R.N.R.

Before M. M. Kumar and Rajesh Bindal, JJ.

COURT ON ITS OWN MOTION,—*Petitioner*

versus

R. N. PRASHAR AND OTHERS,—*Respondents*

CWP No. 2098 of 2009

28th October, 2010

Constitution of India, 1950—Art.226—Land Acquisition Act, 1894—S.48—Release of land of a senior functionary from acquisition after more than 6 years of passing of award—State also allotting a two kanal plot in developed area in lieu of acquired land by merely returning compensation received by him—Once possession of land taken, no power vested with State to release land from acquisition u/s 48—Misuse of power and violation of provisions of 1894 Act—Orders releasing land and consequential allotment of plot by State set aside.

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(2) 1994 Suppl. (2) S.C.C. 52

Held, that a perusal of the proceedings of the meeting held under the Chairmanship of Hon'ble the Chief Minister-cum-Chairman, HUDA, which had taken place for the purpose of release of land to respondent-R. N. Prashar clearly show that initially he tried to mislead the concerned authority by citing a judgment which in fact was totally contrary to the subsequent judgments of Hon'ble the Supreme Court, which is stated to be opining that after taking over possession the acquired land, there is no power vested with the State to release the same from acquisition under Section 48 of the Act. Not only this, release of the land was ordered even though it was specifically pointed out in the note that such a power does not exist under Section 48 of the Act. Still more, a plot adjoining to the already released land of respondent-R. N. Prashar was allotted to him in lieu of the released land. It is not disputed that the land was acquired way back in the year 1997 and till 2006, when a portion thereof was directed to be released to respondent-R. N. Prashar, HUDA had utilized the land for carving out plots of one kanal and two kanals and those must have been offered for sale as well. As to why this particular plot, which was adjoining to the already released land of respondent-R. N. Prashar, was never put for sale clearly shows that even though his land had been acquired, but still he had been able to manage with HUDA not to put the adjoining plot for sale so that at any point of time convenient to him, he may get that plot allotted in lieu of his acquired land.

(Para 38)

Further held that there is no escape from the conclusion that once possession of the land has been taken by the State in pursuance to acquisition proceedings, power under Section 48 of the Act cannot be exercised for release of land from acquisition. In the present case, the admitted position on record is that possession of the land had been taken. Accordingly, the exercise of power by the State in releasing the acquired land six year after the possession thereof had been taken is nothing else but a blatant misuse of power.

(Para 39)

Further held, that the allotment of plot measuring 846 square meters in favour of respondent-R. N. Prashar by HUDA is sought to be justified as an exchange. Once the release of land in favour of respondent-R. N. Prashar by the State is held to be illegal and arbitrary, there is no

question of exchange and the consequent allotment of plot also falls through. Another factor, which is required to be noticed is that in the affidavit of Mr. R. P. Gupta, Administrator, HUDA (Headquarter) Panchkula dated 17th July, 2009, the stand sought to be taken is that in terms of Section 30 of the HUDA Act, 1977, it had merely carried out the directions as were issued by the State Government, whereas at the time of arguments, the stand taken was different.

(Para 41)

Further held, that once it has been found that release of land in favour of respondent-R. N. Prashar was in violation of the provisions of the Act, which even the State could not defend, the property having been vested in the State. The State is trustee of the people. If by violating the Act and the Rules, some benefit is granted to a favouritee, the Court can always step in as it was not a bounty which was being distributed by the State.

(Para 42)

Further held, that the argument regarding delay is equally meritless. In fact, it was a planned design by respondent-R. N. Prashar not to file the application immediately after the land was released and a plot was allotted to him in 2006 and the application was filed in this Court in September, 2008, which could have been filed immediately after release of land. The object may have been to plead equity on account of delay, in case the plea of arbitrariness in the entire process of release of land is taken up by any person in Court. Even if no one had invoked the jurisdiction of the Court, this Court cannot shut its eyes to patently illegal act committed by the State in showing favouritism to a person who had been a senior functionary in the State at the relevant time.

(Para 43)

Arun Nehra, Advocate as Amicus Curiae.

Sarjit Singh, Senior Advocate with Jagdev Singh, Advocate for R. N. Prashar.

Kamal Sehgal, Additional Advocate General, Haryama.

Arun Walia, Senior Standing Counsel for HUDA.

RAJESH BINDAL, J.

(1) The duty of a Judge has been well-defined in Smriti Chandrika in the following terms :

यथा शल्यं मिषक् कायादुद्धरेद् यंत्रयुक्तित: ।
प्राड्विाकस्तथा शल्यमुद्धरेदु व्यवहारत: ।।

As an experienced surgeon extracts a dart from the body of a person by means of surgical instruments, even so the Chief Justice must extract the dart of inequity from a law suit."

(Narada *vide* Smriti Chandrika P.30).

