IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE

BEFORE

HON'BLE SHRI JUSTICE SUSHRUT ARVIND DHARMADHIKARI

&

HON'BLE SHRI JUSTICE HIRDESH

ON THE 17th OF JANUARY, 2024

WRIT APPEAL No. 392 of 2009

BETWEEN:-

1. **SATISH KUMAR S/O GIRDHARILAL BATRA DASHAHARA MAIDAN, UJJAIN (MADHYA PRADESH)**
2. **KISHORE S/O GIRDHARILAL BATARA DASHAHARA MAIDAN, UJJAIN (MADHYA PRADESH)**
3. **RAJU S/O HANSRAJ SALUJA DASHAHARA MAIDAN, UJJAIN (MADHYA PRADESH)**

.....APPELLANTS

(BY SHRI VINAY GANDHI, ADVOCATE FOR THE APPELLANTS.)

AND

1. **STATE OF M.P. THROUGH PRINCIPAL SECRETARY HOUSING AND ENVIRONMENT DEPTT. MANTRALAYA, VALLABH BHAWAN (MADHYA PRADESH)**
2. **THE M.P. HOUSING BOARD THROUGH HOUSING COMMISSIONER ARERA COLONY, NEAR VITTHAL MARKET, BHOPAL (MADHYA PRADESH)**
3. **THE EXECUTIVE ENGINEER M.P. HOUSING BOARD BHANPURI, BHOPAL (MADHYA PRADESH)**
4. **THE COLLECTOR UJJAIN (MADHYA PRADESH)**
5. **THE COMMISSIONER UJJAIN DIVISION, UJJAIN (MADHYA PRADESH)**
6. **THE LAND ACQUISITION OFFICER COLLECTORATE, UJJAIN (MADHYA PRADESH)**

.....RESPONDENTS

((SHRI ANIKET NAIK, DY. ADVOCATE GENERAL FOR THE RESPONDENT NO. 1,4,5 & 6/STATE)
(SHRI SUNIL JAIN, SR. ADVOCATE WITH SHRI KUSHAGRA JAIN, ADVOCATE FOR THE RESPONDENT NO. 2 & 3/ M.P. HOUSING BOARD)

WRIT APPEAL No. 447 of 2009

BETWEEN:-

1. GAJANAND S/O SHRI BHAGIRATH JI MALI, AGED ABOUT 52 YEARS, OCCUPATION: AGRICULTURE MALIPURA, UJJAIN (MADHYA PRADESH)

2. NIRMALKUMAR S/O SHRI PUNAMCHAND GUPTA, AGED ABOUT 49 YEARS, OCCUPATION: BUSINESS SHAHID PARK, UJJAIN (MADHYA PRADESH)

.....APPELLANTS

(BY SHRI SANJAY AGRAWAL, SR ADVOCATE WITH SHRI M.L. PATHAK, ADVOCATE FOR THE APPELLANTS)

AND

1. STATE OF MADHYA PRADESH THROUGH THE COLLECTOR AND DEPUTY SECRETARY (REVENUE) UJJAIN (MADHYA PRADESH)

2. THE LAND ACQUISITION OFFICER COLLECTORATE, UJJAIN (MADHYA PRADESH)

3. MADHYA PRADESH HOUSING BOARD THROUGH ITS HOUSING COMMISSIONER ARERA COLONY, NEAR VITTHAL MARKET, BHOPAL (MADHYA PRADESH)

4. THE EXECUTIVE ENGINNER MADHYA PRADESH HOUSING BOARD BHARATPURI, UJJAIN (MADHYA PRADESH)

.....RESPONDENTS

(SHRI ANIKET NAIK, DY. ADVOCATE GENERAL FOR THE RESPONDENT NO. 1 & 2/STATE)
(SHRI SUNIL JAIN, SR. ADVOCATE WITH SHRI KUSHAGRA JAIN, ADVOCATE FOR THE RESPONDENT NO. 3 & 4/M.P. HOUSING BOARD)

WRIT PETITION No. 11149 of 2010

BETWEEN:-

1. DECD. NANDKISHORE THR.LRS RAMGOPAL AND 02 ORS. S/O LATE NANDKISHORE MALI, AGED ABOUT 45 YEARS, OCCUPATION: AGRICULTURE UDAYAN MARG IN FRONT OF VAGHESHWARI MATA

MANDIR UDAYAN MARG FREEGANJ MADHAV (MADHYA PRADESH)

2. **DECD. NANDKISHORE THROUGH LAXMINARAYAN DECEASED THROUGH LR'S PANKAJ S/O LATE SHRI LAXMINARYA,, AGED ABOUT 25 YEARS, OCCUPATION: AGRICULTURE RAMI NAGAR, UJJAIN (MADHYA PRADESH)** ,

3. **DECD. NANDKISHORE THROUGH LAXMINARAYAN DECEASED THROUGH LR'S RAVINDRA S/O LATE LAXMINARYAN, AGED ABOUT 29 YEARS, OCCUPATION: AGRICULTURE RAMI NAGAR, UJJAIN (MADHYA PRADESH)**

4. **DECD. NANDKISHORE THROUGH LAXMINARAYAN DECEASED THROUGH SMT. KALPANA D/O LATE LAXMINARAYAN, W?O DHARMENDRA CHAWDA AGED ABOUT 31 YEARS, OCCUPATION: HOUSEHOLD R/O HOUSE NO 31, NEHRU COLONY, THANA KAMLA NEHRU NAGAR, NANAKHEDA, UJJAIN (MADHYA PRADESH)**

5. **DECD NANDKISHORE THROUGH LAXMINARAYAN DECEASED THROUGH LR'S SMT. DEEPIKA D/O LATE LAXMINARAYAN, AGED ABOUT 32 YEARS, OCCUPATION: HOUSEHOLD SADASHIV NAGAR, MOTI BUNGLOW, DEWAS (MADHYA PRADESH)**

6. **DECEASED NANDKISHORE THROUGH LRS RAMESH CHANDRA S/O LATE NANDKISHORE MALLI, AGED ABOUT 43 YEARS, OCCUPATION: AGRICULTURIST UDAYAN MARG FREEGANJ, MADHAV NAGAR, UJJAIN(MADHYA PRADESH)**

.....PETITIONERS

(BY SHRI J.B. MEHTA, ADVOCATE FOR THE PETITIONERS)

AND

1. **PRINCIPAL SECRETARY THE STATE OF MADHYA PRADESH AND 05 ORS. GOVT. GOVT.OF M.P. HOUSING AND ENVIRONMENT DEPTT. VALLABH BHAWAN MANTRALAYA BHOPA (MADHYA PRADESH)**

2. **THE MADHYA PRADESH HOUSING BOARD THROUGH HOUSING COMMISSIONER ARERA COLONY, NEAR VITTHAL MARKET (MADHYA PRADESH)**

3. **THE EXECUTIVE ENGINEER M.P. HOUSING BOARD, BHANPURI BHANPURI (MADHYA PRADESH)**

4. **THE COLLECTOR UJJAIN UJJAIN DISTRICT, KOTHI PALACE (MADHYA PRADESH)**

5. **THE COMMISSIONER UJJAIN REVENUE DIVISION KOTHI PALACE, UJJAIN (MADHYA PRADESH)**

6. **THE LAND ACQUISITION OFFICER COLLECTORATE (MADHYA PRADESH)**

.....RESPONDENTS

(BY SHRI ANIKET NAIK, DY. ADVOCATE GENERAL FOR THE RESPONDENTS/STATE)

(SHRI SUNIL JAIN,SR. ADVOCATE WITH SHRI KUSHAGRA JAIN, ADVOCATE FOR THE RESPONDENTS NO. 2 & 3/ M.P. HOUSING BOARD)

Reserved on : 22.09.2023

Pronounced on : 17.01.2024

These appeals & writ petition having been heard and reserved for judgment coming on for pronouncement this day, ***Hon'ble Shri Justice S.A. DHARMADHIKARI*** *pronounced the following*

JUDGEMENT

Heard finally with the consent of the parties.

W.A. No. 392/2009 under Section 2(1) of the Madhya Pradesh Uccha Nyayalaya (Khand Nyaypeeth Ko Appeal) Adhiniyam, 2005 assails the order dated 09.09.2009 passed in W.P. No. 2624/2008 and W.A. No. 447/2009 under Section 2(1) of the Madhya Pradesh Uccha Nyayalaya (Khand Nyaypeeth Ko Appeal) Adhiniyam, 2005 assails the order dated 19.07.2004 passed in W.P. No. 830/1997 whereby the writ petitions filed by the appellant has been dismissed.

W.P. No. 11149/2010 had been filed by the petitioner for quashment of the notifications u/S 4 of the Land Acquisition Act dated 12.07.1994 as well as notification u/S 6 of the Land Acquisition Act dated 26.05.1995 and other consequential proceedings arising therefrom with respect to land acquisition of petitioner's land.

Looking to the similitude of the controversy involved in the writ appeals as well as the writ petition, present appeals and writ petition are being disposed off by this common order.

INTRODUCTION:

The Appellants Satish Batra & Others in **Writ Appeal 392 of 2009,** are the landowners of the land bearing survey no. 43/1/ख admeasuring 0.468 hectares situated in village Neemanwasa, Tehsil and District Ujjain.

The Appellants Gajanand Mali and Nirmal Kumar Gupta in **Writ Appeal no. 447 of 2009** are the land owners of the land situated in Village Neemanwasa, Tehsil and District Ujjain bearing land survey no(s) 44/1, 44/2, 44/4, 87/3, 89, 90, 91, 92, 93, 94, 95 total admeasuring 7.701 hectares and survey no. 43/1 measuring 0.123 hectares, consecutively.

The Petitioner Nandkishore (Dead) through legal heirs Ramgopal & others in **Writ Petition 11149 of 2010** i.e., are the legal heirs of the owner of the land bearing survey no. 43/1 measuring 0.478 hectares situated in village Neemanwasa, Tehsil and District Ujjain.

The petitioner in the petition and appellants in appeals are the rightful owners of the aforementioned survey numbers, and, therefore, their names were duly inscribed as *bhumiswami i*n the revenue records i.e., the Khasra of the said lands of the relevant revenue years.

2. <u>CHEQUERED HISTORY</u>

<u>Events preceding to issuance of Notification under Sec 4 of the Land Acquisition Act of 1894 for acquisition of land</u>: -

A) That the present Appellant Gajanand Mali, in WA 447 of 2009, is the land owner of a total land admeasuring 8.893 hectares situated in village, Neemanwasa, Tehsil and District Ujjain. In the Year 1980-81, the said total land 8.893 hectares, was brought under the scanner of the Urban Land Ceiling and Regulation Act

1976 (hereinafter referred as the Act of 1976). Thereafter on 28/11/1985 the Competent Authority, Urban Land Ceiling, District Ujjain, issued a final statement under Sec 9 of the Act of 1976, declared the land admeasuring 7.701 hectares as surplus land, and declaring it to vest into State ownership. Thereby, Gajanand Mali ,the appellant in WA 447 of 2009, was left with only 1.192 hectares of land in village Neemanvasa belonging to him as Ceiling-free land.

B) The Ministry of Housing and Environment Development of Madhya Pradesh, by a circular dated 30th March 1992 directed the Commissioner of Madhya Pradesh Housing Board & others that, it shall 'not' initiate the proceedings of land acquisition, without obtaining approval from the State Government.

C) In 1992, Gajanand Mali initiated the development of a colony on his ceiling free 1.192 hectare land, by obtaining all the statutory permissions from the state instrumentalities as required under different provisions of law. For the above purpose, on 07.08.1992, the Town and Country Planning Department has given its assent to the appellant's proposal and sanctioned the map of the proposed residential Row-Housing Colony. Further the SDM Ujjain vide his order dated 30.01.1993 passed in case no. 01/अ-2/91-92 has allowed the diversion of the said land from agriculture to residential purpose. Thereafter the appellant Gajanand on his 1.192 hectare ceiling free land, developed the said colony named as Arjun Nagar and constructed row-houses as per the sanctioned permission and sold them to prospective

buyers.

D) The then Executive Engineer of the Madhya Pradesh Housing Development Board, filed a complaint against the present appellant Gajanand Mali in the Illegal Colony Cell of Collectorate Ujjain stating that the appellant has illegally developed a colony named as "Arjun Nagar" upon the land of his ownership admeasuring 1.192 hectare in Village Neemanvasa and is now constructing houses over it.

E) The said complaint was rejected by the Illegal Colony cell, Ujjain stating that Arjun Nagar Colony is a legal colony, developed after obtaining all the statutory permissions.

F) In this background, the Executive Engineer, by stating that the land was vacant land, requested for the Section 4 notification to be issued.

G) On 09/07/1993 an Executive Engineer of the Madhya Pradesh Housing Development Board (hereinafter referred as the Board) on his own volition, without taking any approval or prior permission from the Board or the State Government, submitted an application for acquisition of 10.158 hectares of agricultural land situated at the village Neemanwasa directly to the Land Acquisition Officer, District Ujjain.

H) Consequent upon the letter submitted by the Executive Engineer of the Board, the Land Acquisition Officer issued an order for publication of a Notification dated 12.07.1994 under Section 4(1) of the Land Acquisition Act, 1894 dated [hereinafter

referred to as "the Act of 1894"] inviting objections.

I) It is an undisputed fact that, in the said Notification u/s 4(1) dated 12.07.1994, there is no mention of the details of land such as, survey numbers or patwari halka or locality or surroundings of the land or any land boundary by which it could be identified that which land is going to be acquired by the State Government out of 613.823 hectares land of Village Neemanvasa. Meanwhile, after the issuance of Sec 4 notification, a resolution was passed on 09.01.1995 in the 109th Meeting of the Housing Board, which was alleged by the Housing Board to be the scheme sanctioned.

J) Subsequently, various land owners submitted their objections pertaining to their lands situated in village Neemanwasa, including present appellants of WA 447 of 2009 for their ceiling free lands as well as the petitioner in W.P. No. 11149 of 2010. The Land Acquisition Officer acting upon the objections, filed by the appellants and petitioner and other land owners, vide its order dated 18.04.1995 summarily rejected all objections and the said case was adjourned to be listed on 09.05.1995.

K) Being aggrieved by the said order dated 18.04.1995, the appellant - Gajanand Mali preferred petition registered as W.P. No. 651/995 before this Court for his 1.192 hectare ceiling free land, envisaging that objections raised by him u/S 5(a) of the Act of 1894 were never considered. This Court had passed an order in W.P. No. 651/1995 dated 04.05.1995 by which, all the further actions arising from the order dated 18.04.1995 would be stayed. As soon as, the appellant received the copy of stay order dated

04.05.1995, he submitted the same before the Land Acquisition Officer on 06.05.1995. This demeanour of the appellant is being substantiated by the records, as it is noted in the proceeding dated 30.05.1995 of Land Acquisition Officer.

L) Despite the stay being granted by this Court vide order dated 04.05.1995 in W.P. No. 651/1995, the Land Acquisition Officer send a reminder to the Controller of the Government Press of Madhya Pradesh, to publish the notification under section 6 of the Act of 1894 for acquiring the disputed land. Thereafter a notification under Section 6 of the Act of 1894 was published in the Gazette on 26.05.1995, showing the date as 25.04.1995 and was published in the daily evening newspaper "Akshar Vishwa" on 11.05.1995.

