RAJASTHAN HIGH COURT

Surajmal

Vs.

State of Rajasthan

Special Appeals Nos. 310, 311, 313 to 326 and 335 of 1971
(B.P. Beri, C.J. and M.L. Joshi, J.)

12.04.1973

JUDGMENT

Beri, C. J.

1. These 17 appeals are directed against an order of the learned Single Judge who had dismissed the writ petitions wherein the validity of the Land Acquisition Act and the acquisitions made there under were challenged.

2. Within the Municipal limits of Jaipur there are two villages named Bhojpura and Chak Sudarshanpura. Lands belonging to the appellants were notified for acquisition by the State of Rajasthan for the planned development of the city of Jaipur at the behest of the Urban Improvement Board (abbreviated as 'U.I.B') Jaipur. On 29-7-1959 the Chairman of the U.L.B visited the site accompanied by the Land Acquisition Officer Mr. K.C. Gupta and passed verbal orders that steps be taken for its acquisition. On December 8, 1959 the Secretary, Local Self Government, was requested to issue a notification under Section 4 of the Rajasthan Land Acquisition Act. 1953 (hereinafter called "the Acquisition Act"). A notice under Section 4 of the Acquisition Act was issued on May 13, 1960, which was published in the Rajasthan Rajpatra on June 9, 1960. No objection was made under Section 5-A disputing the existence of the public purpose as notified in Section 4 of the Acquisition Act Accordingly a notification under Section 6 of the Acquisition Act was published in the Rajasthan Rajpatra on May 11, 1981. Soon thereafter on July 18, 1961 notices under Section 9 of the Acquisition Act were issued to the persons interested, 65 claims were presented before the Land Acquisition Officer including the one by the predecessor-in-title of the appellant Surajmal. The Officer made an award on January 9, 1964 which is Exhibit R/3 on the record. It was amended on July 6, 1964. Early in 1970 notices were issued to the appellants to take compensation, hand over the possession and further to take

possession of such parcels of land which were allotted to some of them. This is Exhibit 3 in Surajmal's case. Similar notices were issued in other cases.

3. 28 petitions under Article 226 of the Constitution of India were presented challenging the notifications issued under Sections 4, 6 and 9 of the Acquisisition Act mainly because they were violative of the fundamental rights of the petitioners. In two petitions, from which appeals Nos. 323 and 324 of 1971 are before us, even the Award Exhibit R/3 given by the Land Acquisition Officer was assailed and sought to be quashed.

4. The State of Rajasthan and the U.L.B. which had by then become the Urban Improvement Trust, by their joint answer, while admitting the salient facts regarding the issuing of notifications, contested each and every ground raised by the petitioners. They advanced additional pleas against the petitioners on the grounds of dealy, estoppel and res judicata.

5. The learned Single Judge found that the petitioners were guilty of inordinate delay and that there was no reasonable ground to condone the same. Holding that the writ petitions could be dismissed on this score alone, he however examined the contentions of the petitioners and held that there was no force in the plea that the acquisition of the petitioners' lands should have been made under the Rajasthan Urban Improvement Act (hereinafter called 'the Improvement Act') rather than under the Acquisition Act because the acquisition proceedings were commenced before the Urban Improvement Trust, Jaipur was constituted. For the same reason he rejected the argument that advantageous compensation under the Improvement Act wag available to the petitioners. Repelling the arguments advanced on behalf of the petitioners that the State had practiced discrimination in the matter of acquisition vis-a-vis certain Influential persona, the learned Single Judge observed that those persons were not similarly situated. He also opined that what the State needed was the lands for the planned development of the city of Jaipur and not the area where the houses were situated. The plea of the petitioners that the State had given favorable treatment to certain persons not only by giving them lands but also loans to construct the building was rejected on the ground that there was no conscious discrimination. The argument that the notifications under Sections 4 and 6 of the Acquisition Act were invalid because they were signed by the Secretary not belonging to the Department of Revenue as required by the rules of business framed under Article 166(3) of the

Constitution of India, was repelled by the learned Single Judge on the ground that there was a circular issued by the Chief Secretary pursuant to a decision of the Cabinent that the notifications relating to the acquisition may be signed by the department concerned and because the U.L.B. was supervised by the Local Self Government the notifications were properly signed by the Secretary, Local Self Government This was also correct on the principles of joint responsibility. As a result the learned Single Judge dismissed the petitions on merits as well. He, however, partly allowed writ petitions Nos. 150, 188 and 180 of 1970 on the ground that the Khasra numbers of the lands relating to these writ petitions were not mentioned to the Notification under Section 4 of the Acquisition Act Writ Petition No. 1719 of 1970 was allowed because the notices in tills case were issued against Naga who was already dead at the time of the issuance of the notice. Excepting to this extent all the petitions were dismissed.