"As a skilful surgeon, conversant with the art of extracting a dart, takes it out by the application of surgical instruments and other manifold artful practices, even though it may be difficult to get at, the being invisible, even so a judge shall extract the dart of inequity which has entered a law suit, by employing the artful expedients of judicial investigation.

[Narada Smriti SBE Series P. 39 footnote].

(Source : A compilation by Justice Dr. M. Rama Jois published by Department of Post Graduate Studies and Research in Law, Gulbarga University at the time of introduction of new LLM Course in Bharateeya Nyaya Darshan and Raja Dharma).

(2) It is while performing the aforesaid duty that it came to the notice of one of us (Rajesh Bindal, J.) in collateral proceedings as to how the persons at the helm of affairs could mis-use their power, which otherwise would have remained hidden in the file. It is a case where a senior functionary of the State had been able to get his 846 square meters of land released by giving a complete go-by to the provisions of the Land Acquisition Act, 1894 (for short, 'the Act').

(3) Before the respective contentions of the parties are dealt with in detail, it would be appropriate to notice the facts of the case, which resulted in treating the arbitrary action of the State as well as HUDA in the present case as a public interest petition. The issue came to the notice of this court while dealing with appeals filed by the land owners seeking

enhancement of compensation. As some of the land owners had started withdrawing their appeals, this court being suspicious of the reasons behind that asked learned counsel for the State to find out the reasons therefor. From the material placed on record, it transpired that in the case of respondent-R. N. Prashar, though the land owned by him stood acquired *vide* notification dated 11th September, 1997. The award was announced by the Collector on 5th September, 2000 and the possession thereof was also taken. The amount awarded by the Land Acquisition Collector (for short, 'the Collector') was upheld by the Reference Court, against which R.F.A. No. 818 of 2003 was filed in this court. However, during the pendency thereof, in 2006 the land owned by him was directed to be released by the State Government and in lieu thereof, a plot measuring 846 square meters in Sector 4, Mansa Devi Complex, Panchkula was allotted merely on the condition that he will return the amount of compensation received by him alongwith interest and pay a small amount as development charges. It also came on record that the land owned by respondent—R. N. Prashar was in a triangular shape measuring 2883 square meters, out of which 535 square meters of land was released till the announcement of the award and the balance was released six years after the award. The land released was also not the same, which was owned by respondent—R. N. Prashar, but was in the form of a regular plots carved out in the already developed sector in the area.

(4) Considering the aforesaid action of the government to be *prima facie* not permissible in view of Section 48 of the Act and various judgments of Hon'ble the Supreme Court and this court, this court directed for treating the matter regarding release of land as a public interest petition while issuing notices to the State of Haryana, HUDA and respondent—R. N. Prashar. It is how the matter was listed finally before this Bench.

(5) After the notices were issued to the affected parties including R. N. Prashar, the beneficiary of undue favour, they have filed their reasons and also addressed oral arguments in support of their respective claims.

(6) Mr. Arun Nehra, Advocate, appearing as Amicus Curiae, submitted that the case in hand is a glaring example of mis-use of power by the State and its functionaries. He further highlighted as a how senior functionaries of the State can get things manipulated in their favour. In the

present case, R. N. Prashar, a senior bureaucrat, who had initially been able to save his land from acquisition, though notified twice earlier, however, when ultimately a small portion was acquired, the same was also got released by him after more than 6 years of the passing of the award by the Collector and taking over of possession of the land by the State. There is no power vested with the State to release any land from acquisition after the possession thereof had been taken. In fact, under the guard of release of land, R. N. Prashar had been allotted a two-kanal plot in developed Sector 4, Mansa Devi Complex, Panchkula valuing crores of rupees on a heavenly condition that he will return the amount of compensation received by him pertaining to his acquired land along with interest and a small amount as development charges.

(7) He submitted that if there is such a policy of the government, the same should have been made known to the public as the persons, whose land is acquired, would certainly love to take plots in the developed sectors equivalent to their acquired land by merely returning the compensation received by them along with interest and development charges. It is per chance that this illegality came to the notice of this court, otherwise this would have remained buried in the official files only. Referring to a Division Bench judgment of this Court in **Smt. Mirdula Joshi** *versus* **State of Haryana and others, (1)** and **Mysore Urban Development Authority by its Commissioner** *versus* **Veer Kumar Jain and others, (2),** the submission was that release of land in favour of R. N. Prashar deserves to be set aside.

(8) Learned counsel for the State fairly submitted that in terms of the provisions of Section 48 of the Act, as has been interpreted by Hon'ble the Supreme Court and this Court in numerous judgments, once possession of the land had been taken by the State, the same could not be released from acquisition. It could be utilised for any purpose even if the purpose for which the same was acquired was no more existing. Referring to the judgment of this Court in **Smt. Mridula Joshi's** case (supra), it was submitted that in the aforesaid case, release of land in favour of some of the land owners was quashed by this court under similar circumstances. Though the matter is pending before Hon'ble the Supreme Court, however,

(1) 2009 (1) R.C.R. (Civil) 536

(2) 2010 (2) R.C.R. (Civil) 851

there is an interim stay only with regard to directions contained in paragraph 22(d) of the judgment, which provided for issuance of comprehensive instructions on certain matters pertaining to the acquisition of land. He was fair enough to submit that is noticed in the note of Director, Urban Estates dated 13th May, 2006, the possession of the land had in fact been taken by the State.