Events prior to issuance of Notification under Section 6 of the Act of 1894.

a. Upon perusal of the record, it is also seen that a separate note sheet was prepared by the Respondent dated 17.04.1995, in which, it was stated that if in case the objections made u/S 5A of the Act of 1894 are rejected then it would be appropriate to publish the said notification under section 6 in the Gazette as well as in any 2 newspapers.

b. As per the order sheets of the Land Acquisition Officer, it is apparent that contrary to the above proceeding, the Presiding Officer or the Land Acquisition Officer was busy on the said date, that is 17.04.1995, which controverts this fact that notesheet of the said notification was prepared on the same date and the

contents of the same notesheet were not mentioned in the order sheet.

c. Perusal of the record further reveals that on 18.04.1995, the Land Acquisition Officer, received the file from the Office of the Collector and prior to the receiving of the said file, the Land Acquisition Officer by a note sheet or a letter which is annexed as R-1 dated 17.04.1995, finds it convenient to get the notification of Section 6 of the Act of 1894 published even before the objections were decided.

d. This independent notesheet[R-1] does not concur with the content of the order sheets and are contrary and the content of this notesheet were not recorded in the ordersheets filed by the appellant.

e. Perusal of record, clearly depicts that after hearing the case was adjourned to be listed for 09.05.1995. But acting contrary to the order sheet, the Land Acquisition Officer on 24.04.1995 send a draft of notification u/S 6 of the Act of 1894 to the Govt. press at Bhopal for publication in the Gazette.

During the pendency of the W.P. No. 651/1995, The Urban Land Ceiling Repeal Act of 1999 (hereinafter referred as the Repeal Act) came into force, by which the draconian law of the Act 1976 was repealed.

a. On 29.03.1996, before the enforcement of the Repeal Act, stay u/s 20 of the Act of 1976 was granted to appellant Gajanand Mali, staying the ceiling proceedings u/s 6 of the Act in respect of his land which was earlier declared as surplus land. Thereafter,

on 18.03.1997, appellant Gajanand Mali with respect to his ceiling affected land, sent a Letter for demand of justice to the Collector, Ujjain which fetched no response.

b. On 19.05.1997, appellants Gajanand Mali and Shri Nirmal Kumar filed W.P. No. 830/1997 challenging the notification passed under Section 4 of the Act of 1894 and subsequently Section 6 and 9 of the Act of 1894 before this Court.

Subsequently after filing of the Writ Petition 830/1997, on 24.05.1997, an award was passed by the Collector under section 11 of the Act of 1894. Meanwhile during the pendency of this petition, this Court while deciding I.A. No. 435/1997 vide order dated 25.09.1997 in W.P. No. 830/1997 has passed an order of status-quo.

c. During the pendency of writ petitions, in the year 2000 by effect of the Repeal Act, the ceiling affected land of the appellant - Gajanand Mali was released from ceiling and was declared as entirely ceiling free land and the ownership of Gajanand Mali was restored over the said land in final proceedings dated 05.04.2000. However, on 16.04.2001, this Court had dismissed the W.P. No. 651/1995.

d. Against the said order of dismissal dated 16.04.2001, the appellant Gajanand Mali filed a Letters Patent Appeal no. 228 of 2001 before this Court. This Court in LPA No. 228 of 2001, vide order dated 27/06/2002 has held that the petitioners were afforded proper opportunity of hearing while deciding their objections filed under Section 5(a) of the Act of 1894 and the

said matter was remanded back to the Land Acquisition Officer for hearing the petitioners afresh and deciding their objections filed under section 5(a) of the Act of 1894 after giving due opportunity of hearing to both the sides.

e. In compliance of the order dated 27.06.2002 passed in LPA 228/ 2001, the then Land Acquisition Officer i.e. The Collector District Ujjain called all the aggrieved persons along with the appellant - Gajanand Mali to file their objections under Section 5A of the Act of 1894 against the notification dated 12.07.1994.

f. The Land Acquisition Officer after hearing all the objections under Section 5A of the Act of 1894 and after affording due opportunity of hearing to every aggrieved person passed an order dated 11/08/2003 holding that the whole Notification, issued under Section 4 of the Act of 1894 was against and contrary to the provisions of Madhya Pradesh Housing Board Act and various Government Orders and thus was *void-ab-initio* and was *ultra vires* to the law as settled by the this Court in the case of **Mohammad Shafi vs Madhya Pradesh Housing Development Board** reported in **1989 JLJ 501** which was also affirmed by the Hon'ble Apex Court. The Collector further hold that as per the relevant circular of the Govt. of Madhya Pradesh itself, it was *sine-qua-non* for the Board to obtain prior approval from State Government before initiating any proceedings under the Act of 1894, which was not done in the present case, therefore the Sec 4 notification and all the subsequent acquisition proceedings were nullified.

g. Though in consensus with the Collector's report, the Divisional Commissioner Ujjain Division, while passing the order dated 03.11.2003 restricted the findings of the learned Collector only to the land admeasuring 1.192 hectare and extended the same relief *suo-moto* to another 0.220 hectare of land and further upheld the land acquisition proceedings with respect to the remaining land admeasuring 8.746 hectare without assigning any reason, thereby confirming the disputed land acquisition proceedings which were under challenge in this Court wherein status-quo order was already in effect.

h. Being aggrieved by the order dated 03.11.2003 passed by the learned Commissioner Ujjain Division, the appellants in W.A. No. 447 of 2009 challenged the irregularities in the order passed by the Commissioner Ujjain Division by way of filing an application in pending W.P. No. 830 /1997. The said W.P. No. 830/1997 was dismissed on 19.07.2004 upon a hyper technical ground of Order 2 Rule 2, C.P.C.

i. As soon as the petition came to be dismissed, the Board Officials reached on the land belonging to the appellants in both the appeals and threatened them of dispossession by force leading to filing of police complaint by appellants of W.A. No. 392 of 2009.

j. On receiving information about the acquisition proceedings, the appellants Satish Batra and his co-owners upon an erroneous legal advice, filed a Civil Suit no. 85A of 2006 on 30/09/2004 against the present Respondents before Vth Civil Judge, Class-I,

Ujjain. The Trial court vide order dated 19.05.2007 rejected the said civil suit on an application filed under Order 7 Rule 11 of CPC stating that civil Courts do not have any jurisdiction in cases pertaining to the land acquisition.

3. <u>PREVIOUS LITIGATION AT A GLANCE</u>

a. The appellants in the Writ Appeal No. 392 of 2009 filed a Writ Petition no. 2624 of 2008 challenging the Notification u/s 4 of the Act of 1894 dated 12.06.1994 as well as Notification u/s 6 of the Act of 1894 dated 26.05.1995 and the Award passed u/s 11 dated 24/05/1997. The learned Single Judge vide order dated 09.09.2009, without entering into merits of the case had rejected the petition on the ground of delay and latches. Being aggrieved by the very same order, the appellants have preferred the present W.A. No. 392 of 2009.

b. Similarly, being aggrieved by the order dated 19.07.2004 passed in W.P. No. 830/1997, the appellants in W.A. No. 447/2009 have preferred a Letters Patent Appeal 329 of 2004.

c. Due to change of legal jurisprudence, the Letters Patent Appeal were non maintainable. Therefore the Appellants, assailed the said order dated 19/07/2004 before the Apex Court in SLP no. 23050 of 2005 which got converted into Civil Appeal no.(s). 923-924 of 2008, in which the Apex Court has passed the order of status -quo.

d. The Apex court granted permission to the appellants to withdraw the said Civil Appeal with liberty to move to the High

Court in a Writ Appeal which is the present Writ Appeal no. 447 of 2009.

e. Similarly, the petitioners in W.P. No. 11149 of 2010 i.e. the legal heirs of Nandkishore who died during the pendency of the acquisition proceedings, after receiving information of the fact that they were not granted the relief of the findings of Collector declaring Notification u/S 4 of the Act of 1894 to be *void-ab-initio*, on 06/09/2010 filed a W.P. No. 11149/2010. During the pendency of the W.A. No.447/009 and W.P. No. 11149/2010, this Court by passing a final order dated 18.09.2020 has adjudicated the W.A. No.392/2009 in favour of the appellants, Satish Batra and others.

f. The Madhya Pradesh Housing Development Board being aggrieved by the said order dated 18/09/2020 preferred SLP before the Apex Court registered as Civil Appeal no. 1116 of 2022. Since similar matters arising out of the same notification were pending adjudication before this Court, the Apex Court vide its judgment dated 10.02.2022 has quashed the order dated 18.09.2020 in the W.A. No 392/2009 and remanded the matter back to this Court for adjudication.

g. The Apex Court had directed that, without commenting upon the merits of the case, the said matter is remanded to the Division bench of the High Court to decide W.A. No.392/2009 along with W.A. No. 447/2009 in accordance with law and on their own merits, without in any way being influenced by any of the observations made in the judgment and order one way or the

other, which as such is otherwise quashed and set aside by this court by the present order only for the purpose of remanding this matter to be heard along with W.A. No.447/2009.

h. Since W.P. No. 11149/2010 has also been filed challenging the validity, propriety and legality of notification u/S 4 of the Act of 1894 which is the subject matter of writ appeals, therefore, Hon'ble Chief Justice of High Court of M.P. vide administrative order dated 11.07.2022 had ordered for linking W.P. no. 11149/2010 alongwith W.A. No. 392/2009 and W.A. No. 447/2009 for analogous hearing.

4. SUBMISSIONS OF PARTIES

5. Learned Senior counsel for the appellants while commencing his arguments has drawn the attention of this Court on the following key points:

I. **Wrong application of Order 2 Rule 2 CPC:** The learned senior counsel contended that the learned Single Judge erred in applying the principles of Order 2 Rule 2 of the CPC to the writ proceedings under Article 226 of the Constitution. Referring to the explanation to Section 141 of the CPC, which explicitly states that the expression "proceedings" does not include any proceedings under Article 226 of the Constitution, learned counsel demonstrates that Order 2 Rule 2 is not applicable to writ petitions. To summarize, the learned Senior Counsel asserts that learned Single Judge erred by applying the principles

engraved under Order 2 Rule 2 of CPC to the writ proceedings, citing legal precedents and specific circumstances surrounding the case.In support of his contention, learned Sr. counsel has pressed into service the judgments passed by Apex Court in the case of **Brahma Singh and Others Vs. Union of India and Others [W.P. (Civil) No. 59/2019]** , in the case of **Devendra Pratap Narain Rai Sharma Vs. State of U.P. And Anr** reported in **AIR 1962 SC 1334 and also in the case of Gulabchand Chhotalal Parikh Vs. State of Guajrat**.

II. **Distinct Cause of Action:** It is further contended that the appellant, Gajanand Mali, acquired a fresh cause of action only after obtaining a stay under Section 20 of the Act of 1976 on March 29, 1996. This stay directed State instrumentalities to defer proceedings under Section 6 of the Act in relation to the 7.701-hectare land parcel. He contended that the cause of action for challenging the acquisition proceedings regarding remaining parcel of land admeasuring 7.701-hectare did not accrue until after the filing of the first petition (W.P.No.651 of 1995). Therefore, the principles of Order 2 Rule 2 should not be applied.

III. **Different Nature of Writ Petitions:** The Learned Senior Counsel further argued that the fact that writ court, vide its order dated 22.09.1997 had delinked W.P. No. 830 of 1997 from W.P. No. 651 of 1995, explicitly stating that

both the petitions are of distinct nature and by this delinking, the writ court's subsequent assertion that the petitioner should have raised grievances in the first writ petition regarding the 7.824-hectare land parcel is erroneous and inconsistent.

IV. **Appellant Nirmal Kumar's Right to Challenge:** The Senior counsel also points out that the appellant Nirmal Kumar did not challenge the legality and validity of the notifications in the first round of litigation. Therefore, the principles embodied under Order 2 Rule 2 CPC should not be applied to W.P. No. 830/1997 with respect to Nirmal Kumar, as there was no prior litigation on the same subject matter for him.

6. Learned Senior counsel to establish nature of the notification issued under section 4 of the Act of 1894 as *void ab initio* has put forth the following points:

i. **Violation of Mandate under Madhya Pradesh Griha Nirman Mandal Adhiniyam, 1972:** Learned Senior Counsel contends that the Executive Engineer's initiation of the requisition, contrary to the provisions of Adhiniyam of 1972, is unauthorized and *ultravires*. The Board, as defined in the Adhiniyam, is the sole authority for making a requisition for compulsory acquisition, and the Executive Engineer's action lacks legal standing.

ii. **Lack of Jurisdiction in Initiating Acquisition**

Proceedings: The counsel submitted that the Land Acquisition Officer's initiation of proceedings lacks jurisdiction as per the State Government's mandate. The Collector can only exercise powers under sections 4, 5, and 6 of the Land Acquisition Act for pre-approved government schemes, which was not the case in the present matter.

iii. **Non-compliance with Circulars from the Department of Revenue:** The circular dated 01/11/1990 explicitly directed District Collectors not to initiate land acquisition proceedings for ceiling-affected land. The Land Acquisition Officer's action in issuing the Section 4 notification for such land is in direct contravention of this directive.

iv. **Procedural Deficiencies in Board Resolution and Approval**: The Senior Counsel emphasizes that the Board, before submitting a requisition, must pass a board resolution specifying the housing scheme and obtaining approval from the State Government. In this case, no board resolution was passed, no scheme existed, and no approval from the State Government was obtained, rendering the initiation of land acquisition *void and non-est.*

v. **Insufficient Details in Section 4 Notification:** It is further contended that the Section 4 notification lacks essential details of the land to be acquired, such as the Patwari Halka, locality, survey numbers, and names of

landowners which is clearly violates the mandatory provisions of Section 4 of the Land Acquisition Act, rendering the notification *void ab initio*.

vi. **Constitutional and Legal Rights:** The Senior Counsel argues that any statutory process must be observed in a prescribed manner, and procedural defects cannot be cured by subsequent ratification. Quoting Article 300A of the Constitution, he asserts that no person shall be deprived of property save by authority of law, emphasizing the need for adherence to legal procedures.

vii. **Finality of Appropriate Government's Order:** The counsel highlights the order of the Appropriate Government (Commissioner Division) declaring the Section 4 notification void. Citing various judgments, he contended that this order, unchallenged by the respondents, is final and settles the controversy regarding the validity of the notification.

viii. To bolster his submissions, learned Sr. counsel has pressed into service, various judgments passed by the Apex Court.**[See Narendrajit Singh vs. State of U.P., Mohd. Shafi vs. The State of M.P., J&K Housing Board vs. Kanwar Sanjay Krishan Kaul, B.E.M.L Employees House Building Co-operative Society Ltd. vs. State of Karnataka, and Kulsum R. Nadiadwala vs. State of Maharashtra]**

ix. In addition to above judgments, he relies on legal principles, as affirmed in **State of UP v. Singhara Singh, Commissioner of Income Tax v. Anjum MH Ghaswala, and Competent Authority v. Barangore Jute Factory** to support the contention that adherence to statutory procedures is mandatory. Furthermore, the counsel references statutory circulars and orders of the State Government, including those from the Revenue Department and the Housing & Environment Department, to establish the flouting of several statutory requirements in the land acquisition proceedings.

x. In the legal proceedings before this court, the learned senior counsel vehemently asserts that the Divisional Commissioner, in an arbitrary and unlawful manner, affirmed the report of the Land Acquisition Officer. The said report, compiled after due consideration and adjudication of all objections raised under Section 5A of the Act of 1894 was issued by an order dated 11/08/2003. Despite this, the Divisional Commissioner, in a seemingly capricious fashion, restricted the order to the acquisition of land measuring 1.192 hectares and further suo-motto extending it to 0.220 hectares, without providing any justifiable reasons. The actions of the Divisional Commissioner stand in stark contradiction to the order submitted by the Collector and the Land Acquisition Officer, which covered all the land purported to be acquired.

xi. It is further contended that the order issued by the Collector or the Land Acquisition Officer was not only in the best interest of all landowners but was also an order enforceable by *right in rem*, rather than *right in personam*. The subsequent unilateral and unjust restriction by the Divisional Commissioner, Ujjain, to only 1.192 hectares and 0.220 hectares was not only without proper justification but has also erroneously declared the completion of land acquisition for 8.746 hectares. This declaration was found to be incorrect, as evidenced by the ongoing challenge to the acquisition of 7.82 hectares before this Court in WP. No. 830/1997, where a stay was granted on 25/09/1997, and the said stay order was operative uptil the date of the Commissioner's order.

xii. The learned Senior counsel has drawn the attention of this Court to the Commissioner's declaration that the notification issued under Section 4 of the Act of 1894 was void in piecemeal in as much as that such a declaration goes against the established legal principles, as the nullification of a portion of notification renders the entire notification *null and void* in the eyes of the law. This finding, particularly with regard to land measuring 1.192 hectares and 0.220 hectares in village Neemanwasa, is asserted to be contrary to the provisions of the law.

xiii. Furthermore, learned Senior counsel contended that

the Commissioner erroneously concluded that the land acquisition for 8.746 hectares was complete and that only the issue with regard to payment of compensation is left which unjustly deprived the appellant Gajanand Mali of the opportunity to raise objections under Section 5A against the notification issued under Section 4 of the Land Acquisition Act. Such deprivation is deemed to be violation of the fundamental right to equality under Article 14 of the Indian Constitution. It is emphasized that the State cannot act partially or in a discriminatory manner against any individual. In sum and substance, the appellant - Gajanand Mali was deprived of his constitutional right to property as enshrined under Article 300 of the Indian Constitution.

