v. R. Hanumaiah & Ors. [(2005) 12 SCC 508], in the following terms :

"43. In our considered view, the Division Bench has erred in holding that the State Government could release the lands in exercise of its power under Section 48 of the Land Acquisition Act, 1894 from the acquisition." It has further been held :

"46. The possession of the land in question was taken in the year 1966 after the passing of the award by the Land Acquisition Officer. Thereafter, the land vested in the Government which was then transferred to CITB, predecessor-in-interest of the appellant. After the vesting of the land and taking possession thereof, the notification for acquiring the land could not be withdrawn or cancelled in exercise of powers under Section 48 of the Land Acquisition Act. Power under Section 21 of the General Clauses Act cannot be exercised after vesting of the land statutorily in the State Government."

{See also State of Kerala & Ors. v. V.P. Kurien & Ors. [(2005) 11 SCC 493]}.

32. The High Court, therefore, in our opinion, was correct in its view.

33. We may now consider the question as to whether the issue as to whether possession of the acquired land had actually been taken over or not being a disputed question of fact could not have gone into by the High Court. It is not a case where oral evidence was required to be taken. There is no law that the High Court is denied or debarred from entering into a disputed question of fact. The issue will have to be determined keeping in view the fact situation obtaining in each case. If a disputed question can be determined on the basis of the documents and/or affidavit, the High Court may not ordinarily refuse to do so. In a given case, it may also examine witnesses.

In Smt. Gunwant Kaur & Ors. v. Municipal Committee, Bhatinda & Ors. [(1969) 3 SCC 769], it was held :

"14. The High Court observed that they will not determine disputed question of fact in a writ petition. But what facts were in dispute and what were admitted could only be determined after an affidavit in reply was filed by the State. The High Court, however, proceeded to dismiss the petition in limine. The High Court is not deprived of its jurisdiction to entertain a petition under Article 226 merely because in considering the petitioner's right to relief questions of fact may fall to be determined. In a petition under Article 226 the High Court has jurisdiction to try issues both of fact and law. Exercise of the jurisdiction is, it is true, discretionary, but the discretion must be exercised on sound judicial principles. When the petition raises questions of fact of a complex nature, which may for their determination require oral evidence to be taken, and on that account the High Court is

of the view that the dispute may not appropriately be tried in a writ petition, the High Court may decline to try a petition. Rejection of a petition in limine will normally be justified, where the High Court is of the view that the petition is frivolous or because of the nature of the claim made dispute sought to be agitated, or that the petition against the party against whom relief is claimed is not maintainable or that the dispute raised thereby is such that it would be in appropriate to try it in the writ jurisdiction, or for anologous reasons.

15. From the averments made in the petition filed by the appellants it is clear that in proof of a large number of allegations the appellants relied upon documentary evidence and the only matter in respect of which conflict of facts may possibly arise related to the due publication of the notification under Section 4 by the Collector.

16. In the present case, in our judgment, the High Court was not justified in dismissing the petition on the ground that it will not determine disputed question of fact. The High Court has jurisdiction to determine questions of fact, even if they are in dispute and the present, in our judgment, is a case in which in the interests of both the parties the High Court should have entertained the petition and called for an affidavit in reply from the respondents, and should have proceeded to try the petition instead of relegating the appellants to a separate suit."

Such a direction has been issued, as noticed hereinbefore, even in a land acquisition matter. Yet again, in Babubhai Muljibhai Patel v. Nandlal Khodidas Barot [(1974) 2 SCC 706], this Court has held :