(9) Even though the authority, under whose orders the land was directed to be released much after the possession thereof had been taken in acquisition proceedings, was not able to defend the order of release considering the settled position of law, but still learned counsel appearing for HUDA sought to justify the action of the HUDA in allotting plot No. 190, Sector 4, MDC, Panchkula to respondent-R.N. Prashar by claiming that it was merely exchange of land by the HUDA, which is permissible it terms of Section 15 of the Haryana Urban Development Authority Act, 1977 (for short, 'the HUDA Act'). He did not dispute the fact that shape of the land owned by respondent-R.N. Prashar initially was triangular. Even earlier when the part of land was left out of acquisition, the same was made part of the development scheme and proper shaped plot was given to him by HUDA, instead of the land initially owned by him. He was not aware of the fact as to whether any exchange deed was signed with him or not at the relevant time.

(10) Learned counsel appearing for respondent-R.N. Prashar in his attempt to save his client in the illegality committed by him or got committed from some other authority submitted that there is no public interest as such involved in the present petition, for which this court has taken judicial notice. It is merely land pertaining to one person, which has been released by the State from acquisition finding his claim to be reasonable and *bona fide.* No third party is effected as such and this court should not interfere in the action of the government. This was not the kind of a case in which this court should have taken suo motu notice. He further submitted that the land was released in favour of respondent-R.N. Prashar way back in the year 2006. Now it is too late to test the validity of that action, as much water has flown under the bridge of river Ganges and the parties have changed their position. He further submitted that there is no prohibition under the HUDA Act for release of land. On the asking of the court, learned counsel was candid in saying that there is no enabling provision either under

the Act or the HUDA Act. He could not dispute the fact that the land was acquired by the State and HUDA was merely the beneficiary thereof, hence, there was no question of release of land by HUDA. He also endorsed the argument raised by learned counsel for HUDA claiming that it was exchange of land by HUDA for the land, which was released for acquisition and there was nothing illegal about it Finally, it was submitted that since the judgment of this court in **Smt. Mirdula Joshi's** case *(supra)* is already pending consideration before Hon'ble the Supreme Court, this court can very well wait for the result thereof.

(11) Heard learned counsel for the parties and perused the paper book.

(12) Before the respective contentions of the parties are considered, it would be appropriate to notice the facts of the case in brief.

(13) Respondent-R.N. Prashar purchased land measuring 7 kanals and 5 marlas in village Bhainsa Tibba near Mansa Devi Temple in the year 1980. It is claimed by him that the aforesaid land was purchased after raising loan from the State. For the first time, the aforesaid land was proposed to be acquired *vide* notification dated 27th August, 1981 issued under Section 4 of the Act. After considering the objections raised by respondent-R.N. Prashar, the land was left out of acquisition while issuing notification under Section 6 of the Act. The land was again proposed to be acquired *vide* notification dated 23rd April, 1985. Respondent-R.N. Prashar again raised objections to the acquisition. Accepting the objections filed by him, the same was not notified under Section 6 of the Act. It is admitted by respondent-R.N. Prashar that at the relevant time, he was posted as Chief Administrator, Haryana Urban Development Authority and Director, Town and Country Planning, Haryana. However, he claimed that file relating to this case was not dealt with by him and the decision not to acquire the land was taken by the Secretary of the Department with the consent of the Hon'ble Chief Minister.

(14) Another notification was issued on 5th May, 1987 proposing to acquire part of the land for the purpose of construction of a road. In the process, one kanal and 11 marlas of land was acquired leaving a balance of 5 kanals and 14 marlas of land with respondent-R.N. Prashar.

(15) *Vide* subsequent notification issued on 11th September, 1997, remaining 5 kanals and 14 marlas of land (2883 square meters) was proposed to be acquired. Respondent-R.N. Prashar filed objections under Section 5-A of the Act. After affording opportunity of hearing to respondent-R.N. Prashar and inspecting the site, the Land Acquisition Collector (for short, 'the Collector') reported that at the spot, there was one room of 'A' class construction measuring 25x14 feet and on 280 square yards, there was lantern on pillar. He recommended for release of 330 square yards of land. While issuing notification under Section 6 of the Act, 0.13 acres (535 square meters) of land, on which construction was existing, was left out, whereas 0.58 acres (2348 square meters) of land was notified for acquisition. However, still respondent-R.N. Prashar was not satisfied and being in dominating position had been able to delay announcement of the award to its last and during the interregnum used his good offices to get another 0.37 acres (1500 square meters) of land released from a Minister's Committee and finally it was only 0.21 acres (848 square meters) of land, for which the award was announced by the Collector on 5th September, 2000.