7. Learned Sr. counsel while putting forth his arguments assailing the order passed by the learned Single Judge has raised the following objections:

i. **Inaccuracies in the Impugned Order dated 19th July 2004:**The learned Single Judge made a factual error by assuming that the land measuring 10.158 hectare was owned solely by Gajanan Mali, whereas documents and revenue records prove otherwise. The impugned order incorrectly included the land measuring 0.220 hectare, owned by Mr. Lunkaran, in the relief granted, even though he was not at all a party in WP no. 651 of 1995. This inclusion is contrary to the facts and the petitioner's

non-contestation of the case.

ii. **Wrong application of Legal Principles from the Case of RamnikLal:**The principles from the case of Ramnik Lal were wrongly applied in the present case. In Ramnik Lal, the award was challenged, and there was no challenge to the notifications under Sections 4 and 6 of the Act of 1894.The present petitioners challenged the fundamental aspects of the land acquisition process from the beginning, unlike Ramnik Lal and, therefore, should not be treated as fence sitters.

iii. **Violation of Article 14 of the Indian Constitution:** The learned Single Judge's decision to grant relief partially for one portion of the land, without extending the same relief to all landowners whose lands were acquired under the same notification, goes against the principles of equality under Article 14 of the Indian Constitution.

iv. **Void-ab-initio Nature of the Land Acquisition Process:**When a singular notification is issued for multiple parcels of land, and the court has nullified the Section 4 notification for some parcels, the entire land acquisition process should be considered void-ab-initio. No discrimination has to be made among landowners.Emphasis is placed on the

indivisibility of the notification – if part of it is void, the whole should be considered void. Hence, while dismissing the writ petition, learned Single Judge has failed to consider the same.

v. **Malicious and Hasty Initiation of Land Acquisition Process:** Learned Single Judge has further erred in considering the fact that the land acquisition process was initiated maliciously and hastily, without budgetary allocation or a prepared scheme. This led to the inability of the housing development board to grant compensation to landowners, which is a mandatory step in the acquisition process. The circular dated 10th November 1994, issued by the state government, emphasizes the necessity of depositing compensation before initiating possession proceedings, which was not adhered to in this case.

vi. **Failure to Address Infirmities :** The Collector and Commissioner correctly identified the infirmity in the acquisition process regarding the failure to deposit compensation, but the learned Single Judge has failed to acknowledge and address this issue in the impugned order.

8. The learned Senior counsel has also taken this Court to the fundamental issue that the entire land acquisition process originated

with a malicious intent. It was initiated based on the arbitrary decisions of Executive engineers in connivance with other officers of the State. Consequently, the initiation of the land acquisition process was flawed, and essential mandatory compliances were ignored. For instance, no on-site inspection was carried out before issuing the notification under Section 4 of the Act of 1894. Similarly, no objection certificate from the the Department of Town and Country planning has to be obtained before formulating the scheme. Despite the objection raised by the Town and Country Planning Department that the land earmarked for acquisition has already been approved for two residential colonies and, therefore, should not be acquired.

9. The objection raised by the Town and Country Planning Department was disregarded by both the Board as well as the Land Acquisition Officer during the initiation of acquisition proceedings. Furthermore, the oversight occurred regarding the inclusion of certain lands under the ceiling act, making them ineligible for acquisition according to established legal principles. Prior to commencement of the land acquisition process, the board lacked the budget for developing the proposed scheme or a colony on the designated land. Consequently, without budgetary provisions, the Board failed to deposit the compensation amount.

10. These lapses in compliance stemmed out due to absence of a prior inspection of the land. As a result, the Board and the Officers requesting land acquisition did not consider the fact that a residential colony is already existing on the same land. Demolishing the houses of

current residents and inviting new construction on a developed colony, originally intended for housing development by the Board, would ultimately defeat the very purpose of land acquisition. These arguments collectively seek to establish the illegitimacy of the land acquisition process and the need for a reconsideration of the impugned order.These flaws and non-compliance of the statutory provisions, the learned Senior counsel prayed the Court to nullify the land acquisition process, asserting that it contravenes the provisions of the law, and seek quashment of the notification.

11. The learned counsel for the petitioner in the writ jointly on the issue of delay and latches submitted that once the mandatory requirement for approval of the scheme has not been fulfilled, the landowners are entitled to challenge the acquisition proceedings at any point of time, even in collateral proceedings by placing reliance on the law laid down by the Hon'ble Supreme Court in the case of **R. Rajashekar Vs.Trinity House Building Co. Society** reported in **(2016)16 SCC 46.**

Relevant para of the judgment is reproduced below for convenience and ready reference:

> ***Para 58.*** *They further submitted that the Acquisition proceedings initiated by the Respondent Authorities were in violation of the provisions of the Land Acquisition Act and where the acquisition proceedings had been made contrary to the statutory provisions, the same would not attract the principle of*

Delay and Latches. Even otherwise, there is no period of limitation for the courts to exercise their constitutional jurisdiction. Thus, the Writ Petition can be entertained even after passing of the Award particularly when the Award is never passed in respect of the subject land.

Learned counsel further placed reliance upon the law laid down by the Hon'ble Supreme Court in the case of **Vidya Devi v/s State of H.P. reported in (2020)2 SCC 569** .

12. He has also placed reliance on the judgment passed by the Apex Court in the case of **Sukh Dutt Ratna v/s State of H.P.** reported in **(2022) 7 SCC 508** where in the Hon'ble Supreme Court has reiterated the law laid down in the case of ***Tukaram Kana Joshi*** and ***Vidya Devi***. Further by placing reliance on the case of **Vyalikaval Housebuild. Coop. Society v/s V. Chandrappa** reported in **(2007) 9 SCC 304** , it has categorically held that once the notification is found to be malafide and contrary to law, then the question of delay in filing the writ has no substance. Hence, the impugned notifications deserves to be quashed.

13. Per contra the learned counsel for the State by placing reliance on the case of **Andhra Pradesh Industrial Infrastructure Corporation Limited Vs Chinthamaneni Narsimha Rao** reported in **(2012)12 SCC 797** submitted that once an award is duly passed, it becomes immune from challenges and the High Courts shall refrain in interfering with the land acquisition matters as they involve larger public interest and in the present case the acquisition was done to cater the larger public needs by

developing the residential colony on the acquired land. He further submitted that as far as the argument of the appellants with respect to non-mentioning of the details of land in acquisition notification issued under section 4 of the Act of 1894 is concerned, the State Government is not under any mandate to give details of land in notification because all the records with respect to the land acquisition was kept at the Office of the Collector District Ujjain and the appellants could have analyzed the details by inspecting the records at the Collector's office. It was further submitted that the whole land acquisition process was duly completed by complying with all the provisions of law and even though if any irregularity is being committed, it does not cause any prejudice to the appellants or landowners. The learned Counsel by placing reliance on the judgment rendered by this Court in the case of **Dr. Rambihari Mishra (since dead) through Legal Heirs Neeta d/o Dr. Rambihari Mishra and others Vs. State of M.P. & Others** reported in **(2018)2 MPLJ 411** submitted that it is not necessary for the State government to mention the particulars of land in the land acquisition notification.

14. On the other hand, learned Senior counsel for the respondents/ M.P. Housing Board submitted that though it is true that this provision does not find application in writ proceedings, the underlying principle of Order 2 Rule 2 of the CPC is relevant in the context of writ jurisdiction under Article 226 of the Constitution of India, serving the Court's own safeguarding interests. The contention is that a litigant should not be allowed to seek relief for the same cause of action under Article 226 in a fragmented manner. Allowing such piecemeal claims could potentially amount to an abuse of the extraordinary jurisdiction

vested in constitutional Courts. He further submitted that the learned Single Judge, in this instance, did not dismiss the petition based on the application of Order 2 Rule 2 of the CPC; instead, had applied the underlying principle without explicitly invoking the provision. Consequently, it is argued that there is no merit in the appellants' assertion that the learned Single Judge erred in dismissing the petition on the grounds of Order 2 Rule 2 of the CPC.

i. It is further submitted that from the perusal of the record itself it is abundantly clear that the conduct of the appellants is not above board. They are fence sitter, they allowed the proceedings to go on, they took a chance and only at the fag end of the conclusion of acquisition proceedings and just four days prior of passing the award, in anticipation filed the writ Petition. If we take as it is the case as projected by the appellants before this Court, at the first place they did not file any objection under section 5 A of the Act of 1894 in respect of 7.701 hectare of land. Even there is no whisper about this land in the averments made in first petition i.e. W.P. No. 651/95. At the time of filing W.P. No. 830/97 they did not disclose the pendency of Urban Land Ceiling Proceedings and only after 6-7 years of filing petition for the first time they came out with the case of pendency of Urban Land Ceiling Proceedings. Even out of 7.701 hectare land, 2.832 hectare land was exempted from Urban Land Ceiling Proceedings on 05.08.1994 that is much prior to even filing of first petition. In such circumstances

no relief to such litigants can be extended under Article 226 of the Constitution of India.

ii. The learned senior counsel also submitted that the Board being a body corporate can enter into correspondence only through its officers. Executive Engineer being ·a principal officer of the Board is entitled to make correspondence with the Collector of the respective district for land acquisition. A circular dated 13.03.1981 to this effect issued by the Housing Commissioner is Annexure R-3/8 is available on record in this regard. Even otherwise the appellants have failed to point out any prejudice caused to them on this count. He further submitted that at the first place, the provisions of Section 34 and 49 of the Adhiniyam are directory in nature and non-compliance, if any, would not vitiate the proceedings, meaning thereby the resolution can be passed at later stage and similarly, the scheme can also be framed at subsequent stage, these are not *sine qua non* for initiating any proceedings. The Hon'ble Apex Court in the case of **Karnataka Housing Board and another vs State of Karnataka** reported in **(2022 SCC online SC 933)** had an occasion to deal with similar controversy, where after elaborate discussion had come to the conclusion that framing of scheme is not condition precedent for initiating any land acquisition proceedings.

iii. Learned Senior counsel also brought to notice of this

Court by submitting that the board has passed a resolution on 09.01.95 in its meeting No.109 which is available on record as Annexure R-3/15. A tentative scheme was also framed that is also available on record as R-3/14 and its sanctioned layout as Annexure R-3/19. Therefore, by no stretch of imagination it can be said the acquisition proceedings had been initiated solely on the basis of a letter from the Executive Engineer and there was neither any resolution nor any scheme of the Board.

iv. The learned Senior counsel with respect to delay and latches argued that Writ Petition No. 830/1997, jointly filed by Gajanand Mali and Nirmal Kumar Gupta, involves Mr. Nirmal Kumar Gupta's claim of ownership over 0.123 hectares of land. Notably, he does not contend that his land was subject to Urban Land Ceiling Proceedings, which could have potentially justified delay in filing the petition. However, his failure to provide a valid explanation for filing the writ petition just four days before the award was passed raises questions about the maintainability of the petition for the 0.123-hectare land. Thus, the dismissal of the petition on grounds of delay and laches appropriate.

v. Learned Sr. counsel in support of his above submission has placed reliance on the judgments rendered in the cases of (2002) 7 SCC 712 (Para 21), (2003) 1 SCC 335 (Para 9), (2010) 4 SCC 532 (Para 6-10), and (1996) 6 SCC

445 (Para 9)

vi. During the course of arguments, the learned senior counsel emphasized that upon careful examination of the records, it becomes evident that the conduct of the appellants is questionable. They remained indecisive, allowing the proceedings to unfold, taking a calculated risk. Only towards the conclusion of the acquisition proceedings and a mere four days before the award was to be passed, they filed the writ Petition in anticipation. If this Court were to accept the appellants' presented case as is, it is crucial to note that they initially failed to submit any objection under Section 5A of the Act of 12894 regarding the 7.701-hectare land. Their first Petition (W.P. No. 651/95) made no mention of this land, and even while filing W.P. No. 830/97, they did not disclose the ongoing Urban Land Ceiling Proceedings. It was only after a lapse of 6-7 years from the initial petition that they raised the issue of the pending Urban Land Ceiling Proceedings. Furthermore, it is pertinent to highlight that out of the 7.701-hectare land, 2.832 hectares had been exempted from Urban Land Ceiling Proceedings on 05.08.1994, which predates the filing of the first petition. Under such circumstances, it is submitted that no relief should be granted to such litigants under Article 226 of the Constitution of India.

vii. The learned Senior counsel for respondent/M.P.

Housing Board also submitted that the foregoing points establish a compelling case against the appellants, underscoring their deliberate risk-taking and lack of candor before this Court. Their petition is marred by significant flaws, including unwarranted delays and omissions. Notably, despite the ongoing Urban Land Ceiling proceedings, the appellants failed to file objections under section 5-A, casting doubt on the purity of their intentions. Even in their initial petition, they have concealed the crucial fact of the pending proceedings. Subsequently, in their second petition, filed after obtaining a stay order, they belatedly disclosed the connection to the Urban Land Ceiling proceedings, a revelation that came six to seven years after the initial filing and during the pendency of the WA.

viii. Further compounding their oversight, the appellants neglected to file objections pertaining to a 2.832-hectare land, excluded from their first petition but already exempted from urban land celing proceedings well before the notification and filing of the initial petition. This lapse raises questions about the comprehensiveness and diligence of their legal submissions. Additionally, the appellants offered no justifiable explanation for the delayed filing of the petition concerning the 0.123-hectare land belonging to petitioner No.2.

15. In light of these substantial shortcomings, it is evident that the

writ appeals filed by the appellants lack merit and should be summarily dismissed. The cumulative effect of their calculated actions, procedural lapses, and omissions render their case untenable before this Court.