6. Out of the 28 petitioners 17 have preferred these special appeals and us the arguments raised are common we propose to dispose them together by one judgment.

7. Mr. B.K. Garg, appearing for the appellant in special anneal No. 310/71, urged that there was no delay in presenting the petitions because what was sought to be protected was right to possess which was threatened on 7-1-1970; that the notification under Section 4 was a mere proposal; that the one under Section 6 was only a declaration and both could be undone by recourse to the provisions of Section 48 of the Acquisition Act. He further relied on Government's letter dated 12-10-1964 which suspended the progress of the process of acquisition and lastly he urged that there could be no waiver of the fundamental rights and thus there could be no delay in the presentation of the petitions which were based on their violation.

8. Mr. S.M. Mehta adopted Mr. Garg's arguments and added that the learned Single Judge having examined the petition on merits the plea of delay lost its force. Reliance was placed by both the learned counsel on *State of Madhya Pradesh v. Bhailal Bhai,* [1] *Tilokchand Motichand v. H.B. Munshi* [2] *Kamlabai v. T.B. Desai,* [3] *Union of India v. Kamlabai,* [4] *Dau Dayal v. State of U.P.,* [5] *Dalpathbhai Hemchand v. Chansma Municipality,* [6] *E. and T. Agencies v. S.I. Trust* [7] *Dinshaw v. State of Hyderabad,* [8] *Appa Rao v. Secy, of State,* [9] *Neelkanth Mali v. Jagannath Singh,* [10] and *Rukhmabai v. Laxminaryan,* [11]

9. Mr. S.K. Tiwari learned counsel for the respondents, supported the judgement of the learned Single Judge and urged that even if we were to count the period from the date of the notification under Section 6, namely, May 11, 1961, the petitions would be barred by time under Article. 120 of the old Limitation Act, which is the extreme limit as laid down in Tilokchand's case. AIR 1970 SC 898. He invited our attention to *Rabindra Nath v. Union of India,* [12] *Durga Prasad v. Chief Controller. I. and E.*[13] and laid strew on certain passages of *State of Madhya Pradesh v. Bhailal Bhai,* [14] *I.M. Patel v. Ahmedabad Municipality* [15] *Mohd, Habibullah v. Spl. Dy. Collector,* [16] *Tirthalal De v. State of West Bengal,* [17] and *Kamini Kumar v. State of West Bengal,* [18] He also urged that no benefit could be derived by the appellants on account of the letter dated 12-10-1964 because it was not communicated to any of the appellants. He placed reliance on *Simpsons Motor Sales (London) Ltd. v. Hendon Corporation*[19] and *Simpsons Motor Sales (London) Ltd., v. Hendon*[20]

10. The first question which therefore, falls for our decision is one of delay in the presentation of the petitions from which these 17 appeals arise. In order to appreciate the rival contentions a recall of the relevant dates will be useful. The notification under Section 4 of the Acquisition Act (Exhibit 1) was published on June 9, 1960. Survey of the land in question was made thereafter but we do not know the exact date. No objection was filed under Section 5-A of the Acquisition Act by any of the appellants questioning the public purpose. The notification under Section 6 of the Acquisition Act (Exhibit 2) was published on May 11, 1961. The notification under Section 9 of the Acquisition Act to the persona interested was sent on July 18, 1961, 65 claims were filed including the one by the predecessor-in-title of Surajmal appellant. In the notification under Section 9 the Land Acquisition Officer. Public Works Department Jaipur asked the persons Interested to hand over their land. Some of the claimants were willing to hand over their lands to the Overseer, Improvement Trust but they were allowed to retain the possession of those lands with them in the capacity of a licensee. The Land Acquisition Officer announced his award (Exhibit R/3) on January 9, 1984 and the amended award (Exhibit R/4) on July 9, 1964. The notice for demand of possession (Exhibit 3) was issued on January 7, 1970 and the writ petitions were submitted on January 23, 1970. The law relating to the delay in the matter of presenting petitions under Article 32 came to be considered by their Lordships of the Supreme Court in Tilokchand's case, AIR 1970 SC 898. The following excerpts from their Lordships' lucid judgements do deserve a recall :-