(16) As has been noticed in agenda item No. A-98th (1)-Suppl. of HUDA, the shape of plot originally owned by respondent-R.N. Prashar was triangular. The portion of land measuring 2,035 square meters, which was released till the stage of announcement of award by the Collector was also given to him in regular shaped plots merely on deposit of Rs. 5,85,870 as development charges.

(17) After the announcement of award, possession of the land was taken by the government. Respondent-R.N. Prashar, being dis-satisfied, filed objections before the Collector, which were referred to learned District Judge, Panchkula, who vide his judgment dated 21st October, 2002 dismissed the same finding the award of the Collector to be reasonable.

(18) Respondent-R.N. Prashar, being aggrieved against the award of the learned court below, filed R.F.A. No. 818 of 2003 before this court, which was admitted. More than 8 years after announcement of the award and taking over possession of the land by the Collector and 5 years after the filing of appeal before this court seeking enhancement of compensation, application was filed by respondent-R.N. Prashar before this court bearing

C.M. No. 8834-CI of 2008 seeking permission to withdraw the appeal. Considering the prayer of respondent-R.N. Prashar to be *bona fide*, the appeal was permitted to be dismissed as withdrawn on 11th September, 2008.

(19) The bad luck for respondent-R.N. Prashar was that some other land owners subsequently filed applications seeking permission to withdraw the appeals filed by them, wherein also the prayer was for enhancement of compensation. The prayer made by the land owners for withdrawal of the appeals filed by them seeking enhancement of compensation was quite unprecedented as at the most finally their appeals could be dismissed. Even against that dismissal order, they had their further remedies. In these circumstances, this court asked the State counsel to clarify the position as to why the appeals filed by the land owners were being withdrawn. He was also asked to explain as to under what circumstances, respondent-R.N. Prashar had withdrawn his appeal earlier.

(20) In response thereto, affidavit of Land Acquisition Collector, Faridabad was filed explaining therein the situation with regard to withdrawal of appeals by the land owners in R.F.A. Nos. 2540 to 2543 of 1999. To put the record straight regarding the circumstances under which the land owners in the aforesaid appeals withdrew their appeals, briefly it is mentioned that amount of compensation as awarded by the Reference Court in those cases had been reduced by this court. Finding that the State was not in appeal in the cases of those land owners seeking reduction of compensation, even though appeals were filed in all other cases, the land owners sought permission to withdraw those appeals so that the award of the learned court below awarding compensation at a higher rate than what was ultimately determined by this Court in their cases is not set aside. However, later on, the appeals filed by the State in the aforesaid cases along with application seeking condonation of delay of 8 years and 251 days in re-filing thereof also came up for hearing before this Court. Finding the reasons for seeking condonation of delay in re-filing to be not sufficient, those applications as well as the appeals were dismissed by this court vide order dated 7th September, 2010.

(21) However, as far as the appeal pertaining to respondent-R.N. Prashar is concerned, Land Acquisition Officer, Panchkula filed affidavit dated 27th November, 2008 explaining that his land had been released from acquisition.

(22) It is at this stage that arbitrary action of the State came to light, whereby the land of respondent-R.N. Prashar, for which the award was announced on 5th September, 2006 and the possession was taken by the State, was released from acquisition on 24th July, 2006 under the orders of Hon'ble the Chief Minister and as a consequence thereof, instead of handing over possession of released land, plot No. 190, Sector 4, Mansa Devi Complex, Panchkula measuring 846 square meters was allotted to respondent-R.N. Prashar allegedly in exchange of the released land by HUDA. Finding the aforesaid action to be apparently a piece of blatant mis-use of power, this court considered it appropriate to treat the issue as a public interest petition.

(23) From the sequence of facts, as narrated above, in brief, what has emerged is that it is a case where a senior functionary of the government had been able to give a complete go-by to the provisions of the Act by successfully saving the land owned by him from acquisition ever since 1981. The provisions of the Act were swept under the carpet to satisfy his luxurious needs who was not satisfied with 0.5 acres (2,035 square meters) for construction of his palatial house. He was sought to be gifted a plot of 846 square meters at a prime location by HUDA merely on the condition that he will refund the amount of compensation received by him along with interest and some petty development charges. The market value of the plot at the relevant time, was running into crores of rupees. It has also not been pointed out either by learned counsel for the State or HUDA that the case of respondent-R.N. Prashar for release of land was considered under any policy of the State, which was made known to the public at large or it was merely a favour shown to an individual. If any policy is framed, the public at large is entitled to take benefit thereunder. Action should not be taken to benefit a particular individual only who had access in the corridors of power.

(24) Before we proceed to consider the respective contentions of learned counsel for the parties, it would be appropriate to extract the provisions of Sections 16 and 48 of the Act and Section 15 of the HUDA Act, which read as under :

Sections 16 and 48 of the Land Acquisition Act, 1894

"16. *Power to take possession.*—When the Collector has made an award under Section 11, he may take possession of the land, which shall thereupon vest absolutely in the Government, free from all encumbrances.