16. FINDINGS

Heard, learned counsel for the parties at length and perused the record.

17. In the present case, the learned Single Judge has dismissed W.P. No. 2624/2008 on the ground of delay and laches without examining the illegalities in respect of the acquisition proceedings. The appellants are still in possession of the land in question. Undisputedly, the appellants were not given any notice of notification under Section 4, 6, 9 and 12 of the Act of 1894. The Civil Judge in the Civil Suit preferred by the appellants has passed an order of status-quo on 05/10/2004 and the same was in existence up to 19/05/2007. The Housing Board has not taken any steps towards any housing scheme so far.

18. The Hon'ble Supreme Court in the case of **Royal Orchid Hotels Limited and Another Vs. G. Jayarama Reddy and Others** reported in **(2011) 10 SCC 608** in paragraphs No.18 and 19 has held as under:-

> *"18. In the second round, the learned Single Judge dismissed the writ petition by observing that even though fraud vitiates all actions, the Court is not bound to give relief to the petitioner ignoring that he had approached the Court after long lapse of time. Writ Appeal No.7772 of 1999 filed by respondent No.1 was allowed by the Division Bench of the High Court. While dealing with the question whether the learned Single Judge was justified in non suiting respondent No.1 on the ground of delay, the Division Bench*

referred to the explanation given by him, took cognizance of the fact that even after lapse of more than a decade and half land had not been put to any use and observed:

" It is the definite case of the appellant that he came to know of the fraud committed by the third respondent in diverting the acquired land clandestinely in favour of Respondents 4 and 5 and certain others, that too, for the purpose other than the purpose for which the land was acquired, only in the year 1993. It is his further case that even then, he did not approach this Court for legal remedies immediately after he came to know of the fraud committed by the third respondent and also the judgment of this Court in the case of Behroze Ramyar Batha Vs. Land Acquisition Officer, (1992) 1 Kant LJ 589, because, under a wrong legal advice, he filed IAI in LAC No. 37 of 1988. In other words, even after the appellant came to know of the fraud committed by the 3rd respondent, under a wrong advice, he was prosecuting his case before a wrong forum. The question for consideration is whether that circumstance can be taken into account for condoning the delay. A three Judge Bench of the Supreme Court in the case of Badlu and another. v. Shiv Charan and others., (1980) 4 SCC 401 where a party under a wrong advice given to them by their lawyer was pursuing an appeal bonafide and in good faith in wrong Court, held that the time taken for such prosecution should be condoned and took exception to the order of the High Court in dismissing the second appeal. Further, the Supreme Court in M/s Concord of India Insurance Company Limited v. Smt. Nirmala Devi and

Others., [1979] 4 SCC 365 has held that the delay caused on account of the mistake of counsel can be sufficient cause to condone the delay and the relief should not be refused on the ground that the manager of company is not an illiterate or so ignorant person who could not calculate period of limitation.

It is the further case of the appellant that only in the month of September, 1995 he was advised by another counsel that the appellant was wrongly prosecuting his case before the Civil Court by filing IAI in LAC No. 37 of 1988 and that the civil court has no jurisdiction to quash the notification issued under Section 4(1) and declaration under Section 6(1) of the Act and for that relief, he should necessarily file writ petition in this Court. The appellant on receiving such advice from the counsel, without any further loss of time, filed the present Writ Petition No. 34891 of 1995 in this Court on 18-9- 1995. It further needs to be noticed that the pleading of the appellant would clearly demonstrate that but for the fraud committed by the 3rd respondent in diverting the acquired land in favour of respondents 4 and 5 and others clandestinely for the purposes other than the purpose for which it was acquired, perhaps, the appellant would not have challenged the land acquisition proceedings at all. It is his definite case that he was approaching this Court under Article 226 for quashing the impugned notifications only because the acquired land was sought to be diverted by the third respondent- beneficiary in favour of third parties, that too, for the purposes other than the one for which it was acquired and the acquisition of the entire extent of land

under the same notification in its entirety is already quashed by this Court as fraud on power and tainted by malafide. Therefore, the Court has necessarily to consider the question of delay and laches in the premise of the specific case of the appellant and it will be totally unfair and unjust to take into account only the dates of Section 4(1) notification and Section 6(1) declaration. It is also necessary to take into account the fact that well before the appellant approached this Court, the Division Bench of this Court in Writ Appeal No. 2605 of 1991 and Writ Petition Nos.19812 to 19816 of 1990 preferred by certain other owners of the acquired land vide its orders dated 18-9-1991 and 3-10-1991 had already quashed Section 4(1) Notification and Section 6(1) declaration in their entirety and directed the State Government and the LAO to handover the acquired land to the owners concerned on red positing of the compensation money received by the owners with 12% interest p.a. In that view of the matter, it is trite, the acquisition of the schedule land belonging to the appellant also stood quashed by virtue of the above judgments of the Division Bench. Strictly speaking, the State Government and the LAO even in the absence of a separate challenge by the appellant to the land acquisition proceedings, in terms of the orders made in the above writ appeal and writ petitions, ought to have handed over the schedule land to the appellant by collecting the amount of money received by him as compensation with interest at 12% p.a.

Be that as it may, the appellant as an abundant caution separately filed writ petition for quashing of the

notifications issued under Sections 4(1) and 6(1) of the Act with regard to the schedule land. The relief cannot be refused to the appellant, because, the appellant herein and the appellants in Writ Appeal Nos. 1094- 1097 of 1987 and W.A. No. 2065 of 1991 and the petitioners in Writ petition Nos. 19812 to 19816 of 1990 are all owners of the acquired land under the same notifications and all of them belong to a 'well-defined class' for the purpose of Article 14 of the Constitution. There is absolutely no warrant or justification to extend different treatment to the appellant herein simply, because, he did not join the other owners at an earlier point of time. It is not that all the owners of the acquired land except the appellant instituted the writ petitions jointly and the appellant alone sat on fence awaiting the decision in the writ petitions filed by the other owners. Some writ petitions were filed in the year 1987 and other writ petitions in the year 1990 as noted above. Since the appellant came to know of the fraud committed by the third respondent only in the year 1993 after this Court delivered the judgment in Batha's case (supra) and since he was prosecuting his case before a wrong forum under a wrong legal advice and therefore, the time so consumed has to be condoned in view of the judgment of the Supreme Court already referred to above, we are of the considered opinion that the learned single Judge is not justified in dismissing the writ petition on the ground of delay and laches.

It needs to be noticed further that admittedly, no developments have taken place in the schedule land despite considerable passage of time. Further more, admittedly, no

rights of third parties are created in the schedule land. The schedule land being a meagre extent of land compared to the total extent of land acquired for the public purpose, cannot be put to use for which it was originally acquired. Looking from any angle, we do not find any circumstance on the basis of which we would be justified in refusing the relief on the ground of delay and laches even assuming that there was some delay on the part of the appellant before approaching this Court by way of writ petition in the year 1995."

19. The Division Bench then referred to orders dated 18.9.1991 and 3.10.1991 passed in Writ Petition Nos.19812 to 19816 of 1990 - ***Annaiah and others v. State of Karnataka and others*** *and Writ Appeal No.2605 of 1991 -* ***Smt. H.N. Lakshmamma and others v. State of Karnataka and others*** *(supra) respectively and held:*

1. ".....Since the appellant herein and the appellants and writ petitioners in W.A.No. 2605 of 1991 and W.P. Nos. 19812 to 19816 of 1990 are the owners of the acquired land under the same notification and similarly circumstanced in every material aspect, they should be regarded as the persons belonging to a 'well-defined class' for the purpose of Article 14 of the Constitution. In other words, the appellant herein is also entitled to the same relief which this Court granted in Writ Appeal No. 2605 of 1991 and W.P. Nos. 19812 to 19816 of 1990 to the owners therein. Apart from that, as already pointed out, the schedule land is a very meagre land compared to the total extent of land acquired and except the schedule land the acquisition of the remaining land has been set at naught and the possession of

the land has been handed over to the owners. The schedule land being a meagre in extent, cannot be used for the purpose for which it was acquired. That is precisely the reason why the schedule land is kept in the same position as it was on the date of Section 4(1) notification without any improvement or development."

19. In the aforesaid case also the petitioner, likewise the present appellants in W.A. No. 392/2009 and petitioner in W.P. No. 11149/2010, have approached the Court after a long time and the issue of non-suiting on the ground of delay and laches was looked into and the Hon'ble Supreme Court has taken note of the fact that even after lapse of more than a decade and half, land had not been put to any use.

20. In the present case also as notification was issued in the year 1994 and till date no steps have been taken by the Housing Board and therefore, the question of delay and laches will not come in way of the appellants and the petitioner. Otherwise also, the appellants on an erroneous advice have filed a civil suit and after dismissal of the civil suit as it was not maintainable have immediately approached this Court. A litigant cannot be made suffer due to wrong advice by an Advocate as held in the case of **Rafiq and Another Vs. Munshilal and Another** reported in **(1981) 2 SCC 788.** Thus looking at the merits involved in the present appeals and petition, the Delay is condoned.

21. Further heard on I.A. No. 405/2010, which is an application filed by intervenor in W.A. No. 447/2009.

Avantika Grih Nirman Samiti has filed an IA No 405/ 2010 for impleadment as intervenor in the present appeal.

On perusal of the documents presented by the parties, it has

surfaced that earlier the intervener on 09/02/1988 has filed a civil suit for declaration of title and injunction against the appellant and has lost in that case by order dated 09/01/2002. It is a settled proposition that Writ jurisdiction cannot be invoked under Order 1 Rule 10 of C.P.C. and cannot be made applicable on the basis of mere agreements. An agreement does not give any right to agreement holder, except to file a suit for specific performance which can only be filed within three years from the alleged date of execution of agreement.

Therefore, the I.A. No. 405/2010 is dismissed.

22. KEY POINTS OF CONSIDERATION

i. The undisputed facts reveal that the Executive Engineer, Madhya Pradesh Housing Board wrote a letter to the Land Acquisition Officer on 09/07/1993 for acquisition of 10.158 hectares of land situated at Village Neemanwasa, Tehsil and District Ujjain. The Land Acquisition Officer as requested by the Executive Engineer issued a notification dated 12/07/1994 under Section 4(1) of the Act of 1894 and the notification dated 12/07/1994 which reads as under:-

दैनिक मध्यांचल शनिवार 6 अगस्त, 1994 15582/24

जिला उज्जैन मध्यप्रदेश एवं पदेन उप सचिव
मध्यप्रदेश शासन राजस्व विभाग

क्रमांक –क्यु/भूमि-सम्पादन 94 उज्जैन, दिनांक 12 जुलाई 1994

चूंकि राज्य शासन को यह प्रतीत होता है कि इससे संलग्न सूची के खाने (1) से (4) में वर्णित भूमि को अनुसूची के खाने (6) में उसके सामने दिये गये सार्वजनिक प्रयोजन के लिये आवश्यकता है। अथवा आवश्यकता पडने की संभावना है अतः भूअर्जन अधिनियम 1894 क्रमांक (क्रमांक एक सन् 1894) की धारा 4 की उपधारा (1) के उपबंधों के अनुसार इसके द्वारा सभी संबंधित व्यक्तियों को इस आशय की सूचना दी जाती है राज्य शासन इसके द्वारा अनुसूची के खाने (5) में उल्लेखित अधिकारी को उक्त भूमि के संबंध में उक्त धारा 4 की उपधारा (2) दी गयी शक्तियों का प्रयोग करने के लिये प्राधिकृत करता है।

अनुसूची

जिला	भूमि का वर्णन नगर/ग्राम तहसील	लगभग क्षेत्रफल (हे.)	धारा 4 की उपधारा 2 द्वारा अधिकृत अधिकारी	सार्वजनिक प्रयोजन का वर्णन
1	2	3 4	5	6
उज्जैन	उज्जैन	नीमनवासा 10.1583 हे. खुली भूमि	भूअर्जन अधिकारी उज्जैन	आवासीय योजना हेतु

भूमि का नक्शा (प्लान) कलेक्टर कार्यलय में देखा जा सकता है।

मध्यप्रदेश के राज्यपाल के नाम से तथा आदेशानुसार
कलेक्टर एवं पदेन उपसचिव
म.प्र. शासन, राजस्व विभाग

G-15567/94

ii. It is also undisputed fact that, in the said Notification u/s 4(1) dated 12/07/1994, displayed above, there is no mention of the details of land such as, survey no's or patwari halka or locality or surroundings of the land or any land boundary by which it could be identified that which land is going to be acquired by the State Government out of 613.823 hectares land of Village Neemanwasa.

iii. Perusal of the records reveals that admittedly the present appellants & the petitioner are the owners of different parcels of land under acquisition, situated in Village Neemanwasa. Out of which 7.701 hectares land of Gajanand Mali, 0.123 hectares land of Nirmal Gupta, 0.468 hectares land of Satish Batra & 3 Ors. and 0.454 hectares land of Late. Nandkishore is presently the subject matter of the present appeals and petition. However the land parcels admeasuring 1.192 hectares of Gajanand Mali(in LPA No. 228 of 2001) & 0.220 hectares of Loonkaran (in W.P. No. 718/1995) were also part of the land under notification, but the same have been released from acquisition in view of the order passed by the Land Acquisition Officer i.e. the District Collector dated 11/08/2003 which was further affirmed by the order dated 03/11/2003 passed by Divisional Commissioner. The relevant Khasra Panchsala on P-2 Form and the relevant sale deeds are also on record. Therefore the appellants and the petitioner challenged the legality and

validity of the Notifications issued under section 4 & 6 of the Act of 1894 and all proceedings arising therefrom. Currently, apart from these cases, no other case is pending with respect to the aforementioned controversy.

iv. The Madhya Pradesh Griha Nirman Mandal Adhiniyam, 1972 [referred to as the "Adhiniyam 1972" hereinafter] has been incorporated for regulating the housing problems in the State of Madhya Pradesh and for taking the measures to deal with and satisfying the need of housing accommodation and for the matters connected therewith. The Housing Commissioner appointed by the State is a Principal Officer of the Board and it is the Housing Board only which is empowered to undertake the housing scheme and other officers of the Board are not competent to frame any scheme or to make any request for acquisition of land for any scheme.

v. Relevant statutory provisions governing the field under the Adhiniyam 1972 as under contained under Sections 2(3), 4, 24, 25, 33, 34 and 49 are reproduced as under:-

vi. *"**2. Definition** -In this Act, unless the context otherwise requires, -*

> **(3)** *"**Board**" means the Madhya Pradesh Housing Board established under section 3 of the Madhya Pradesh Gramin Avas MandaI established under section 4- A, as the case may be;*
>
> ***4. Constitution of Board** -The Board shall consist of*

the Chairman who shall be appointed by the State Government and the following other members, namely

(a) Secretary to the Government of Madhya Pradesh in charge of each of the following departments or his nominee, namely :-

(i) Housing Department (ii) Finance Department

(b) Chairman, Housing and Urban Development Corporation, New Delhi or his nominee;

(c) Engineer-in-Chief, Public Works Department;

(d) Two members of the State Legislative Assembly to be appointed by the State Government;

(e) Director, Town and Country Planning or his nominee;

(f) Two non-officials to be appointed by the State Government.

(g) One person prominent in the field of Housing, Engineering, Architecture or Town Planning to be appointed by the State Government.

(h) Housing Commissioner;

24. Power to Board to incur expenditure *- Subject to the budget provision, availability of funds and other provisions of this Act, the expenditure may be incurred on any single work or scheme for carrying out any of delegate to the Committee, Committee of the Board, the Housing Commissioner or any other officer of the Board of the power to incur expenditure upto such limits on any single work or scheme as may be*

prescribed by regulations.