"In India we have the Limitation Act which prescribes different periods of limitation for suits, petitions or applications. There are also residuary Articles which prescribe limitation in those cases where no express period, is provided. If it were a matter of a suit or application, either an appropriate article or the residuary article would have applied. But a petition under Article 32 is not a milt and is also not a petition or an application to which the Limitation Act applies. To put curbs in the way of enforcement of Fundamental Rights through legislative action might well be questioned under Article 13(2). The reason is also quite dear. If a short period of limitation were prescribed the Fundamental Right, might well be frustrated. Prescribing too long a period might enable stale claims to be made to the detriment of other rights which might emerge.

If then there is no period prescribed what is the standard for this Court to follow ? I should say that utmost expedition is the sine qua non for such claims. The party aggrieved must move the Court at the earliest possible time and explain satisfactorily all semblance of delay. I am not indicating any period which may be retarded as the ultimate limit of action for that would be taking upon myself legislative functions. In England a period of 6 months has been provided statutorily, but that could be because there is no guaranteed remedy and the matter is one entirely of discretion. In India I will only say that each case will have to be considered on its own facts. Where there is appearance of avoidable delay and this delay affects the merits of the claim, this Court will consider it and in a proper case hold the party disentitled to Invoke the extraordinary Jurisdiction."

Sikri, J., as ha then was, was of opinion that :

"If a claim is barred under the Limitation Act unless there are exceptional circumstances, prima facie it is a stale claim and should not be entertained by this Court. But even if it is not barred under the Indian Limitation Act it may not be entertained by this Court if on the facts of the case there is unreasonable delay. For instance, if the State had taken possession of property under a law alleged to be void, and if a petitioner comes to this Court 11 years after the possession was taken by the State. I would dismiss the petition on the around of delay, unless there is some reasonable explanation. The fact that a suit for possession of land would still be in time would not be relevant at all it is difficult to lay down a precise period beyond which delay should be explained. I

favour one year because this Court should not be approached lightly, and competent legal advice should be taken and pros and cons carefully weighed before comma to this Court it is common knowledge that appeals and representations to the higher authorities take time : time spent in pursuing these remedies may not be excluded under the limitation Act, but it may ordinarily be taken as a flood explanation for the delay."

Bachawat, J. while dealing with this case expressed his opinion in the following language :-

"The writ under Article 32 issues as a matter of course if a breach of a fundamental light 33 established. Technical rules applicable to suits like the provisions of Section 80 of the Civil Procedure Code are not, applicable to a proceeding under Article 32. But this does not mean that in giving relief under Article 32 the Court must ignore and trample under foot all laws of procedure, evidence, limitation, res judicata and the like."

He further observed that

"The extraordinary remedies under the Constitution are not intended to enable the claimant to recover monies, the recovery of which by suit is barred by limitation. Where the remedy in a writ application under Article 32 or Article 226 corresponds to a remedy in an ordinary suit and the latter remedy is subject to the bar of a statute or limitation, the Court in its writ jurisdiction acts by analogy to the statute, adopts the statute as its own rule of procedure and in the absence of special circumstances imposes the same limitation on the summary remedy in the writ jurisdiction .....?.?The Court will almost always refuse to give relief under Article 226 if the delay is more than the statutory period of limitation, (See AIR 1964 SC 1008)."

Mitter, J. in this connection observed as follows:-

"'The Limitation Acts do not in terms apply to claims against the State in respect of violation of fundamental rights. A person complaining of infraction of any such right has one of three courses open to him. He can either make an application under Article 226 of the Constitution to a High Court or he can make an application to this Court under Article 32 of the Constitution, or he can

file a suit asking for appropriate reliefs. The decision of various High Courts in India hive firmly laid down that in the matter of the issue of a writ under Article 226 the Courts have a discretion and may in suitable cases refuse to give relief to the person approaching it even though on the merits the applicant has a substantial complaint as regards violation of fundamental rights. Although the Limitation Act does not apply, the Courts have refused to give relief in cases of long unreasonable delay. As noted above in Bhailal Bhai's case. 1964-6 SCR 261 (Supra), it was observed that the 'maximum period fixed by the legislature as the time within which the relief by a suit in a Civil Court must be brought may ordinarily be taken to be a reasonable standard by which delay in seeking remedy under Article 226 can be measured'. On the question of delay, we see no reason to hold that a different test ought to be applied when a party comes to this Court under Article 32 from one applicable to applications under Article 226. There is a public policy behind all statutes of limitation and according to Halsbury's. Laws of England (Third Edition Vol. 24) Article 330 at Page 181 :