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".

Section 15 of the Haryana Urban Development Authority Act, 1977

15. Disposal of land.—(1) Subject to any directions given by the State Government under this Act and the provisions of sub-section (5), the Authority may dispose of —

(a) any land acquired by it or transferred to it by the State Government without undertaking or carrying out any development thereon; or

(b) any such land after undertaking or carrying out such development as it thinks fit, to such persons, in such manner and subject to such terms and conditions, as it considers expedient for securing development.

(2) Nothing in this Act shall be construed as enabling the authority to dispose of land by way of gift, but subject to this condition, reference in this Act to the disposal of land shall be construed as reference to the disposal thereof in any manner, whether by way of sale, exchange or lease or by the creation of any easement of right or privilege or otherwise.

(3) Subject to the provisions hereinbefore contained. the Authority may sell, lease, or otherwise transfer whether by auction, allotment or otherwise, any land or building belonging to it on such terms and conditions as it may, by regulations, provide.

(4) The consideration money for any transfer under sub-section (1) shall be paid to the Authority in such manner as may be provided by regulations.

(5) Notwithstanding anything contained in any other law, for the time being in force, any land or building or both, as the case may be, shall continue to belong to the authority until the entire consideration money together with interest and other amount, if any, due to the Authority, on account of the sale of such land or building or both is paid.

(6) Until the conditions provided in the regulations are fulfilled, the transferee shall not transfer his rights in the land or building except with the previous permission of the Authority, which may be granted on such terms and conditions, as the authority may deem fit."

(25) A perusal of Section 16 of the Act shows that after the announcement of award under Section 11 of the Act, the Collector is at liberty to take possession of the land which shall thereupon vests absolutely in the State free from all encumbrances. In the present case, it is the admitted position on record as is evident from the note of Director, Urban Estates dated 13th May, 2006 that possession of the land had initially been taken. Along therewith if the provisions of Section 48 of the Act are considered, it clearly provide that the State has been given liberty to withdraw from acquisition only the land, the possession of which has not been taken. The provisions of Section 48 of the Act, with reference to release of land from acquisition came up for consideration before Hon'ble the Supreme Court and this court number of times.

(26) In **The State of Madhya Pradesh and others** *versus* **Vishnu Prasad Sharma and others, (3)** Hon'ble the Supreme Court

(3) AIR 1966 S.C. 1593

opined that once the government has taken possession of the land, it cannot withdraw from acquisition. Relevant paragraph 19 thereof is extracted below :

> "19. This power can be exercised even after the Collector has made the award under S. 11 but before he takes possession under S. 15. Section 48(2) provides for compensation in such a case. The argument that S. 48(1) is the only method in which the Government can withdraw from the acquisition has, therefore, no force because the Government can always cancel the notifications under Ss. 4 and 6 by virtue of its power under S. 21 of the General Clauses Act and this power can be exercised before the Government directs the Collector to take action under S. 7. Section 48(1) is a special provision for those cases where proceedings for acquisition have gone beyond the stage of the issue of notice under S. 9(1) and it provides for payment of compensation under S. 48(2) read with S. 48(3). We cannot, therefore, accept the argument that without an order under Section 48(1) the notification under S. 4 must remain outstanding. It can be cancelled at any time by Government under S. 21 of the General Clauses Act and *what S. 48(1) shows is that once Government has taken possession it cannot withdraw from the acquisition. Before that it may cancel the notification under Ss. 4 and 6 or it may withdraw from the acquisition under S. 48(1)......* "
>
> (emphasis supplied).

(27) The aforesaid observations of Hon'ble the Supreme Court were subsequently considered in **Lt. Governor of Himachal Pradesh and another** *versus* **Shri Avinash Sharma, (4).** The relevant paragraph thereof is extracted below :

> "But there 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 S. 17(1) the land is vested in the Government and the notification cannot be cancelled under S. 21 of the General Clauses Act, nor can*

(4) AIR 1970 S.C. 1576

the notification be withdrawn in exercise of the powers under S. 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 S. 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." (emphasis added)

(28) Subsequent thereto, in **Bangalore Development Authority and others** *versus* **R. Hanumaiah and others, (5)** their Lordships of Hon'ble the Supreme Court while referring to the earlier judgments in **Pratap** *versus* **State of Rajasthan, (6) Mohan Singh** *versus* **International Airport Authority of India, (7)** and **Printers (Mysore) Ltd.** *versus* **M.A. Rasheed, (8)** reiterated the earlier enunciation of law holding that after the State had taken possession of the acquired land, it could not be withdrawn from acquisition. The relevant paragraphs thereof are extracted below :

"45. Again in **Pratap versus State of Rajasthan,** (1996) 3 SCC 1, it was reiterated that once the possession is taken and the land vests in the Government then the Government cannot withdraw from acquisition under Section 48 of the Land Acquisition Act. Same view was reiterated by this court in **Mohan Singh** *versus* ***International Airport Authority of India,*** (1997) 9 SCC 132 and in **Printers (Mysore) Ltd.** ***versus*** **M.A. Rasheed,** (2004) 4 SCC 460.