25. ***Powers of Board, Chairman and Housing Commissioner to approve estimates*** *- The Board, the Chairman or the Housing Commissioner, as the case may be, may accord approval to estimates for incurring expenditure on any work doing of any act for carrying out any of the purposes of this Act subject to like restrictions and conditions imposed on the Board, the Chairman or the Housing Commissioner, as the case may be, under section 24.*

33. Matters to be provided for by Housing Schemes*- Not withstanding anything contained in any other law for the time being in force, a housing scheme may provide for all or any of the following matters, namely-*

(a) the acquisition by purchase, exchange or otherwise of any property necessary for an affected by, the execution of the scheme;

(b) the laying or relaying out of any land comprised in the scheme;

(c)the distribution or redistribution of sites belonging to owners of property comprised in the scheme;

(d) the closure or demolition of dwellings or portion of dwellings unfit for human habitation;

(e)the demolition of obstructive buildings or portions of buildings;

(f)the construction and reconstruction of buildings;

(g)the sale, letting or exchange of any property comprised in the scheme;

(h) the construction and alteration of sheets and back lines;

(i) the provision of the draining, water supply and lighting of the area included in the scheme;

(j) The provision of parks, playing fields, open spaces for benefit of any area comprised in the scheme or any adjoining area and the enlargement of existing parks playing fields open space and approaches;

(k) the provision of sanitary arrangements required for the area comprised in the scheme, including the conservation and prevention of any injury or contamination to rivers or other sources and means of water supply;

(l)the provision of accommodation for any class of inhabitants:

(m) the advance of money for the purposes of the scheme;

(n) the provision of facilities for communication and transport;

(o)the collection of such information and statistic as may be necessary for the purposes of this Act;

(p) any other matter for which, in the opinion of the State Government, it is expedient to make provision with a view to provide any housing accommodation and to the making of improvement or development of

any area comprised in the scheme or any adjoining area or the general efficiency of the scheme.

[Explanation- For the purposes of this section, the State Government may on the recommendation of the Board by notification specify such area surrounding or adjoining the area included in a housing scheme to be the adjoining area.]

34. ***Land Development Scheme****- (I) Whenever the Board is of opinion that it is expedient to provide building sites in any area, the Board may frame a land development scheme. (2) Such scheme shall specify the proposed layout of the area to be developed and the purposes for which particular portions thereof are to be utilized. (3) The Board may provide for roads, streets open spaces, drainage water supply and street lighting and other amenities for the scheme area. (4) The Board may lease out or sell, by out-right sale or on hire purchase basis, the building sites in the scheme area."*

49. Acquisition of land*- (1) The Board may also take steps for the compulsory requisition of any land or any interest therein required for the execution of a housing scheme in the manner provided in the Land Acquisition Act, 1894 (No.1 of 1894), and the acquisition of any land or any interest therein for the purpose of this Act shall be deemed to be acquisition for a public purpose within the meaning of the Land Act 1894 (No.1 of 1894).*

(2) The Board shall be deemed to be a local authority for the purpose of Land Acquisition Act, 1894 (No.1 of 1894).

23. Before we go ahead to deal with the legal issues involved in the

present bunch of cases, it would be apt to deal primarily with the issue that whether the learned writ court has rightly rejected the appellant's W.P. No. 830/1997 summarily by applying the principles incorporated under Order 2 Rule 2 of CPC, without commenting on the merits of the case.

i. It is settled principle of law that in the realm of writ proceedings, the constitutional mandate takes precedence over procedural rules like Order 2 Rule 2 of CPC. The non-applicability of this rule in writ proceedings is rooted in the unique nature and purpose of constitutional remedies. The focus of the Courts in writ proceedings is on upholding fundamental rights and serving the interests of justice, allowing for a more flexible and expansive approach to procedure. While the CPC provides a framework for regular civil suits, it cannot fully encapsulate the complexities and nuances inherent in the constitutional jurisprudence surrounding writ proceedings.

ii. On this issue, the explanatory clause of the Section 141 of the Civil Procedure Code is reproduced as under:-

> *'Explanation.— In this section, the expression "proceedings" includes proceedings under Order IX, but does not include any proceedings under article 226 of the Constitution.'*
>
> Thus, in light of the above explanation, the principles of Order 2 Rule 2 CPC cannot be directly applied to writ proceedings.

iii. This Court upon perusal of documents and by analyzing the series of facts is of the view that the Learned Single Judge erred in observing that, right to challenge the notification with

respect to land admeasuring 7.701.hectares accrued to the appellant - Gajanand Mali at the very outset or during the first round of litigation while preferring writ petition i.e. W.P. No 651/1995 because, the cause of action with respect to the land admeasuring 7.701 hectares which was earlier declared as surplus under urban land ceiling, accrued to the appellant Gajanan Mali only when the competent authority passed the stay order dated 29.03.1996 by directing State instrumentalities to stay the proceedings u/s 6 of the Act of 1976 in respect to the above mentioned land. The documents related to final statement issued under Ceiling proceedings, the stay u/s 20 of the Act of 1976 and subsequently the final release of land from ceiling due to enforcement of Repeal Act are present on record,

iv. Similarly, the writ court also erred, by ignoring the fact that, the appellant no.2 - Nirmal Kumar has never ever challenged the legality and validity of the notifications dated 12/07/1994 & 26/05/1995, thereby the appellant no.2 - Nirmal Kumar had all the rights to challenge the notifications for land acquisition as it was challenged first time by him therefore the principles embodied under Order 2 Rule 2 CPC would not be applicable to W.P. No. 830/1997.

v. However, a peculiar fact that was also brought to the notice of this Court that, when the W.P. No. 830/1997 was filed, it was pleaded therein that W.P. No. 651/1995 was already pending in which the very same set of notifications were challenged and at the request of petitioners W.P.No.

830/1997 was connected with W.P. No. 651/1995 for analogous hearing. But the Writ Court vide order dated 22.09.1997 has delinked W.P. No. 830/1997 from W.P. No. 651/1995 on the ground that W.P. No. 830/1997 is on different footing. This fact *per se* is very pertinent because once the Writ Court has categorically held that both the writ petitions are of different nature, then subsequently by passing the final order it cannot be said by the Writ Court that both writ petitions were similar by controverting its own previous order.

vi. Under such circumstances, this Court is of the view that Writ Court failed to consider its previous order dated 22/09/1997 passed in W.P. No. 651/1995. Hence, dismissing the writ petition by applying the principles envisaged under Order 2 Rule 2 of the C.P.C appears to be non justified *per se*.

vii. The Apex Court in case of **Gulabchand Chhotalal Parikh vs State Of Bombay (Now Gujarat)** reported in **AIR 1965 SC 1153** has held that : -

"26. ...By its very language, these provisions do not apply to the contents of a writ petition and consequently do not apply to the contents of a subsequent suit."

24. The same principles were reiterated by the Apex court in **Devendra Pratap Narain Rai Sharma v. State of Uttar Pradesh** reported in **1962 SCR Supl. (1) 315:**

"The bar of Order 2 Rule 2 of the Civil Procedure Code on which the High Court apparently relied may not apply to a petition for a high prerogative writ under Article 226 of the Constitution"

Recently the Apex Court in case of **Brahma Singh & Ors. V. Union of India WP Civil no. 59 of 2019 Supreme Court** reiterated the above settled preposition of law.

25. The power to issue writs is inherent in the High Courts and the Supreme Court to enforce fundamental rights and is not circumscribed by the procedural limitations applicable to ordinary civil suits. Writ proceedings are not concerned with adjudicating private rights between parties. Instead, they focus on the protection and enforcement of public and constitutional rights. The nature of the relief sought in writ proceedings is different from that of civil suits, making application of certain procedural provisions, such as Order 2 Rule 2, CPC incongruous. Writ proceedings often involve issues of public interest, and the courts are more inclined to address the larger constitutional and public policy concerns rather than being restricted by technical and procedural rules. The overriding objective in writ proceedings is the protection of fundamental rights and the promotion of justice, which may require a flexible approach to procedure. Therefore this Court is of the view that the learned Single Judge has erred in dismissing the writ petition by applying the principles of Order 2 Rule 2 CPC while passing the impugned order.

26. This Court after ruling out the above mentioned controversy which was restricted to WP No. 830/1997 is of the opinion that this bunch of cases involves the substantial question which has to be answered for settling this prolonged dispute amongst all the parties in these cases which is as follows:

> *"Whether the notification issued under Section 4 of the Act of 1894 was void-ab-initio and non-est in the eyes of law as well as the entire land acquisition process was illegal since*

inception ?"

27. As it is apparent from the notification dated 12/07/1994 under Section 4 of the Act of 1894 reproduced above that neither there is any mention of details of land which was supposed to be acquired, nor the Patwari Halka of the land or any specific locality of village Neemanwasa was written. Even, the survey numbers were not prescribed and the names of the land owners, whose land was supposed to be acquired, were also missing from the same notification.

28. In this regard, the principles laid down by three Judges bench of Apex Court in case of **Union of India and Others Vs. Gopaldas Bhagwan Das and Others** (Civil Appeal No.3636 of 2016, decided on 04/02/2020), are noteworthy of reference and is are reproduced below:-

> *"14.This Court in **J&K Housing Board v. Kunwar Sanjay Krishan Kaul** has observed that all the formalities of serving notice to the interested person, stipulated under Section 4 of the Act, has to be mandatorily complied with in the manner provided therein, even though the interested persons have knowledge of the acquisition proceedings."*
>
> *"32. It is settled law that when any statutory provision provides a particular manner for doing a particular act, the said thing or act must be done in accordance with the manner prescribed therefor in the Act. Merely because the parties concerned were aware of the acquisition proceedings or served with individual notices does not make the position alter when the statute makes it very clear that all the procedures/modes have to be strictly complied with in the*

manner provided therein.

"So far as village Malad is concerned, where the land in ***Kulsum R. Nadiadwala's case*** *was land that was adjacent to the present land, the very section 4 notification has been struck down and declared null and void, and this being the case, it would not be in the interest of justice to allow the present appeal in favour of the Union of India, as this would amount to a discrimination between two persons who are otherwise similarly placed."*

29. Above are the views of the Apex Court in a matter of land acquisition by Union of India for a Defence project, thus having very high utility and urgency quotient. Thus, this Court is also of the view that the non-compliance of the mandatory provisions mentioned under Sec 4 of the Act of 1894 renders the notification issued under the said Act on 12/07/1994 to v*oid-ab-initio* and *non-est* in the eyes of law since inception.

30. As mentioned above undisputedly, pursuant to the order dated 27.06.2002 passed by this court in LPA 228 of 2001, the landowners had challenged Sec 4 notification dated 12.07.1994 of land acquisition before the Land Acquisition Officer (Collector) by raising the following objections: -

(a) No housing scheme was prepared;

(b) No approval from Board was obtained;

(c) Only Executive Engineer of the Board requested for compulsorily acquiring land;

(d) No approval from State Government was obtained;

(e) NOC from Town and Country Planning Department was not obtained;

(f) No budgetary provision was made for any scheme;

(g) Details of land to be acquired and the locality not mentioned in Section 4 notification.

(h) Two fully developed residential colonies were considered as open land.

31. The Land Acquisition Officer after taking into account the objections raised by Gajanand Mali and other similarly situated persons has passed an order on 11/08/2003. The relevant extracts of the order passed by the Collector (Land Acquisition Officer) reads as under:-

> मैंने म.प्र. गृह निर्माण अधिनियम 1672 के प्रावधानों का अवलोकन किया है। इस अध्याय के अंतर्गत धारा 39 से 34 का अध्ययन करने पर विदित होता है कि राज्य शासन के नियंत्रण के अधीन रहते हुए आवासीय योजनाओं के लिये व्यय करने तथा कार्य किसी क्षेत्र के हाथ में लेने के लिये बोर्ड कार्यवाही कर सकता है।
>
> म.प्र. गृह निर्माण अधिनियम 1672 की धारा 2 की उपधारा 3 में बोर्ड को परिभाषित किया गया है। इन प्रावधानों का अध्ययन करने पर स्पष्ट होता है कि आवासीय योजना के लिये बोर्ड द्वारा पारित औपचारिक प्रस्ताव किसी आवासीय योजना के लिये आधारभूत आवश्यकता है। प्रस्तुत प्रकरण के अभिलेख में अथवा कार्यपालन यंत्री उज्जैन द्वारा प्रस्तुत किये गये अभिलेखों में ऐसा कोई अभिलेख में अथवा कार्यपालन यंत्री उज्जैन द्वारा प्रस्तुत किये गये अभिलेखों में ऐसा अभिलेख नहीं है जिससे यह विदित होतो है कि प्रस्तावित भूमि-अर्जन के लिये उनका अनुरोध म.प्र. गृह निर्माण के विधान अनुसार निर्णय एवं स्वीकृति उपरांत प्रस्तुत किया गया हो।
>
> अधिनियम 1972 की धारा 2 की उपधारा 3 में बोर्ड को परिभाषित किया गया है। इन प्रावधानों का अध्ययन करने पर स्पष्ट होता है कि आवासीय योजना के लिये बोर्ड द्वारा पारित औपचारिक प्रस्ताव किसी आवासीय योजना के लिये आधारभूत आवश्यकता है। प्रस्तुत प्रकरण के अभिलेख में अथवा कार्यपालन यंत्री, उज्जैन द्वारा प्रस्तुत किये गये अभिलेखों में ऐसा कोई अभिलेख नहीं है जिससे यह विदित होता है कि प्रस्तावित भूमि अर्जन के

लिये उनका अनुरोध म.प्र.गृ.नि.म. के विधान अनुसार निर्णय एवं स्वीकृति उपरांत प्रस्तुत किया गया हो। मैंने 1979 जेएलजे पृ. क्र. 505 में उल्लेखित मा. उच्च न्यायालय मध्यप्रदेश के संबंधित न्यायिक दृष्टान्त का भी अध्ययन किया है। इस न्यायिक दृष्टान्त में मा. उच्च न्यायालय ने मान्य किया है कि बोर्ड का अध्यक्ष बोर्ड नहीं होता है। बोर्ड मध्यप्रदेश गृह निर्माण मण्डल अधिनियम की धारा 4 के अंतर्गत गठित की गई इकाई जिसमें राज्य शासन द्वारा नियुक्त अध्यक्ष के साथ उक्त प्रावधान में उल्लेखित अन्य सदस्य भी होते है। इस दृष्टान्त में कहा गया है कि बोर्ड द्वारा पारित किये गये प्रस्ताव में भूमि अर्जन का आधार होना चाहिये। अध्यक्ष के निर्देशानुसार किसी कार्यपालन यंत्री द्वारा भूअर्जन अधिकारी को भेजा गया पत्र इस अधिनियम की धारा 46 के अंतर्गत भूअर्जन के लिये पर्याप्त नहीं है।

उपरोक्त विश्लेषण से आपत्तिकर्ता का यह कथन सही जान पडता है कि धारा 4 की अधिसूचना अवैध, अपूर्ण एवं अव्यावहारिक है। मात्र कार्यपालन यंत्री के प्रस्ताव पर भूअर्जन अधिनियम की धारा 4 की अधिसूचना का प्रसारण विधि शन्य है। उक्त विश्लेषण उपरांत यद्वपि आपत्तिकर्ता द्वारा प्रस्तुत की गई अन्य आपत्तियों के विश्लेषण की किया गया था।