"The Courts have expressed at least three different reasons supporting the existence of statutes of limitation, namely, (1) that long dormant claims have more of cruelty than Justice in them. (2) that a defendant might have lost the evidence to disprove a stale claim and (3) that persons with good causes of action should pursue them with reasonable diligence".

11. These excerpts enumerate fundamental principles in the exercise of discretion in matter of presentation of petitions and what is good for petitions under Article 32 is equally applicable to petitions under Article 226 of the Constitution of India. It is clear from these excerpts that the law does not prescribe a time limit for granting relief under Article 226 but on the ground of public policy and to eliminate the hardship that delay works on the interest of parties and their rights, the Courts have in their discretion imposed a restriction on the exercise of these powers. The Limitation Act provides a safe guideline for judging the staleness of a demand, for after all the Limitation Act expresses the standard which the community through its chosen representatives has accepted to be the norm to determine whether a litigant has been lethargic or not. the very fact that in Tilokchand's case. AIR 1970 SC 898 the sales tax paid under a law which was declared invalid was not ordered to be refunded does to show that the Supreme Court declined to exercise its jurisdiction only because the demand was antiquated. Likewise in Rabindra Nath's case. AIR 1970 SC 470 in para. 34 their Lordships observed. –

> "The highest Court in this land has been given Original Jurisdiction to entertain petitions under Article 32 of the Constitution. It could not have been the intention that this Court would go into stale demands after a lapse of years. It is said that Article 32 is itself a guaranteed right. So it is but it does not follow from this that it was the intention of the Constitution makers that this Court should discard all principles and grant relief in petition filed after in ordinate delay."

In Durga Prasad's case, AIR 191 SC 769 their Lordships of the Supreme Court further clarified that "Even when there is an alleged breach of fundamental rights the grant of relief is discretionary. Such discretion has to be exercised judiciously and reasonably."

We are, therefore, clear in our mind that save in exceptional cases if a petitioner comes to a court of law after the period of limitation prescribed for a particle relief the Court would ordinarily decline to grant it on the ground of delay and does not make any difference whether the relief is claimed in regard to the vacillation of fundamental rights or otherwise.

12. Mr. Garff, however, strenuously urged that what he was seeking was to protect his right of possession and that was threatened only by Exhibit 3 dated January 7, 1970 and judging it from that point of time his petition was well within time. We are unable to agree. The notifications under Sections 4 and 6 have been the subject-matter of challenge throughout the petition and even before us. The threat for the acquisition of the land was notified as early as June 9, 1960 and it was confirmed by another notification dated May 11, 1961. What has happened in this case is that the appellants Participated in the land acquisition proceedings; they took a chance to get what they could and when in the meantime the prices shot up they have now come to assail the acquisition proceedings and the award nearly 9 years after notifications, Dau Dayal's case. AIR 1966 Allahabad 237 on which stress was laid by Mr. Garg, is clearly distinguishable because in that case the petition was filed almost a year after the publication of the notification under Section 6 of the Act and no award had been made by that time. It was on this account that the learned Single Judge rejected the plea of latches.

13. We might also notice a case of our own Court *Purshottam Lal v. State of Rajasthan,* [21] where Tyagi, J. declined to interfere because the notification under Section 6 was challenged 4 years after its issuance. The matter was agitated before us in appeal but we had dismissed the appeal in, limine. (See D.B. Appeal No. 265 of 1972, decided on July 25, 1972). The matter was taken up before their Lordships of the Supreme Court in Special Leave Petn. No. 2250 of 1972 and it was decided on 22-9-1972. Their Lordships of the Supreme Court dismissed the special leave Petition. In the case before us the petitions have been preferred about 9 years after the notification under Section 6 as already noticed end it is a case which in worse than that of Purshottam Lal.