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

(5) (2005) 12 S.C.C. 508
(6) (1996) 3 S.C.C. 1
(7) (1997) 9 S.C.C. 132
(8) (2004) 4 S.C.C. 460

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."

(29) Similar was the position in **Mandir Shree Sitaramji** *alias* **Shree Sitaram Bhandar** *versus* **Land Acquisition Collector and others, (9) National Thermal Power Corporation Ltd.** *versus* **Mahesh Dutta and others, (10)** and **Mysore Urban Development Authority by its Commissioner** *versus* **Veer Kumar Jain and others, (11).**

(30) This issue came up for consideration before this court as well in number of cases, where the arbitrary exercise of power by the State under such similar circumstances was quashed. Reference can be made to **Gurkirpal Singh** *versus* **Financial Commissioner (Revenue) and Secretary, Government of Punjab, Department of Revenue and others, (12).**

(31) In **Hari Chand and others** *versus* **State of Haryana and others, (13)** this Court adversely commented upon the conduct of the State as well as HUDA in arbitrarily releasing the land in favour of the builders. Relevant paragraph 13 thereof is extracted below :

"13. The petitioners No. 1 to 3 would not be able to fulfill the first requirement of Section 3(i) because they cannot be regarded as full fledged owner after notification under Section 4 of the Act has been issued and a licence in their favour cannot be granted unless in law they are able to argue that they possess title to the land in question. In this context, the policy of the government to release a part of the land proposed to be acquired, has to be considered. Once, the land is proposed to be acquired under Section 4 of the Act for development of a sector in an urban area, the rates of the land in the surrounding

(9) AIR 2005 S.C. 3518
(10) 2010 (2) R.C.R. (Civil) 109
(11) 2010 (2) R.C.R. (Civil) 851
(12) (2008-3) P.L.R. 740
(13) 2009 (4) R.C.R. (Civil) 467

area and in respect of the land which is not acquired ordinarily goes up, because the area in the vicinity of such land is likely to be highly developed. Once that is the situation with regard to area which has not been notified under Sections 4 and 6, it does not require much imagination to conclude that the area which is to be released from acquisition after notification issued under Section 4 would become highly precious. In releasing of land in bulk to colonizers, the State or its agencies are not advancing the public purpose for which the land is acquired but would be doing dis-service to the society by releasing the land either in favour of a colonizer or a private individual to advance their private interest. We are of the firm view that such a course is not available to the respondent-State. The discretion for releasing the land from acquisition is available, for example, in favour of those persons who had built houses, factories etc. before issuance of notification under Section 4 but no discretion could be exercised by granting licence to those who have entered into any Collaboration Agreement with the land owner after issuance of notification under Section 4. It would amount to colourable exercise of power because the land which is sought to be acquired for a public purpose would be released to advance a private purpose which is against the basic principles of eminent domain. Therefore, we cannot accept the policy of the State Government to grant licence in favour of a colonizer who had no interest in the land before issuance of notification under Section 4 and who has acquired interest either by entering into a Collaboration Agreement or by acquiring ownership rights after notification under Section 4 of the Act. The respondent-State would not be entitled to issue license to land owners or a private colonizer after issuance of notification under Section 4."

(32) In **Delhi Assam Roadways Corporation Ltd.** *versus* **The Haryana Urban Development Authority and others, (14)** opening comments of a Division Bench of this Court with reference to a case

(14) 2008 (3) R.C.R. (Civil) 389

pertaining to allotment of commercial plots in Sector 44, Gurgaon are fully applicable in the facts and circumstances of the present case. The same are extracted below :

> "If settled principles of law are flagrantly violated by those who are entrusted with the duty to apply those principles then gullible public is bound to walk with the impression that the system moves only on extraneous considerations and not on relevant one. When the law declared under Article 141 of the Constitution becomes binding on each and every individual then at least it is safe to presume that it is known to the parties. When those filled with greed gain confidence setting in motion the moves that the settled principles of law could be shelved then such people acquire guts and confidence to defeat such principles. These set of petitions filed under Articles 226 of the Constitution, thus, reveal thinking of such persons whose perhaps have hoped that no one is likely to know about their acts and they could execute their operation without being caught. But vigilant petitioners have come forward exposing their designs and unholy intentions to shelve settled law."