सामान्य तौर पर प्रतिकर राशि अर्जित करने वाली ऐजेंसी को अग्रिम के रूप में जमा कर दी जानी थी। इस प्रकरण में ऐसा नहीं किया गया। अवार्ड पारित हो जाने के बाद यह राशि तत्काल संबंधित भूमि स्वामियों को प्रतिकर के भुगतान के लिये उपलब्ध करायी जाना थी। इस संबंध में भूअर्जन अधिकारी द्वारा अनेकों बार लिखे जाने के बावजूद न तो उक्त राशि जमा की गई और राशि न जमा किये जाने के संबंध में कोई युक्तियुक्त कारण प्रस्तुत किया गया। इस विषय को, लंबित रखने के लिये यह अपेक्षा की जाती रही कि क्या न्यायालय द्वारा स्थगन प्रभावशील होते हुए भी आधिपत्य सौंपा जायेगा। भूअर्जन अधिकारी ने माननीय उच्च न्यायालय द्वारा आपत्तियों की सुनवाई के निर्देश के साथ प्रकरण प्रत्यावर्तन में वापस प्राप्त होने के बाद पुनः लिखा था और उक्त राशि जमा करने हेतु एक अवसर दिया था। इसका भी लाभ गृह निर्माण मण्डल द्वारा नहीं लिया गया। यह उनके प्रकरण का सबसे दुर्बल पक्ष है। बिना मुआवजा की राशि उपलब्ध कराये भूअर्जन की प्रक्रिया कैसे संभव है, इससे यह अनुमान किया जा सकता है कि गृह निर्माण मण्डल द्वारा औपचारिक रूप से उक्त भूअर्जन पर अनुमोदन प्राप्त नहीं होने के कारण वित्तीय आवंटन प्राप्त नहीं हो सका।

उपरोक्त विश्लेषण के आधार पर निष्कर्ष यह है कि आपत्तिकर्ताओं की आपत्तियां वैधानिक एवं तथ्यात्मक आधार पर विचारणीय है। गृह निर्माण मण्डल द्वारा भूअर्जन के प्रस्ताव की स्वीकृति एक आवश्यक कानूनी

औपचारिकता है, यह माननीय उच्च न्यायालय मध्यप्रदेश का न्यायिक दृष्टान्त इस प्रकरण के लिये एक प्रासंगिक न्याय सिद्धांत है। मात्र कार्यपालन यंत्री की पहल अधिनियम की धारा 4 की अधिसूचना के लिये पर्याप्त आधार नहीं हो सकती। इस प्रकरण में धारा 4 की अधिसूचना इसी दुर्बल एवं वैधानिक दृष्टि से असक्षम आधार पर जारी हुई है। फलतः अपास्त किये जाने योग्य है।

अन्य आपत्तियां तथ्यात्मक है और अभिलेखों के आधार पर प्रमाणित है। अधिनियम की धारा 5 के अंतर्गत मेरी अनुशंसा यह है कि यह एक ऐसा प्रकरण है जिसमें आपत्ति मान्य की जानी चाहिये और चूंकि इस प्रकरण में भूमि का आधिपत्य प्राप्त नहीं किया गया है इसलिये अधिनियम की धारा 48 के अंतर्गत पूर्व प्रसारित अधिसूचना दिनांक 12.07.64 के प्रत्याहरण की अनुशंसा शासन को किया जाना नियम संगत और औचित्यपूर्ण होगा। तदनुसार कार्यवाही की जावे। तदनुसार मेरे पूर्वाधिकारी द्वारा अधिनियम की धारा 4 के अंतर्गत दिनांक 12.07.64 जारी अधिसूचना के सन्दर्भ में की गई अनुवर्ती कार्यवाहियां भी वैधानिक दृष्टि से निष्प्रभावी हो आवश्यकता नहीं रह जाती है, परन्तु वैधानिक दृष्टि से उन पर भी विचारण की आवश्यकता समझता हूँ।

आपत्तिकर्ता की दूसरी आपत्ति यह थी कि भूअर्जन प्रस्ताव के साथ नगर तथा ग्राम निवेश विभाग का अनापत्ति प्रमाण पत्र संलग्न नहीं था। मध्यप्रदेश गृह निर्माण की ओर लिखित बहस में इस बिन्दु पर कोई टिप्पणी नहीं की गई। आपत्ति के सन्दर्भ में प्रकरण का अवलोकन करने पर विदित होता है कि नगर तथा ग्राम निवेश विभाग द्वारा स्वीकृत किया गया कोई प्लान या कोई अनापत्ति प्रमाण पत्र अभिलेख में उपलब्ध नहीं है। इस सन्दर्भ में आपत्तिकर्ता द्वारा कही कई बात सही जान पडती है। सामान्यत- गृह निर्माण मण्डल द्वारा हाथ में ली जाने वाली योजनाओं के लिये बोर्ड के अनुमोदन के साथ साथ राज्य शासन के औपचारिक अनुमोदन की भी आवश्यकता होती है। आपत्तिकर्ताओं ने मध्यप्रदेश शासन, आवास एवं पर्यावरण विभाग के पत्र क्रमांक एफ/3236/85/32/30.03.62 का उल्लेख इस सन्दर्भ में किया है। इस प्रकरण में ऐसा कोई अनुमोदन अभिलेखों में उपलब्ध होना नहीं पाया जाता है।

एक विषय यह है कि क्या अर्जित की जा रही भूमि अर्जन के प्रस्ताव प्रस्तुत करते समय पूर्णतः कृषि भूमि थी। आपत्तिकर्ता का कथन यह है कि प्रस्तावित भूमि में से 1.162 तथा 0.220 हेक्टर भूमि अर्नुननगर तथा अलकापुरी कालोनी के रूप में धारा 4 की अधिसूचना के प्रकाशान के पूर्व विकसित थी। इस संबंध में आपत्तिकर्ताओं ने जिला कलेक्ट्रेट में अवैधानिक

कॉलोनी अनुमोदन से संबंधित प्रकरण का पूर्ण विवरण प्रस्तुत किया है। इस विवरण के आधार पर स्पष्ट होता है कि उपरोल्लेखित कालोनी आवासयी योजना के रूप में विधिवत रूप से स्वीकृति एवं अनुमोदन प्राप्त कर विकसित की गई थी और अर्जनाधीन भूमि का 1.162 तथा 0.220 हेक्टर हिस्सा कृषि भूमि नहीं था। इस बारे में उन्होंने संगत दस्तावेजों की प्रतिलिपियां प्रस्तुत की है। अभिलेखों के अवलोकन से जान पडता है कि अर्जन के प्रस्ताव में उक्त जानकारी सही रूप से संस्था द्वारा प्रदर्शित नहीं की गई थी।

इस प्रकरण में एक महत्वपूर्ण बिन्दु और है। माननीय उच्च न्यायालय ने आपत्तिकर्ताओं द्वारा आपतितयां प्रस्तुत किये जाने पर उपरोक्त अर्नुननगर एवं अलकापुरी से भूअर्जन की अग्रिम कार्यवाही के संबंध में अधिसूचना प्रकाशित करने के लिये स्थगन दिया था। शेष 8.746 भूमि इस स्थगन से अप्रभावित थी। मेरे पूर्वाधिकारी ने इस अप्रभावित क्षेत्रफल 8.746 हेक्टर के संबंध में अधिनियम के प्रावधानों के अंतर्गत पूर्ण कार्यवाही के बाद दिनांक 24.05.67 को एक अवार्ड पारित किया तथा अवार्ड में 32,46,166/00 रूपये का प्रतिकर निश्चित जावेगी।"

32. The Divisional Commissioner, Ujjain acting as ex. Officio Secretary, Revenue Department, State of Madhya Pradesh i.e. the appropriate government, on receipt of Collector's report affirmed the same by his order dated 03/11/2023, stating that he is in full agreement with the findings arrived at by the Collector. Relevant extracts of the order passed by the Ujjain Divisional Commissioner dated 03/11/2003 are reproduced as under:-

''मैंने कलेक्टर उज्जैन के प्रतिवेदन, आपत्तिकर्ताओं की अपत्ति उसका प्रतिवाद एवं दोनों पक्षों के द्वारा दिये गये तर्कों के आधार पर प्रकरण का सूक्ष्म परीक्षण एवं अध्ययन किया। प्रकरण में अर्जुननगर एवं अलकापुरी कॉलोनी की भूमि रकबा 1.192 एवं 0.220 हे. भूमि का विवाद है। शेष भूमि रकबा 8.746 हे. की भू-अर्जन की कार्यवाही पूर्ण हो चुकी है। उसमें विवाद केवल प्रतिकर की राशि रू 32,46,199/- म.प्र. गृह निर्माण मंडल संभाग उज्जैन के द्वारा अभी तक नहीं जमा कराने का ही शेष है इसलिए इस भूमि के संबंध में धारा 5ए की आपत्तियों पर विचार नहीं किया जाएगा। धारा 5ए की आपत्तियों पर विचार केवल प्रश्राधीन भूमि रकबा 1.192 एवं 0.220 है के संबंध में ही किया जाएगा। प्रकरण में उक्त प्रश्नाधीन भूमि के संबंध में केक्टर उज्जैन ने जो प्रतिवेदन

दिया है उसमें आपत्तिकर्ताओं की आपत्तियों की आपत्तियॉं की उनके तर्कों के प्रकाश में विस्तृत विवेचना की गई है। मैं उनकी विवेचना एवं उनके निष्कर्ष से सहमत हूँ। म.प्र. गृहनिर्माण मंडल के विधान के अनुसार मंडल की स्वीकृति के उपरांत ही कार्यपालन यंत्री को भू-अर्जन के प्रस्ताव देना थे जो नहीं दिये गये हैं। इसलिए धारा 4 की अधिसूचना विधिवत नहीं मानी जा सकती है क्योंकि प्रावधानानुसार वादग्रस्त भूमि का विवरण एवं स्थान स्पष्ट उल्लेख नहीं किया गया है।

प्रश्नाधीन भूमि का डायवर्शन दिनांक 30.01.93 को हो चुका था और उस पर अर्जुन नगर एवं अलकापुरी कॉलोनी का विकास धारा 4 की अधिसूचना जारी होने के पूर्व ही हो चुका था। उक्त आवासीय कॉलोनियॉं विधिवत रूप से आवश्यक स्वीकृति एवं अनुमोदन प्राप्त करने के पश्चात् विकसित हो चुकी थी ऐसी स्थिति में यह भूमि कृषि भूमि नहीं थी।

ऐसी स्थिति में आपत्तिकर्ताओं की आपत्ति कलेक्टर उज्जैन के अनुसार मान्य की जाकर प्रश्नाधीन भूमि रकबा 1.192 एवं 0.220 है. को धारा 4 की पूर्व प्रसारित अधिसूचना दिनांक 12.07.94 से कम करके प्रत्याहरण की अनुशंसा धारा 48 के अंतर्गत राजस्व विभाग को की जाती है। इस भूमि का अभी कब्जा नहीं लिया गया है।''

33. The findings in the order of the Collector and Commissioner reveal that, neither the Executive Engineer before filing the requisition, obtained any formal approval from the Madhya Pradesh Housing Board for any formally approved scheme by the Board, nor the Madhya Pradesh Housing Board had obtained any approval for the land acquisition from the State Government till date. Furthermore, there was no formal request made by the Board regarding acquisition of the land in question. Instead, it was solely the Executive Engineer who without any authority wrote a letter to the Land Acquisition Officer, seeking acquisition.

34. This Court while adjudicating a similar controversy in the case of **Mohd. Shafi (supra)** against same respondents, has held that the Chairman of the Board is not the Board. Board is a body constituted under Section 4 of the Madhya Pradesh Housing Board Act[hereinafter referred to as "The Board Act"], which consists of a Chairman appointed by the

State Government along with other members mentioned in the above provision. In the said case, the letter sent by an Executive Engineer to the Land Acquisition Officer as per the instructions of the Chairman was found insufficient for initiating land acquisition under Section 49 of the Board Act. Thus, as per the mandate of the Adhiniyam of 1972, the power to make requisition under Sec 49 of the Board Act vests only in the Board and not in any other authority.

35. Moreso, as per the provisions of Sec 98 of The Madhya Pradesh Griha Nirman Mandal Adhiniyam, 1972 , it is mandatory for the Board to comply with the directions given by the State Government. The Circular No. 1036-79/Bhu Shakha/91 dated 06.07.1991 of Madhya Pradesh Housing Board, issued by Housing Board Commissioner stipulates that as per Section 49(1) of the Adhiniyam of 1972, the approval of the scheme from the Board is mandatory, before applying for land acquisition. .

36. Further there was also an order of the Ministry of Housing and Environment, of the Government of M.P. dated 30/03/1992 addressed to the Housing Commissioner, MPHB, not to initiate any land acquisition proceedings without prior approval from the State Government. Therefore, the Executive Engineer and the Board have not complied with the orders of the State Government whose compliance was mandatory and the Executive Engineer in utter violation of the order has made requisition.

37. The Land Acquisition Officer i.e. the Collector while issuing the notification dated 12.07.1994, under Section 4(1) of the Act of 1894, lacks jurisdiction as the requisition was not backed by mandatory Government approval as per directions issued to Collectors of all District by Department of Revenue dated 24.12.1983 and further a reminder letter 28.06.1984 to exercise the rights delegated upon them under Section(s)

4,5,6 & 17 of the Act of 1984, only in case of Government approved schemes. Also there was a circular issued by the Department of Revenue of State of MP dated 01.11.1990 (Annexure E - Document 5391 of 2020) in which it was specifically directed to various District Collectors including District Collector Ujjain i.e. the then Land Acquisition Officer that no development authority or any Housing Development Board shall initiate any land acquisition proceedings in relation to any ceiling affected land, therefore due to lack of jurisdiction, the notification is *void-ab-initio* & *non-est* since inception.

38. The other important aspect of the case is that the Housing Board has not preferred any writ petition challenging the findings arrived at by the Collector or the order passed by the Commissioner for the reasons best known to it. Consequent upon the same, the order dated 03.11.2003 passed by the Commissioner has become absolute, by which the Sec 4 notification dated 12.07.1994 was declared as *void-ab-initio.*

39. In the present matter the Executive Engineer by way of a single requisition requested for acquiring the lands in question to the Land Acquisition Officer. Acting upon the said requisition, the Land Acquisition Officer issued a single notification under Section 4 of the Act of 1894 and further the Land Acquisition Officer vide order dated 11.08.2003 recorded findings for all the parcels of land which was subsequently affirmed by the Commissioner vide order dated 03.11.2003. As a result, rights accrued to all the land owners and not any single land owner exclusively.

40. However, contrary to the provisions of law, the Divisional Commissioner has restricted his order to the land admeasuring 1.192 hectare, and 0.220 hectare without assigning any reasons whereas the Collector or the Land Acquisition Officer had submitted his final report

with respect to all parcels of land proposed to be acquired. Therefore, the order passed by the Land Acquisition Officer was in the interest of all the land owners as it was an order enforceable by r*ight in-Rem*, not *by right in-personam*. The Divisional Commissioner, Ujjain also while passing the order held that the land acquisition with respect to the land measuring 8.746 hectare is complete which was wrong and misplaced. Because the land admeasuring 7.824 hectare was under challenge before this Court in W.P. No 830/1997, in which this Court had granted stay on 25.09.1997 and the said stay was operative uptil the date, order was passed by the Commissioner. The order, suffers from arbitrariness as far as it allows an otherwise *void-ab-initio* Section 4 notification to remain operative for the remaining lands, while *suo-motto* extending the relief arbitrarily only to Loonkaran (0.220 hectares), thereby violating Article 14 of the Constitution. However this very arbitrariness in the order passed by the Commissioner, Ujjain Division was duly challenged by the appellants in W.P. No.830 /1997 on the following grounds:-

i. Similar relief must be given to owners of remaining parcel of land as has been given to Loonkaran as he was *suo-moto* invited to proceedings and relief was extended to him, then petitioners should also be given the same relief.

ii. Since the notification u/s 4 of the Act of 1894 itself was declared as void, petitioner's entire land covered under the said void notification should also be released from acquisition. Once the Notification under Section 4 has been termed as *void* then it cannot be considered to exist for the remaining parcels of land.