14. Another argument which was raised to explain delay was that the Secretary to the Government in the Local Self Department sent a letter on 12-10-1964 to the Secretary. Improvement Trust saving that till the master plan of the city of Jaipur was finalized no land should be acquired for the planned development of Jaipur city. The letter further added that the land acquisition proceedings, which were already in progress, should be adjourned or staved till then. This argument has no substance for two reasons. The first is that the letter is of October, 1964 whereas the award was finally made by the Land Acquisition Officer in July, 1964 and this letter did not govern the acquisition proceedings with which we are concerned. Secondly, we are impressed by the argument advanced before us by the learned Deputy Government Advocate that because the contents of this letter were never communicated to the appellants, they cannot, therefore, treat it as an excuse for explaining the delay. In Simpsons Motor Sale's case. (1962) 3 All ER 75 their Lordships held that unless the contents of the letter were addressed to the appellant he could not take any advantage and construe it as an expression of an intention for abandonment. It is nobody's case that this letter was addressed to the appellants and therefore no advantage can be taken by them from it. We are, therefore, in complete agreement with the learned Single Judge that the appellants presented the petitions under Article 226 of the Constitution after inordinate delay and even under the ordinary law of limitation the claim of the appellants would have been barred by time. These appeals, therefore should fail on this ground but the learned Single Judge having examined the arguments on merits we might as well examine them briefly.

15. The first argument is based on the ground of discrimination. It was urged that in Rajasthan there were number of laws relating to the acquisition of land. They provided

different measures for compensation and it was open to the State to apply any one of them at any time and such a state of law was fraught with discrimination. The laws referred to us were the Rajasthan Land Acquisition Act, 1953, the Rajasthan Urban Improvement Act, 1959 and the Rajasthan Housing Scheme (Land Acquisition) Act (Act No 40 of 1960). A long debate was raised before us on this aspect of the case at the time of arguments in appeals but after the conclusion of the arguments and before the judgement in these appeals was pronounced the Government issued an Ordinance No. 7 of 1972. It was published in the Rajasthan Rajpatra dated December 4, 1972. An application was moved on behalf of the respondents late in December, 1972 that the said Ordinance has a direct bearing on the points in controversy in these appeals and the appeals may be listed for hearing. An answer was filed by the appellants on January 17, 1973 and the learned counsel for the parties were heard again on January, 31, 1973. Section 5 of the Ordinance No. 7 of 1972 reads. -

> "5. Validation of certain acquisitions. - (1) Notwithstanding any judgment decree or order of any Court to the contrary and anything contrary in the principal Act, no acquisition of land made or purporting to have been made for the purpose of improvement or for any other purpose under the principal Act before the commencement of this ordinance and no proceedings for acquisition for the said purposes pending at the time of commencement of this Ordinance and no action taken or thing done (including any order, determination, declaration or decision made, agreement entered into, or notification published) in connection with such acquisition or the pending proceedings, shall be deemed to be invalid or ever to have become invalid on the ground that the proceedings of such acquisition or the pending proceedings were initiated proceeded with or completed under and in accordance with the provisions contained in the Rajasthan Land Acquisition Act 1953 (Act No 24 of 1953), hereinafter referred to as the Acquisition Act. and not under and in accordance with the principal Act, and such pending proceedings shall be continued and completed under and in accordance with the provisions of the Acquisition Act and shall not be liable to any challenge anywhere on the ground that they were continued and completed under and in accordance with the Acquisition Act and not under and in accordance with the principal Act.
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> 2. Notwithstanding any judgment decree or order of any Court to the contrary no acquisition of land made for the purpose of improvement or for any other purposes under the principal Act before the commencement of this ordinance and no proceedings for acquisition for the said purposes pending at the time of

commencement of thus Ordinance, and no action taken or thing done (including any order, determination or decision made agreement entered into or notification published in connection with such acquisition or pending proceedings shall be deemed to be invalid or ever to have become invalid on the ground that the notice under Sub-Section (2) of the principal Act was issued or objections under Sub-Section (3) thereof were received and heard and findings thereon were given by one officer or authority, so authorized, and the final order of acquisition was made without hearing and published by another authorized officer or authority for and on behalf of the State Government and such pending proceedings shall be continued and completed as above and shall not be liable to any challenge anywhere on the around that the notice under Sub-Section (2) of the principal Act was issued or objections under Sub-Section (3) thereof were received and heard and findings thereon were given by one officer or authority, so authorized, and the final order of acquisition was made without hearing and published by another officer or authority for and on behalf of the State Government."