(33) Referring to the settled principles of law with regard to exercise of power under Section 48 of the Act, it would be appropriate to narrate a few facts as to how the process for release of land almost 6 years after the announcement of award and taking over possession by the State was initiated by respondent—R.N. Prashar. Letter dated 13th May, 2005 was addressed by him to the Financial Commissioner and Principal Secretary to the Government, Town and Country Planning Department stating that acquisition of land belonging to him was on account of political victimisation. Otherwise, there was no public purpose of acquisition. He further submitted that a two kanal plot bearing No. 190, Sector 4, Mansa Devi Complex was carved out of the acquired land and the same was still lying unallotted. It was followed by communication dated 14th September, 2005. Reference was made to a judgment reported as **Subramania Asari** *versus* **Secretary to State, (15)** to submit that even in the cases where the compensation had been received by the owner, it can be returned and the land can be given back to the owner.

(15) 17 M.L.J. 557

(34) The statement of this fact by a senior functionary of the State shows that how he was making efforts to mislead the government by quoting an old judgment, whereas the latest judgments of Hon'ble the Supreme Court at that time were taking a view contrary thereto. He even quoted instances where the power had been misused by the government earlier for releasing land of some other favouritee. Copy of this letter was sent even to Hon'ble the Chief Minister, Haryana. On the request of respondent— R.N. Prashar, a note was put up by the Director, Urban Estates on 13th May, 2006 in the following terms :

> "The site was inspected on 5th May, 2006 and again on 9th May, 2006. The location of the land may kindly be seen on the plan at flag 'X'. The original shape of the land which was acquired is shown in the red colour and the land which was released in the form of a regular plot is marked as A, B, C & D and measures 2035 sq. mtrs. The adjoining plots bearing No. 187 to 190 have not been allotted as yet. The construction which has been undertaken by Shri R.N. Prashar is shown on a site plan at flag 'Y'. In case of 2 kanal category plots allotted by HUDA the permissible set back as per building bye-laws are three meters towards ancillary zone and 2.5 meter on other side. The construction that has been undertaken by Shri Prashar shown that set back on one side is just about one meter. In order to provide proper set back and also to retain plot numbers 187 to 190 it is proposed to reduce the width of these plots from 18 meter to 17 meter and to provide a strip of land measuring 4 × 47 meters to Shri R.N. Prashar. This not being a normal process of allotment will require the approval of Authority and is proposed to be allotted at the current rates. It is pertinent to mention that compensation of the acquired land was received by Shri R.N. Prashar in his letter at flag 'A' has mentioned that acquired land can be returned to the owner by the Government even where the compensation has been received by the owner. He has also quoted the example of returning the land measuring 1.02 acres falling in khasra No. 389/2 in village Devinagar now

falling in Sector 3, Panchkula. It has been checked from the record that Government has released the land after 10 years of its acquisition. A copy of the order is placed at flag 'B'.

The provision of Section 48 of the Land Acquisition Act reads as under :

"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."

It is clear from the reading of the above said Section 48 that Government has no power to release land once the possession of land has been taken by the Government. In this case the possession has actually been taken.

In view of this Government may consider the proposal given at 'O' above."

(35) The same was approved by Hon'ble the Chief Minister on 24th July, 2006 with the following note :

> "CM has seen keeping in view the extraordinary circumstances explained by Shri Prashar in his representations dated 13th May, 2005 and 14th September, 2005 the matter be processed for releasing the remaining part of land against which he will have return the compensation amount along with the interest thereon. CM has further ordered that a proposal to this effect be brought up before the HUDA Authority."

(36) Thereafter, the case was put up in 98th meeting of HUDA as supplementary item No. 1. It was mentioned in the note (Annexure A.10 with the affidavit of Mr. Aurbind Sharma, Land Acquisition Officer, Panchkula dated 27th November, 2008) that the total land owned by respondent-R.N. Prashar was 5 kanals and 14 marlas (2,883 square meters), which was notified for acquisition under Section 4 of the Act on 11th September, 1997. Out of this, 535 square meters of land was left out while issuing notification under Section 6 of the Act on 8th September, 1998. However, at the time of award, out of total 2,883 square meters of land, 2,035 square meters of land was not acquired and award was announced only for 1 kanal and 14 marlas of land, i.e., 848 square meters. Compensation of Rs. 4,32,354 was paid to respondent—R.N. Prashar *vide* cheque No. 062808 dated 5th September, 2000. HUDA had carved out plots on this acquired land along with adjoining acquired land. The land owned by respondent—R.N. Prashar was in a triangular shape. However, even released area of 2,035 square meters was also given to him in a regular shape of plot. After noticing the order passed by Hon'ble the Chief Minister considering his representation, it was specifically noticed that after the acquisition of land and taking possession thereof, the same stood utilised for planning two kanals and one kanal plots. Even it was mentioned therein that in terms of various judgments of Hon'ble the Supreme Court, the acquired land cannot be released after taking possession thereof, as the same is in violation of Section 48 of the Act. Further, it was also mentioned therein that there is no system of allotting a particular residential plot to an individual on his

application as the allotment of residential plots is made by inviting applications through advertisement and thereafter by holding draw of lots. There is no discretionary power with the government for allotment of plots.