"10. It is not necessary for this case to express an opinion on the point as whether the various provisions of the Code of Civil Procedure apply to petitions under Article 226 of the Constitution. Section 141 of the Code, to which reference has been made, makes it clear that the provisions of the Code in regard to suits shall be followed in all proceedings in any court of civil jurisdiction as far as it can be made applicable. The words "as far as it can be made applicable" make it clear that, in applying the various provisions of the Code to proceedings other than those of a suit, the court must take into account the nature of those proceedings and the relief sought. The object of Article 226 is to provide a quick and inexpensive remedy to aggrieved parties. Power has consequently been vested in the High Courts to issue to any person or authority, including in appropriate cases any government, within the jurisdiction of the High Court, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari. It is plain that if the procedure of a suit had also to be adhered to in the case of writ petitions, the entire purpose of having a quick and inexpensive remedy would be defeated. A writ petition under Article 226, it needs to be emphasised, is essentially different from a suit and it would be incorrect to assimilate and incorporate the procedure of a suit into the proceedings of a petition under Article 226. The High Court is not

deprived of its jurisdiction to entertain a petition under Article 226 merely because in considering the petitioner's right of relief, questions of fact may fall to be determined. In a petition under Article

226 the High Court has jurisdiction to try issues both of fact and law. Exercise of the jurisdiction is no doubt discretionary, but the discretion must be exercised on sound judicial principles. When the petition raises complex questions of fact, which may for their determination require oral evidence to be taken, and on that account the High Court is of the view that the dispute should not appropriately be tried in a writ petition, the High Court may decline to try a petition (see Gunwant Kaur v. Bhatinda Municipality). If, however, on consideration of the nature of the controversy, the High Court decides, as in the present case, that it should go into a disputed question of fact and the discretion exercised by the High Court appears to be sound and in conformity with judicial principles, this Court would not interfere in appeal with the order made by the High Court in this respect."

In Balmokand Khatri (supra), it has been observed :-

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

34. Recently the question came up for consideration before a Division Bench of this Court in T.N. Housing Board v. Keeravani Ammal, [(2007) 9 SCC 255], wherein it was held :-

"9. On the facts pleaded it is doubtful whether the Government can withdraw from the acquisition, since the case of the State and the Housing Board is that possession has been taken and plans finalised to fulfil the purpose for which the acquisition was made. There is no plea in the writ petition that a request for reconveyance was made in terms of Section 48-B of the Act as amended in the State of Tamil Nadu."

It was furthermore held :-

"15. We may also notice that once a piece of land has been duly acquired under the Land Acquisition Act, the land becomes the property of the State. The State can dispose of the property thereafter or convey it to anyone, if the land is not needed for the purpose for which it was acquired, only for the market value that may be fetched for the property as on the date of conveyance. The doctrine of public trust would disable the State from giving back the property for anything less than the market value. In State of Kerala v. M. Bhaskaran Pillai2 in a similar situation, this Court

observed:

"The question emerges whether the Government can assign the land to the erstwhile owners? It is settled law that if the land is acquired for a public purpose, after the public purpose was achieved, the rest of the land could be used for any other public purpose. In case there is no other public purpose for which the land is needed, then instead of disposal by way of sale to the erstwhile owner, the land should be put to public auction and the amount fetched in the public auction can be better utilised for the public purpose envisaged in the Directive Principles of the Constitution. In the present case, what we find is that the executive order is not in consonance with the provision of the Act and is, therefore, invalid. Under these circumstances, the Division Bench is well justified in declaring the executive order as

invalid. Whatever assignment is made, should be for a public purpose. Otherwise, the land of the Government should be sold only through the public auctions so that the public also gets benefited by getting a higher value."

35. Furthermore the Collector under the Act was acting as a statutory authority. When possession has been shown to have been taken over not only in terms of sub-section (1) of Section 17 of the Act but also by grant of the certificate and other documents, illustration (e) of Section 114 of the Evidence Act 1872, must be held to be applicable. Once such a presumption is drawn the burden would be on the State to prove the contra. The burden of proof could be discharged only by adducing clear and cogent evidence. Not only the aforementioned documents but even the judicial records clearly show that the possession had in fact been taken.

36. Mr. Raju Ramachandran, however, made an alternative submission before us that this Court, in exercise of its jurisdiction under Article 142 of Constitution of India, may issue necessary directions so as to put a quietus to the entire matter. This Court cannot foresee all the eventualities.