The effect of this section so far as the cases before us are concerned is that notwithstanding the existence of the Urban Improvement Act 1950, referred to as the principal Act no proceeding if taken under the Rajasthan Land Acquisition Act 1953 will be invalid or to have been ever invalid. Confronted with the situation the learned counsel for the appellants argued that the Ordinance was invalid inasmuch as it violates Article 213 of the Constitution as no circumstances existed which rendered it necessary for the Governor to take immediate action. Reliance was placed on *Lakhi Narayan Das v. Province of Bihar.* [22] and *R.C. Cooper v. Union of India,* [23] In other words the argument of Mr. S.M. Mehta was that Section 5 of the Ordinance travelled beyond the Preamble of the Ordinance and, therefore, it was to valid because it does not fulfill the condition of the Governor's satisfaction as required by Article 213 of the Constitution. In *R. Sultan v. Govt. of Andhra Pradesh,* [24] the learned Judges observed as follows:-

"It is true that before the Governor promulgates Ordinances, the Governor must be satisfied that circumstances exist which render it necessary for him to take immediate action. He may promulgate such Ordinance as the circumstances appear to him to require. It will thus be seen that firstly whether circumstances exist which render it necessary for him to take immediate action is left to the subjective satisfaction of the Governor and secondly what Ordinance should be

> issued in the circumstances is also left to the Governor. It is plain that the Judge of the circumstances on the basis of which the Governor promulgates Ordinance is the Governor :"

In Lakhi Narayan's case, AIR 1950 FC 59 : (51 Cri LJ 921) their Lordships of the Federal Court had observed that the Governor was not bound to expound the reasons for his satisfaction as to the existence of such circumstances.

16. We are not prepared to hold that the preamble necessarily controls the scope of the Ordinance. In the case before us the acquisition had already been made under the Acquisition Act and it is not necessary for us to investigate whether Section 5 of the Ordinance is wider in its ambit than the Preamble permits. The proper function of a preamble." says Lord Thring, "is to explain certain facts which are necessary to be explained before the enactments contained in the Act can be understood". The necessity of understanding presupposes some kind of ambiguity and when there is none it is hardly necessary to have resort to a preamble. In the Sussex Peerage Claim. (1844) 11 Cl. and F. 85. 143 the Judges enunciated the rule regarding the office of a preamble as follows :-

> If any doubt arises from fee terms employed by the legislature, it has always been held a safe means of collecting the intention to call in aid the around and cause of making the statute, and to have recourse to the preamble, which, according to Chief Justice Dyver, is 'a key to open the minds of the makers of the Act and the mischief's which they intended, to redress'."

But the Earl of Halsbury has said. "If an enactment is itself clear and unambiguous. no preamble can qualify or cut down the enactment".

17. In regard to the objection relating to the Rajasthan Housing Scheme (Land Acquisition) Act there is twofold answer. The first is a concession made by Mt S.K. Tiwari learned Deputy Government Advocate that the compensation regarding the acquisition of land in the appeals before us was calculated by reference to the notification under Section 6 of the Acquisition Act and was regulated by Section 23 thereof and was in no manner Influenced by the Rajasthan Housing Scheme (Land Acquisition) Act (No. 40 of 1960). On this concession the learned counsel for the appellants abandoned the argument of discrimination on account of the Rajasthan

Housing Scheme (Land Acquisition) Act (No. 40 of 1960). The second argument is that the notification under Section 4 in the cases before us was issued on June 9, 1960 whereas the Rajasthan Housing Scheme (Land Acquisition) Act (No. 40 of 1960) came into force on November 9, 1960, and therefore this Act was not in existence at the time of the notification under Section 4 and no freezing of the prices under Act 40 of 1960 was relevant for the dispute before us.