(37) Recording the aforesaid facts, a proposal was put up as to whether a two kanal plot bearing No. 190, Sector 4, Mansa Devi Complex. Panchkula measuring 846 square meters can be considered for allotment to respondent—R.N. Prashar in lieu of his acquired 848 square meters of land. Upon this, the proceedings of the meeting held under the Chairmanship of Hon'ble the Chief Minister-cum-Chairman, HUDA were recorded in the following terms :

> "It was decided that the remaining part of the land measuring 848 sq. mtr. of Shri R.N. Prashar be released for which he will return the compensation amount along with interest thereon. This land thereafter be exchanged with plot No. 190, Sector 4, MDC, Panchkula measuring approximately 846 sq. mtr."

(38) A perusal of the aforesaid proceedings, which had taken place for the purpose of release of land to respondent—R.N. Prashar clearly show that initially he tried to mislead the concerned authority by citing a judgment which in fact was totally contrary to the subsequent judgments of Hon'ble the Supreme Court, which is stated to be opining that after taking over possession of the acquired land, there is no power vested with the State to release the same from acquisition under Section 48 of the Act. Not only this, release of the land was ordered even though it was specifically pointed out in the note that such a power does not exist under Section 48 of the Act. Still more, a plot adjoining to the already released land of respondent—R.N. Prashar was allotted to him in lieu of the released land. It is not disputed that the land was acquired way back in the year 1997 and till 2006, when a portion thereof was directed to be released to respondent-R.N. Prashar, HUDA has utilised the land for carving out plots of one kanal and two kanals and those must have been offered for sale as well. As to why this particular plot, which was adjoining to the already released land of respondent-R.N. Prashar, was never put for sale clearly shows that even though his land had been acquired, but still he had been

able to manage with HUDA not to put the adjoining plot for sale so that at any point of time convenient to him, he may get that plot allotted in lieu of his acquired land.

(39) If enunciation of law, as referred to above, is considered in the facts and circumstances of the case, there is no escape from the conclusion that once possession of the land has been taken by the State in pursuance to acquisition proceedings, power under Section 48 of the Act cannot be exercised for release of land from acquisition. In the present case, the admitted position on record is that possession of the land had been taken. Accordingly, the exercise of power by the State in releasing the acquired land six years after the possession thereof had been taken is nothing else but a blatant misuse of power.

(40) The stand of the State whereby it had not been able to defend the order of release of land even though passed by Hon'ble the Chief Minister raises a question as to why such orders are passed, which are indefensible. This is for the authorities to ponder over.

(41) The contentions raised by learned counsel for HUDA and respondent-R.N. Prashar are also to be noticed and rejected, as the same are only in the nature of frustration. The allotment of plot measuring 846 square meters in favour of respondent-R.N. Prashar by HUDA is sought to be justified as an exchange. Once the release of land in favour respondent-R.N. Prashar by the State is held to be illegal and arbitrary, there is no question of exchange and the consequent allotment of plot also falls through. Another factor, which is required to be noticed is that in the affidavit of Mr. R.P. Gupta, Administrator, HUDA (Headquarter), Panchkula dated 17th July, 2009, the stand sought to be taken is that in terms of section 30 of the HUDA Act, 1977, it had merely carried out the directions as were issued by the State Government, whereas at the time of arguments, the stand taken was different.

(42) The contention raised by learned counsel for respondent-R.N. Prashar to claim that there was no public interest involved is also totally misconceived. Once it has been found that release of land in favour of respondent-R.N. Prashar was in violation of the provisions of the Act,

which even the State Could not defend, the property having been vested in the State. The State is trustee of the people. If by violating the Act and the Rules, some benefit is granted to a favouritee, the Court can always step in as it was not a bounty which was being distributed by the State.

(43) The argument regarding delay is equally meritless. In fact, it was a planned design by respondent-R.N. Prashar not to file the application immediately after the land was released and a plot was allotted to him in 2006 and the application was filed in this court in September, 2008, which could have been filed immediately after release of land. The object may have been to plead equity on account of delay, in case the plea of arbitrariness in the entire process of release of land is taken up by any person in court. Even if no one had invoked the jurisdiction of the court, this court cannot shut its eyes to patently illegal act committed by the State in showing favoritism to a person who had been a senior functionary in the State at the relevant time.

(44) For the detailed reasons recorded above, the release of 848 square meters of land in favour of respondent-R.N. Prashar by the State Government and consequential allotment of plot No. 190, Sector 4, Mansa Devi Complex, Panchkula by HUDA in his favour are set aside. HUDA is directed to refund the amount received from respondent-R.N. Prashar on account of allotment of plot No. 190, Sector 4, Mansa Devi Complex, Panchkula in lieu of release of his land and the development charges recovered from him along with interest at the rate, which is charged by HUDA from the allottees on account of non-payment of the dues from the date of deposit till it is refunded.

(45) We place on record our gratitude to Mr. Arun Nehra, Advocate for ably assisting the court as Amicus Curiae.

R.N.R.