41. In the present case, the Divisional Commissioner violated the two

fundamental principles of natural justice. These two fundamental maxims of natural justice have now become deeply and indelibly ingrained in the common consciousness of mankind as pre-eminently necessary to ensure that the law is applied impartially objectively and fairly. These twin principles are:

> *i* ***audi alteram partem :****Principle of Audi alteram partem is a highly effective rule devised by the Courts to ensure that a statutory authority arrives at a just decision and it is calculated to act as a healthy check on the abuse or misuse of power. Its reach should not be narrowed and its applicability circumscribed."*
>
> *ii.* ***nemo judex in causa sua:****"Nemo Judex In Causa Sua" literally translates to "no one should be made a judge in their cause." According to this principle, decision-makers must be impartial and unbiased while deciding the dispute. They should not have any personal or financial interest in the matter being decided, nor should they have any preconceived notions about the parties involved or the subject matter.*

42. This principle is also known as the rule against bias. Bias means any operative prejudice, consciously or unconsciously, by the judge against the party or issue3. The rule against bias is broadly based follows two principles:

- No one should be a judge in his cause.

•Justice should not only be done but also seen to be done explicitly.

43. In any administrative proceedings, these principles play pivotal role. Any administrator exercising adjudicatory powers should not have any personal or proprietary interest in the outcome of the proceedings, or there should not be any reasonable ground for believing that there was the likelihood of bias in the given decision.

44. Hence, it is clear from the close reading of these two principles that Commissioner has passed the order contrary to these two principles.

45. In light of above discussion and other reasons, in the considered opinion of this Court, the Collector has rightly considered the objections raised by the landowners to be valid and that the notification issued under Sec 4 of the Act of 1894 on 12. 07.1994. However, the arbitrary act of the Commissioner by restricting the notification issued u/S 4 of the Act of 1894 to the land admeasuring 1.192 and 0.22 hectares of Gajanand Mali and Loonkaran cannot be countenanced in the eyes of law. Therefore, the Section 4 notification deserves to be quashed and the same deserves to be declared as *void-ab-initio* and consequently the same could not be implemented.

46. On perusing the record, it is apparent that, the documents presented are of questionable sanctity as they were first time brought onboard at a delayed stage i.e. at the time of final arguments, after more than 27 years of the controversy being under litigation. Undeniably, nothing prevented the respondents to present those documents earlier before the Land Acquisition Officer or the earlier Courts, or even before this Court, whereas the existence of these documents has been the very question of scrutiny before each forum.

47. The Executive Engineer made the requisition on 09.07.1993 and the Land Acquisition Officer issued Section 4 notification on 12.07.1994, and the alleged resolution as per the documents presented is dated 09.01.1995, of six months after the requisition was made. Now as per the relevant provisions of the Board Act, existence of a sanctioned scheme was a precondition before initiation of land acquisition proceedings. The Board must have an approved scheme as well as the budgetary allocation and the said resolution shall be passed by the Board prior to sending of requisition for acquiring the land. However, the prerequisite conditions were not complied with in the present case by the Board. Therefore, complying this pre-requisite conditions after issuance of notification for land acquisition shall not rectify the mistakes or the mandatory compliances which have to be fulfilled earlier. Furthermore the alleged resolution dated 09.01.2015 presented by the respondents fails qualify as a sanctioned scheme as per the mandate provided by the Board Act.

48. On the perusal of records, it is also evident that the draft of order rejecting objections u/s 5A of the Act 1894, dated 25.04.1995 was prepared by an incompetent person who was subordinate to the Land Acquisition Officer and was sent to the Land Acquisition Officer i.e. the Collector. It is not out of place to mention that judicial powers conferred upon statutory post holders cannot be delegated. This kind of practice is detrimental in judicial parlance.

49. Undisputedly, the names of respective land owners along with their respective land details were not published in the Notification under Section 6 of the Act of 1894 as published in Gazette. Even land bearing survey 43/1/kh of the ownership of appellants in W.A. No. 392/2009 was not mentioned. For the sake of convenience, notification under Section 6

of the Act of 1894 dated 25/04/1995 as published in newspaper on 11.05.1995 is reproduced hereunder:

कार्यालय, कलेक्टर, जिला, उज्जैन मध्यप्रदेश एवं
पदेन उपसचिव, मध्यप्रदेश शासन, राजस्व विभाग
उज्जैन, दिनांक 25 अप्रैल 1995

क्र. –क्यू-भूमि-सम्पादन-95-प्र.क्र. 1-ए-92-93—94----चूंकि राज्य शासन को इस बात का समाधान हो गया है कि नीचे दी गई अनुसूची (1) में वर्णित भूमि की अनुसूची के बाद (2) में उल्लेखित, प्रयोजन के लिये आवश्यकता है, अतः भू-अर्जन अधिनियम, 1894 (क्रमांक एक, सन् 1894) की धारा 6 के अन्तर्गत इसके द्वारा यह घोषित किया जाता है कि उक्त भूमि की उक्त प्रयोजन के लिये आवश्यकता है :-

अनुसूची

भूमि का वर्णन

(क)	जिला	-	उज्जैन
(ख)	तहसील	-	उज्जैन
(ग)	नगर/ग्राम	-	निमनवासा की खुली भूमि
(घ)	लगभग क्षेत्रफल	-	10.158 हेक्टर

खसरा नंबर	रकबा (हेक्टर में)
(1)	(2)
43.1	1.045
44/1/1	3.375
44/2	0.679
44/4	0.074
85	0.053
87/3	0.920
88	0.167
90	0.261
91	0.209
92	0.627
93	0.251
94	0.773
95	0.052

	योग 10.158
	---

(2) सार्वजनिक प्रयोजन जिसके लिये भूमि को आवश्यकता है –
ग्राम नीमनवासा उज्जैन में आवासीय योजना हेतु भूमि अधिग्रहण बावत
(3) भूमि का नक्शा (प्लान) का निरीक्षण जिलाध्यक्ष के कार्यालय में किया जा सकता है.

मध्यप्रदेश के राज्यपाल के नाम से तथा आदेशानुसार,
आर.सी. सिन्हा, कलेक्टर एवं पदेन उपसचिव

50. On the perusal of records it is also evident that after the above display, notification under Sec 6 of the Act of 1894 was struck down by this court in LPA No. 228 of 2001 and thereafter, no fresh Section 6 notification was issued. The authorities continued to proceed with the entire acquisition process with the same defective Section 6 notification, rendering the whole process *ultra-vires*.

51. The respondent housing development board has argued that there was the existence of a sanction and resolution passed by the Board on 09.01.1995.

A**)** The controversy in respect of absence of sanctioned scheme and other pre requisities in the given dispute alongwith serious lapses in acquisition procedures and their effect is also dealt with and in that regard, this Court has reached to the following conclusion :

a) Learned counsel for the respondents has vehemently argued about that contrary to the submissions of appellants, the provisions of Section 34 and 49 of the Adhiniyam of 1972 are directory in nature and their non- compliance, if any, would not vitiate the proceedings meaning thereby the resolution can be passed at later stage and similarly the scheme can also be framed at subsequent stage, which are not *sine qua non* for initiating any proceedings.

b) This Court finds support in its view by the judgment passed by Apex Court in the case of **DAV College Managing Committee Vs. Surender Rana** reported in **2011 SCC Online SC 28** as well as of this Court in the case of **State of M.P. Vs. Krishna Das Tikaram** reported in **1994 Supp, (3) SCR 747**.

The Apex Court in the case of DAV College Managing Committee (supra) has held thus:

> *"the absence/lack/want of prior approval would vitiate and invalidate any document, transaction, act, deed or thing etc., required to be done or executed without obtaining previous or prior approval."*

c) As submitted by learned counsel for the respondents that so far as the present case is concerned, the Board has passed a resolution on 09.01.1995 in its meeting No. 109 and a tentative scheme was also framed and a layout was also sanctioned. However, on perusal of records, it is evident that the documents alleged to be relied upon by the respondents as aforesaid, if for the sake of arguments can be taken into account and the question of sanctity of those documents is kept aside, the same appears to be of much later dates than issuance of notification u/S 4 of the Act of 1894 and are contrary to the respondents claim. Hence, the same fails to fullfil the pre requisites as per the mandate provided under the law.

d) So far as the argument of counsel for respondent Board that there was existence of a sanction and resolution was duly passed by the Board on 09.01.1995 is concerned, even if it is to be termed by the respondents as ratification of the Act of Executive Engineer by the Board, but in fact it is *ex-post facto* ratification of pre-requisite condition after issuance of notification u/S 4 of the Act of 1894 which shall not rectify the mistakes or validate the mandatory compliances which have to be made earlier.

e) In this regard, the judgment passed in the case of **Bajaj**

Hindustan Ltd. Vs. State of M.P. reported in **(2016) 12 SCC 613** and **Union of India Vs. Vinod Kumar** reported in **1996 SCALE (5) 595** are worthy of reference.

- **Bajaj Hindustan Ltd. Vs. State of M.P.(supra) –** *"if the provision contemplates previous approval or prior approval, ex post facto approval or ratification would not validate or cure the defect on account of want/absence/lack of prior approval."*
- **Union of India Vs. Vinod Kumar(supra) -** *"ex post facto approval is not an approval in the eye of law".*

B) Others lapses

i. The award does not mention names of present appellants and therefore, the question of tendering the amount to them does not even arise.

ii. The other important aspect of the case is that admittedly, until the Commissioner's order dated 03.11.2003 of declaring Sec 4 notification to be void, the amount of compensation awarded in the matter itself had not been deposited by the Board, despite several reminders even after 6 years from passing of the Award in 1997.

iii. In short, the notifications under Section 4 and 6 of the Act of 1894 have been held to be illegal by the Collector as no scheme was framed by the Board. The procedure to be adopted for preparing Land development schemes are enlisted under Section 33 & 34 of the Madhya Pradesh Housing Board Act, 1972 according to which the scheme shall specify the proposed layout of the area to be developed and the purposes for which particular portions thereof are to be utilized, and details of provisions for roads, streets open

spaces, drainage water supply and street lighting and other amenities for the scheme area. Further any expenditure to be incurred on the scheme is subjected to the budget provision, availability of funds and other provisions of the Adhiniyam of 1972. In the present case, neither any of detail was provided nor any budgetary provisions were made by the Board as per the mandate of the Adhiniyam of 1972. In absence of any budgetary provisions, the Board was not able to deposit the compensation amount even after 6 years from passing of the Award. On the contrary, skipping all the process, and without any spot inspection direct requisition for land acquisition was made by the Executive Engineer, even there was no NOC given by the Town and Country Planning Department. In light of above flaws and non-compliance of the statutory provisions, the land acquisition process completely being contrary to the provisions of law stands illegal and nullified.

52. In this regard , judgment passed by the Apex Court reported in the case of **Chandra Kishore Jha Vs. Mahavir Prasad and others reported in AIR 1999 SC 3558** as well as the judgment passed in the case of **Dhanajaya Reddy Vs. State of Karnataka reported in AIR 2001 SC 1512** can very well be relied upon wherein it has been held that statute provides that a thing is to be done in a particular manner, then it has to be done in the same manner and in no other manner than the manner prescribed. Since, respondents have not followed the said manner, hence relief sought for by the petitioners appears to be reasonable.

53. Another important aspect of the case is that undisputedly, no notice of any kind at any stage was issued or served to the appellants in W.A. 392 /2009 by the Land Acquisition Officer. The Act of 1894 contemplates

notice as mandatory condition. [See: **Narendrajit Singh Vs. State of U.P.** reported in **(1973) 1 SCC 157**, **Madhya Pradesh Housing Board Vs. Mohammad Shafi** reported in **(1992) 2 SCC 168**, **J & K Housing Board Vs. Kunwar Sanjay Kishan Kaul** reported in **(2011) 10 SCC 714** and **Kulsum R. Nadiadwala Vs. State of Maharashtra** reported in **(2012) 6 SCC 348.**] This defect renders the land acquisition process ultravires to the law and *non-est*.

54. The Commissioner erroneously concluded that the land acquisition for 8.746 hectares was complete and that only the issue with regard to payment of compensation is left which unjustly deprived the appellant Gajanand Mali of the opportunity to raise objections under Section 5A of the Act of 1894 against the notification issued under Section 4 of the Land Acquisition Act. Moreso, contrary to the provisions of law, the Divisional Commissioner has restricted his order to land admeasuring 1.192 hectare, and 0.220 hectare keeping Section 4 notification operative for the remaining lands thereby *suo-motto* extending the relief arbitrarily only to Loonkaran (0.220 hectares), Such deprivation is deemed to be violation of the fundamental right to equality under Article 14 of the Indian Constitution. It is emphasized that the State cannot act partially or in a discriminatory manner against any individual. In sum and substance, the appellant - Gajanand Mali was deprived of his constitutional right to property as enshrined under Article 300 of the Indian Constitution.

55. In this regard, judgment passed in the case of **Union of India and others vs. Gopaldas Bhagwandas and others Civil Appeal No. 3636/2016 dated 04.02.2020** is worthy of reference, wherein it has been

enunciated that-

> *"..So far as village Malad is concerned, where the land in Kulsum R. Nadiadwala's case was land that was adjacent to the present land, the very section 4 notification has been struck down and declared null and void, and this being the case, it would not be in the interest of justice to allow the present appeal in favour of the Union of India, as this would amount to a discrimination between two persons who are otherwise similarly placed."*

56. Also in the case of **B.E.M.L Employees House Building Co-operative Society Ltd. vs. State of Karnataka** reported in **2005 (1) MPLJ : AIR 2004 SC 5054 : (2005) 9 SCC 248**, it has been held that :

> *"Enquiry under Section 5-A by Land Acquisition Officer accepted recommendations by State for exclusion from acquisition of some lands but not with regard with other is discrimination.*
>
> *Decision of State Government to continue with acquisition was discriminatory thus hit by Article 14 of Constitution of India."*

57. So far as the contention of State counsel that when an Award u/s 11 of the Land Acquisition Act has been passed and thereafter the said Award attains finality, it becomes immune to challenge and the Court shall not entertain any petition challenging the validity of the said Award and reliance placed by him on the case of **Andhra Pradesh industrial infrastructure corporation limited vs Chinthamaneni Narsimha Rao & Others** reported in **(2012)12 SCC 797**, where the writ petition was

filed before the High court of Andhra Pradesh after the Award was passed is concerned ,it is pertinent to take note of this fact, that in the aforementioned case that was the 2nd Round of litigation and prior to that the High Court of Andhra Pradesh had already dealt with the matter concerning the acquisition of the land, therefore in wake of such circumstances the High Court of Andhra Pradesh restrained itself to re-enter into the merits of the case, which once has attained the finality. The said ratio was also confirmed by the Apex Court. However, in the present case, the petitioners/appellants pressed their grievance before this Court in year 1997, and even before passing of the Award in the matter, due to which the said preposition is not applicable in the present case, as well as no physical possession of lands in question has been obtained by the State from the appellants and the petitioner. This reflects that the appellants have raised their grievance at the threshold stage itself and for the said reason they cannot categorized as 'fence sitters', Since, the notifications were challenged before passing of the award, therefore the said preposition cannot be applicable to the cases in hand.