18. Another argument under Article 14, which we might notice, is whether the appellants were treated differently in regard to the allotment of land than some other people whose lands were acquired. To some of the persons land was allotted as much m area as it was taken. To others more land was Given than what was taken. We cannot spell out any discrimination on this around because for the purposes of planning certain adjustments of land in carving out plots of reasonable sizes and fitting them in the general pattern such adjustments are Inevitable. Learned Deputy Government Advocate argued that assuming that the Land Acquisition Officer showed some favour to some people in the matter of allotment of land it is the conduct of en individual officer and not the fault of the respondents. We are in agreement with the conclusions reached by the learned Single Judge on this aspect of the matter and so also in regard to the question of granting of loans, etc, that no case of discrimination has been made out.

19. Hie argument that the notifications under the Acquisition Act were unauthorized is equally untenable for the reasons given by the learned Single Judge. Apart from that in none of the petitions from which the present 17 appeals arise this wound has been taken. We am therefore; unable to entertain it.

20. Now comes the attack under Article 31 of the Constitution. The first argument was that the notifications under Sections 4 and 6 spoke of the planned development of Jaipur city. It was not a precise public purpose but was too vague. Before this Court in two writ petitions concerning lands situated in village Bhojpura itself the expression "planned development of the city of Jaipur" came to be examined by two different Benches of this Court and no fault was found with the expression on the ground of vagueness. The first is *Smt. Laxmi Devi Sogani v. State of Rajasthan,* [25] by Ranawat. C.J. and Tyagi JJ.). and the second is *Ramanand v. State of Rajasthan.* [26] by Bhandari and Tyagi, JJ.). In Laxmi Devi Sogani's case agricultural land in village Bholpura near the city of Jaipur was decided to be acquired by the U.L.B. The learned Judges held. –

> "In notification under Section 6 that was issued In the instant case a declaration was made that the land was required far a public purpose, namely, the planned development of the city of Jaipur. This purpose is obviously a public purpose."

And this was followed in Ramanand's case.

21. Mr. Gerg invited our attention to the Supreme Court *Munshi Singh v. Union of India* [27] This case is clearly distinguishable from the appeals before us. In Munshi Singh's case 34,000 acres of land in 50 villages around Ghaziabad were sought to be acquired 'for the planned development of the area'. There was no Indication in toe notification as to whether the land would be utilized for the purposes of U.P. State Industrial Corporation or the Improvement Trust Ghaziabad. There was no mention whether the development was for residential sites or commercial or industrial purpose. The Supreme Court also save opportunity to the State to emend the return filed by it and vet the specific purpose of the development remained obscure. In the case before us the planned development is not of an area but of the city of Jaipur. The land was acquired for the Urban Improvement Trust. The planned development of the particular area of Chak Bhojpura seems to have beep well known to the people of the city of Jaipur because this was the Chak which was involved in the two earlier decisions of this Court Had the appellants cared to file objections under Section 5-A of the Acquisition Act they could have contested the purpose, ascertained the details rather than vaguely saving that the purpose was vague. Section 5-A of the Acquisition Act provides that any person interested in any land in respect of which notice has been given under Sub-Section (5) of Section 4 and which has been proposed to be acquired for public purpose mar within 30 days after the service of the Public notice object to the acquisition of the land. Every objection under Sub-Section (1) shall be made to the Collector in writing and the Collector shall give an opportunity to the objector of being heard either in person or by pleader and after making such enquiry, as he thinks necessary, submit the case for the decision of the State Government together with the record of the proceedings held by him and the report containing his recommendations on the objection. This is a salutary provision providing adequate opportunity to a person who has a grievance with regard to the public purpose or matters connected therewith. This was not resorted to. The petitioners themselves admit in the amended petition paragraph 2 (2) that the land was being required for residential sites. To assail the notification in this case under Section 4 without filing objection under Section 5-A but after due participation in the acquisition proceedings and without raising any specific plea as to the vagueness of the public purpose, in our opinion, is both

unjustified and belated. The Supreme Court case is accordingly distinguishable. We might repeat that the notification tinder Section 4 was issued on June 9, 1960 and it is now being attacked in January, 1970, on the ground of vagueness because the prices have shot up. We find no force in this contention and also have no reason to differ with the view taken in the two earlier cases of this Court already mentioned.