37. However, before us Mr. Ranjit Kumar, learned senior counsel appearing on behalf of the respondents, when questioned, categorically stated that in view of the statement made in the counter affidavit, the positive case of the respondents is that they had not been in possession.

If the aforementioned statement made by the respondents is found to be incorrect, legal steps as is permissible in law may be taken. Furthermore, if the respondents and/or any other person are found to be in possession of the lands which were the subject matter of acquisition in terms of the notification under Section 4 of the Act, appropriate steps for eviction therefor can be initiated. It goes without saying that the authorities of the State of Uttar Pradesh shall render all cooperation to the appellant in this behalf.

38. It is furthermore neither in doubt nor in dispute that the initiation of the acquisition proceedings at the instance of the appellant was for setting up of a thermal power station. It had to be shifted to another site only because the Central Government asked it to do so keeping in view the ecological perspective in mind. It is, therefore, permissible for the appellant to put the land in question which has vested in it for another purpose which would come within the purview of any public purpose as has been noticed by this Court in Khatri (supra) and for any other purpose as has been noticed by this Court in Keerwani Ammal (Supra)

Yet again in Kasturi & Ors. v. State of Haryana [(2003) 1 SCC 335], this Court has held :

"12. If the land was not used for the purpose for which it was acquired, it was open to the State Government to take action but that did not confer any right on the respondents to ask for restitution of the land. As already noticed, the State Government in this regard has already initiated proceedings for resumption of the land. In our view, there arises no question of any unjust enrichment to the appellant Company." In Ravi Khullar & Anr. v. Union of India & Ors. [(2007) 5 SCC 231],

it was contended :

"16. The learned Additional Solicitor General appearing on behalf of the respondents submitted that having regard to the authorities on the subject the question is no longer res integra. It is not as if lands acquired for a particular public purpose cannot be utilised for another public purpose. He contended that as long as the acquisition is not held to be mala fide, the acquisition cannot be invalidated merely because the lands which at one time were proposed to be utilised for a particular

public purpose, were later either in whole or in part, utilised for some other purpose, though a public purpose. He, therefore, submitted that some change of user of the land, as long as it has a public purpose, would not invalidate the acquisition proceeding which is otherwise valid and legal."

It was held :

"23. Referring to the facts of the instant case, it cannot be disputed that the planned development of Delhi for which purpose the land was acquired under Section 4 of the Act is wide enough to include the development and expansion of an airport within the city of Delhi. Thus it cannot be said that the land is actually being utilised for any purpose other than that for which it was acquired. The only difference is that whereas initially the development work would have been undertaken by DDA or any other agency employed by it, after the constitution of IAAI, the said development work had to be undertaken by the newly constituted authority. Thus there has been no change of purpose of the acquisition. All that has happened is that the development work is undertaken by another agency since constituted, which is entrusted with the special task of maintenance of airports. Since the said

authority was constituted several years after the issuance of the notification under Section 4, the acquisition cannot be invalidated only on the ground that the public purpose is sought to be achieved through another agency. This, as we have noticed earlier, was necessitated by change of circumstances in view of the creation of the authority i.e. IAAI. Moreover, since there is no change of public purpose for which the acquired land is being utilised, the acquisition cannot be invalidated on that ground. The purpose for which the lands are being utilized by a governmental agency is also a public purpose and as we have noticed earlier, would come within the ambit of the public purpose declared in Section 4 notification. Therefore, the acquisition cannot be challenged on the ground that the acquired lands are not being utilised for the declared public purpose. Having regard to the facts of the case it

cannot be contended, nor has it been contended, that the notification under Section 4 of the Act was issued mala fide."

39. For the reasons aforementioned, the appeals, being devoid of any merit, are dismissed subject to the observations made hereinbefore with costs. Counsel fee assessed at Rs.50,000/- in each of these appeals.