58. To decide the issue of obtaining possession, this Court in addition to the documents placed by the appellants on record, relies upon the law laid down by the Apex Court in the case of **Banda Development Authority Vs. Moti Lal Agarwal** reported in **(2011) 5 SCC 394** wherein certain principles were laid down which are as under:

> "*The principles which can be culled out from the above noted judgments are:*
>
> *i) No hard and fast rule can be laid down as to what act would constitute taking of possession of the acquired land.*

ii) If the acquired land is vacant, the act of the concerned State authority to go to the spot and prepare a panchnama will ordinarily be treated as sufficient to constitute taking of possession.

iii) If crop is standing on the acquired land or building/structure exists, mere going on the spot by the concerned authority will, by itself, be not sufficient for taking possession. Ordinarily, in such cases, the concerned authority will have to give notice to the occupier of the building/structure or the person who has cultivated the land and take possession in the presence of independent witnesses and get their signatures on the panchnama. Of course, refusal of the owner of the land or building/structure may not lead to an inference that the possession of the acquired land has not been taken.

iv) If the acquisition is of a large tract of land, it may not be possible for the acquiring/designated authority to take physical possession of each and every parcel of the land and it will be sufficient that symbolic possession is taken by preparing appropriate document in the presence of independent witnesses and getting their signatures on such document.

v) If beneficiary of the acquisition is an agency/instrumentality of the State and 80% of the total compensation is deposited in terms of Section

17(3A) and substantial portion of the acquired land has been utilized in furtherance of the particular public purpose, then the Court may reasonably presume that possession of the acquired land has been taken."

59. A close scrutiny of the paper panchnama available on record disclose existence of a house, a shop and standing crop, trees on field for which no notice was ever served to the dwellers of the buildings or the cultivator s of the standing crops. The respondents alleged to have obtained ex-parte possession by way of a single panchnama for the entire parcel of land with buildings, standing crop trees and lands belonging to different persons.

60. It is also evident that no physical possession was ever obtained from the appellants for petitioner's legal heirs on the field. The panchnama produced by the respondents is a mere paper work. The letters of Executive Engineer dated 30.09.2004 and 21.09.2004 to the Land Acquisition Officer and Collector that informing the fact of landowners been in possession of the land and requesting not to dispossess them from the land and also to safeguard the standing crops on field have been placed on record by the appellants are not disputed by the respondents. However, to the utter surprise of this Court, on the other hand respondents claim to obtain possession on 31.07.2004 by *panchnama* . The Board has not laid a single brick over the land in question even after expiry of 29 years i.e. from the date of issuance of notification u/S 4(1) of the Act of 1894.

61. Admittedly, no notice was ever served by the authorities to the appellants in W.A. No. 392/2009. Neither any notice of any kind has been issued to the dwellers of the house and shops nor to cultivators of the standing crops for obtaining the possession thereof. Thus, failing to comply with the mandatory procedure prescribed in law, the possession is

held not to be obtained from the appellants as well as petitioner.

62. The counsel for the respondent no. 2 and 3/Board has submitted that Sec 33 of The Karnataka Housing Board Act [referred to as "KHB Act" hereinafter) is *pari-materia* with Sec 49 of The Madhya Pradesh Housing Board Act [referred to as "MPHB Act" hereinafter].

63. To draw a distinction between both the Sections i.e. Sec 33 of KHB Act and Sec 49 of the MPHB Act, it would be apposite, to reproduce the same for convenience and ready reference:

Section 33 of KHB Act

> *33. Power to purchase land, lease, exchange or procuring by agreement.-*
>
> *(2) The Board may take steps for compulsory acquisition of any land or any interest therein, through the State Government required for the execution of a housing scheme or land development scheme in accordance with the procedure provided in the Right to fair compensation and transparency in land acquisition, rehabilitation and resettlement Act, 2013 (Central Act 30 of 2013).*

Section 49 of MPHB Act

> *49. Acquisition of land- (1) The Board may also take steps for the compulsory requisition of any land or any interest therein, required for the execution of a housing scheme in the manner provided in the Land Acquisition Act, 1894 (No.1 of 1894), and the acquisition of any land or any interest therein for the purpose of this Act shall be deemed to be acquisition for a public purpose*

with in. the meaning of the Land Act 1894 (No.1 of 1894).

64. Firstly, it is noteworthy that there is no such provision in MPHB Act for compulsory Acquisition of Land as provided in Sec 33(2) of KHB Act. Moreso, the provisions of the land Acquisition shall be strictly complied and interpreted.

65. The term provided by the KHB Act is 'acquisition' whilst the MPHB Act provides for the term 'requisition' in its mandate. These terms are very much different in their meanings and are clearly differentiated by the Apex Court in the case of **Jiwani Kumar Paraki & Others Vs. First Land Acquisition Officer & Another** reported in **(1984) 4 SCC 612** which states that:

> *"**16.** Thus, normally the expression 'requisition' is taking possession of the property for a limited period in contradistinction to 'acquisition'. This popular meaning has to be kept in mind whether mind in judging whether in a particular case, there has been in fact any abuse of the power."*

66. Orders of requisition and acquisition have different consequences. These have been noted by this Court in the observations of Mukherjee, J. in the decision in the case of **Charanjit Lal Chowdhury V. The Union of India** on 4 December, 1950] [1951 AIR 41, 1950 SCR 869], arid the distinction between 'requisition' and 'acquisition' is also evident from Entry 42 in List III of the Seventh Schedule.

67. Secondly, as per the mandate of the KHB Act, any annual housing programme as defined in Section 2(n) of the Act, is sanctioned by the State Government as per section 20 of the KHB Act.Then thereafter, the

Housing Board can move to execute the said scheme under Sec 24, and for execution of the same, the Housing Board by using its powers under Section 33(2) can either compulsorily acquire the land through State, or u/s 33(1) purchase or exchange the land. However, it is also a pre-requisite for the Board to take sanction under Section 24 as per the statute which has been relaxed by the Apex Court in the **Karnataka Housing Board and another(supra)** .

68. The said proposition is being laid down because before acquiring, the Board has already sanction from the State for its annual programme u/s 20 as well as, The Government of Karnataka as per Notification dated 15.12.1998, issued under Clause(c) of Section 3 of the Act of 1894, appointed the Housing Commissioner of KHB to perform the functions of Deputy Commissioner under Section 4 of the L.A. Act in respect of the lands to be acquired for the purposes of KHB in Bengaluru and Mysore Revenue Divisions, namely, Bengaluru Urban and Bengaluru Rural, etc., as observed in para 3 of KHB judgment.

69. Therefore when the Board itself is exercising the powers of State Government in terms of acquiring the land for the execution of Housing scheme, in such circumstances the Apex Court has rightly relaxed the pre-requisite of obtaining prior sanction under section 24 sub-clause 2.

70. It is pertinent to note here, that in para 38 of the judgment, the Apex court has observed that,

> 5. *"Obviously, for acquiring land or interest thereon, upon entering into an agreement with any person, by following anyone of the three modes prescribed under Section 33(1) prior approval of the State Government is mandatory, subject to its proviso."*

71. However, in the cases in hand, neither the MPHB Act overrides the provision of Land acquisition Act nor the Board has the power to compulsorily acquire the land for public purpose. Therefore, on this very fact, the judgment of **Karnataka Housing Board and another(supra)** is distinguishable. Hence, it can very well be said that the provisions of the KHB Act are not *pari-materia* with the provisions of MPHB act.

72. It is also pertinent to note that Hon'ble Apex Court in para 35 to 37 as well as 40 has observed that, the provisions of KHB Act has modified the Land Acquisition Act vide State Amendment Act of 1961. Therefore the provisions of KHB Act overrides the provisions of Sec 4(1) of Land Acquisition Act, which is not prevalent in State of MP.

The relevant extracts of the judgment are quoted below for convenience and ready reference:

> **35.** *In the case of compulsory acquisition of land required for the execution of a housing scheme or land development scheme obtainment of no such prior approval is prescribed under sub-Section (2) thereof. The reason is obvious. A perusal of the sub-Section (2) would 62 reveal that what is permissible thereunder is compulsory acquisition of any land or interest thereon in the manner provided in the L.A. Act as modified by the KHB Act. Section 4(1) of the L.A. Act is worthy for reference in this context and it reads thus:- "S.4 Publication of preliminary notification and power of officers thereupon.- (1) Whenever it appears to the [appropriate Government] the land in any locality [is needed or] is likely to be needed for any public purpose [or for a company], a notification to that effect shall be published in the Official Gazette [and in two daily newspapers circulating in that locality of which at least one shall be in the regional*

language], and the Collector shall cause public notice of the substance of such notification to be given at convenient places in the said locality [(the last of the dates of such publication and the giving of such public notice, being hereinafter referred to as the date of the publication of the notification)]."

36. *But then, Section 4 (1) in its application to the State of Karnataka reads as hereunder:- In Section 4 of the principal Act,- (1) In sub-section (1),- 63 (a) after the words "the appropriate Government", the words "or the Deputy Commissioner" shall be inserted; (b) for the words "notification to that effect", the words "notification stating the purpose for which the land is needed, or likely to be needed, and describing the land by its survey number, if any, and also by its boundaries and its approximate area" shall be substituted; (c) after the words "the said locality", the following sentence and explanation shall be added, namely,- "the Deputy Commissioner may also cause a copy of such notification to be served on the owner, or where the owner is not the occupier, of the land." Explanation. - The expression "convenient places" includes, in the case of land situated in a village, the office of the Panchayat within whose jurisdiction the land lies. This State amendment was brought vide Land Acquisition (Mysore Extension and Amendment Act) Act 17 of 1961. We have already noted that the Government of Karnataka as per Annexure-'A' Notification dated 15.12.1998 (marked thus in the appeal arising from SLP 64 (C)No.1361 of 2021), which was issued under Clause (c)of Section 3 of the L.A. Act, appointed the Housing Commissioner of KHB to perform the functions of Deputy Commissioner under Section 4 of the L.A. Act in respect of lands to be acquired for the purpose of KHB in Bengaluru and Mysore Revenue Divisions.*

In such circumstances, no error or defect can be attributed against his issuing preliminary notification under Section 4(1) of the L.A. Act.

37. A bare perusal of L.A. Act would reveal that the acquisition proceedings begin with issuance of a notification under Section 4(1) thereof that land in any locality is needed or is likely to be needed for any public purpose. The Notification under Section 4(1) is a formal expression of the decision to start acquisition proceedings for a public purpose. The said notification takes the concrete shape and form by publication in the official Gazette of the appropriate Government, when that be mandatory procedures and when they are strictly complied with it would be without rhyme or reason to prescribe obtainment of a further approval of the Government for such compulsory 65 acquisition by KHB. It is also to be noted that in the cases on hand subsequently, Government had issued declaration and final Notification as prescribed under Section 6 of the L.A. Act.

40. Therefore, the next question is whether L.A. Act stands modified in any manner by the KHB Act in respect any particular aspect or procedure. A bare perusal of sub-Section (2) of Section 33 itself would answer this question. Its latter limb contains 'a deeming provision'. Certainly, that is attracted only on establishing the foundational fact that the acquisition of land or interest therein is for the purposes of KHB Act. The said provision, extracted hereinbefore, would go to show that upon establishing the same the acquisition of land concerned or interest therein, as the case may be, shall have to be deemed as an acquisition for the purpose within the meaning of L.A. Act, viz., Section 3(f) of the L.A. Act that defines "public

purpose". Therefore, in terms of the same L.A. Act stands modified by KHB Act to the extent mentioned above. Hence, it would be suffice if the 68 Notification specifies that the acquisition is for the purpose of KHB. It is a fact that in the TNHB Act no provision pari materia to Section 33(2) of the KHB Act enabling the Housing Board to take steps for compulsory acquisition for the purposes of the Act/the Board as also a deeming provision relating 'public purpose', as mentioned hereinbefore, is available.

73. Thirdly, the mandate of the KHB Act (as provided in Para 36 of the judgment), the Deputy Commissioner of the Board initiates proceedings of land acquisition u/s 4 of the Land Acquisition Act. But in the State of M.P., Board Acts distinctively with the State Government as the Board can make a request for requisition of a land, but it will be under the domain of State Govt or its instrumentalities to acquire the land for the MPHB. The same has been observed by the Apex court in para 48:-

8. "It is a fact that in the TNHB Act no provision pari materia to Section 33(2) of the KHB Act enabling the Housing Board to take steps for compulsory acquisition for the purposes of the Act/the Board as also a deeming provision relating 'public purpose', as mentioned hereinbefore, is available."

74. In the present bunch of cases, it is evident that the notification for acquiring the land issued under section 4 of the Act of 1894 and subsequent notification under 6 of the Act of 1894 resulting into the passing of award has been declared *void ab initio* by the Land Acquisition Officer and Appropriate Government and has been affirmed by this court, in such, compelling circumstances, nothing remains in such acquisition as whole of the acquisition process is illegal, based on such *void-ab-initio*

notification and all the actions initiated by the State Government and its machinery, in consequence of such void notifications such as passing of award, depositing of compensation belatedly and alleged take over of possession etc. stands nullified *per se*. Therefore, the entire land acquisition proceeding is quashed and the lands in question which were subject matter of the acquisition proceedings are hereby restored in the names of their respective owners and their names be duly mutated in respective revenue records.

75. Accordingly, W.A. No. 392/200, W.A. No. 447/2009 stands allowed. The orders passed by the learned Single Judge in W.P. No. 2624/2008 as well as W.P. No. 830/1997 are set aside. Consequent thereto, W.P. No. 11149/2010 also stands allowed.

76. Before parting with the case, it is very important to mention that the primary duty of State is to work for the welfare of public at large. However, that in the present case, conduct of the officers of the State Government is such that they acted without adhering to various statutory provisions, which ought to have been complied with. Instead they have violated the same causing damages in monetary terms to the landowners so also leaving them in mental agony for years together who after being left on cross-roads by the orders passed by the State Officials kept on running from pillar to post for safeguarding their own land. Such a grave prejudice to the public would have vitiated the ultimate purpose of the land acquisition. It is apparent from the record that the land acquisition proceedings were initiated on a legalised colony where people have inhabited and on a land of ceiling by the officers of the State and the state is vicariously liable for the actions of the State officers. The State Officials are hand in glove with the officials of Madhya Pradesh Housing Board

and with ulterior motives, they have tried to deprive the landowners i.e. the common man from their constitutional right of right to property as enshrined under article 300 A of the Constitution of India.

77. In the considered opinion of this Court, it is imperative that cost should be saddled on the respondents to be payable to the appellants/petitioners as a compensation for putting them into mental stigma and compelling them to run from pillar to post for ventilation of their grievances before different forums.

78. Accordingly, the respondents are directed to pay cost of **Rs. 5,000/- (Rupees Five Thousand only)** to appellants in writ appeals as well as petitioners in writ petition within a period of 30 days from the date of receipt of certified copy of this order.

79. Let a copy of this order be kept in the docket of W.A. No. 447/2009 and W.P. No. 11149/2010.

(S. A. DHARMADHIKARI)
JUDGE

(HIRDESH)
JUDGE

sh/-