22. The second ground of attack under Article 31 is that the compensation in the language of their Lordships of the Supreme Court in *N.B. Jeejeebhoy v. Asstt. Collector, Thana.* [28] and *P. Vairavelu Mudaliar v. So. Dy. Collector.* [29] has been held to be the lust equivalent of the property acquired. Under Section 23 of the Acquisition Act there is no provision for taking into consideration the potential value of the land. The real grievance is that this land, which is being acquired for a negligible price shall be sold at an exorbitant once by the Improvement Trust to the public. In the famous Bank Nationalization case. AIR 1970 SC 564, Shah, J. observed in paragraph 103 as follows:-

> "The important method of determination of compensation are - (i) market value determined from sales of comparable properties, proximate in time to the date of acquisition, similarly situate, and possessing the same or similar advantages and subject to the same or similar disadvantages. Market value is the price the properly may fetch m the open market if sold by a willing seller unaffected by the special needs of a particular purchase; or ....."

The learned Deputy Government Advocate urged that there is no data supplied by the appellants in their petitions as to what would have been the potential value assuming that it could be taken into consideration for the purpose of determining compensation. The data on this aspect of the matter is wanting in the petitions. An examination of this plea would necessarily entail a scrutiny of material which is not before us and we are not prepared to entertain this argument in these appeals.

23. Learned Deputy Government Advocate also invited our attention to *United States v. W.G. Reynolds.* [30] It has been held in this case that "The 'market value' of property condemned can be affected, adversely or favorably, by the imminence of the very public project that makes the condemnation necessary. To permit compensation to be either reduced or increased because of and alteration in market value attributable to the project itself would not lead to the 'just compensation' that the Constitution

requires." The purpose of citing this authority by the learned Deputy Government Advocate appears to be that when the Improvement Trust makes a proper lay out it provides amenities such as roads, sewage, public parks, laving of electric lines, etc. then the value of the land naturally rises and this enhancement is due to the project of the planned development itself. It cannot be taken into account We cannot say this argument has no force.

24. Lastly. Mr. Rastogi argued that in appeal No. 335/71 land bearing No. 212/505 was not notified under Section 4 or under Section 6 of the Acquisition Act. This chunk of land measures 4 biswas and the appellant is entitled to the same treatment as the learned Single Judge has given in Writ Petitions Nos. 150, 188 and 189 of 1970. It was also argued by Mr. S.M. Mehta that lands bearing No. 266/520 and 267/521 measuring 4 biswas and 2 biswas respectively were not notified under Sections 4 and 6 and they, deserve to be treated in a similar fashion. As the learned Single Judge despite holding that the petitions were delayed granted relief to others in regard to lands which were not included in the notifications under Sections 4 and 6, we consider it lust and proper to grant similar relief in our appellate jurisdiction in regard to the lands bearing khasras Nos. 266/520, 267/521 and 212/505 and the respondents are directed not to take possession of these lands because they were not duly notified under Sections 4 and 6 of the Acquisition Act.

25. Excepting to this extent these appeals fail and are dismissed with costs.

Appeals dismissed.

Cases Referred.

1. AIR 1964 SC 1006
2. AIR 1970 SC 898
3. AIR 1966 Bom 36
4. AIR 1968 SC 377
5. AIR 1966 All 237
6. AIR 1968 Guj 38
7. AIR 1937 PC 265
8. AIR 1955 Hyd 203
9. AIR 1938 Mad 193

10. AIR 1957 Raj 59
11. AIR 1960 SC 335
12. AIR 1970 SC 470
13. AIR 1970 SC 760
14. AIR 1964 SC 1006
15. AIR 1971 Gul 145
16. AIR 1967 Mad118
17. 1966 Cal WN 115
18. AIR 1972 SC 2060
19. (1962) 3 All ER 75
20. (1973) 2 All ER 484
21. 1972 WLN 702
22. AIR 1950 FC 59: (5) Cri LJ 921)
23. AIR 1970 SC 564
24. ILR (1970) Andh Pra 1075 at p. 1089
25. (Civil Writ No. 475 of 1961, decided on 18-4-1963 (Raj)
26. (Civil Writ Petn. No. 389 of 1961 decided on 4-5-1965 (Raj)
27. Civil Appeal Nos. 2356 of 1968, 1139, 1140, 1475, 1476 and 1785 of 1971 and 1888 of 1970; decided on 23-8-1972: (reported in AIR 1973 SC 1150)
28. AIR 1965 SC 1096
29. AIR 1965 SC 1017
30. AIR 1971 USSC 21