



**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE
BEFORE
HON'BLE SHRI JUSTICE SUBODH ABHYANKAR**

WRIT PETITION No. 27895 of 2019
ASHOK KUMAR JAIN AND OTHERS

Versus

INDORE DEVELOPMENT AUTHORITY AND OTHERS

Appearance:

Shri Deepesh Joshi - Advocate for the petitioners.

Shri Koustubh Pathak- Advocate for the respondent No.1.

Shri Amit Bhatia- G.A. for the State.

WITH

WRIT PETITION No. 13050 of 2020
SMT. USHA DHAKAD

Versus

***HOUSING AND ENVIRONMENT DEPARTMENT AND
OTHERS***

Appearance:

Ms. Astha Nagori- Advocate for the applicant.

Shri Amit Bhatia- G.A. for the State.

Shri Koustubh Pathak- Advocate for the respondent No.2/IDA.

Reserved on : 19.05.2025

Pronounced on : 17.07.2025

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*These petitions having been heard and reserved for orders,
coming on for pronouncement this day, the court passed the following:*



ORDER

Heard finally, with the consent of the parties.

2] This order shall also govern the disposal of both these writ petitions, as they have been filed seeking the identical relief.

3] For the sake of convenience, the facts as narrated in W.P. No.27895/2019 are being taken into consideration.

4] This petition has been filed by the petitioner under Article 226 of the Constitution of India, seeking the following reliefs:-

“(i) The Hon’ble Court be pleased to issue a writ of Certiorari to call for the entire records from the for perusal;

(ii) To declare that the entire exercise done by the respondent No.1 in first forcefully acquiring the land situated at Khasra No.257 & 259 Gram Bhamori Dube Agra Mumbai Road, Indore, on the strength of the paper possession and then allotting it to third parties and delivering the possession thereof becomes an action *void abinitio* and nonest besides being grossly illegal and without jurisdiction;

(iii) Direct the respondents to give possession of the land admeasuring 4.0833 Acres (177870 Sq. ft.) at Khasra No 257, 259 at Gram Bhamori Dube Agra Mumbai Road Indore OR alternatively give another piece of land admeasuring 4.0833 Acres (177870 Sq.ft.) in municipal limits of city of Indore OR alternatively give compensation in accordance with the of law at the rate as exists today in lieu of the land forcefully and illegally possessed;

(iv) Any other relief that this Hon’ble Court deems fit & proper under given facts and circumstances of the case may also be granted in favour of the petitioner.”

5] In brief, the facts of the case can be narrated through the chronology of the events, which are as under :-

07.05.1962	The petitioner's mother Smt. Sohan Kumari Sankhla purchased a land admeasuring 5 Acres forming part of Khasra No. 257 & 259 from the erstwhile owner of the said land Shri Shaligram Pandit (Annexure P-1) & (Annexure P-2).
19.07.1963	Indore Improvement Trust (as it stood on that



	date) published a Notification regarding acquisition of the land in question under Section 46(1) of Indore Improvement Trust Act 1960 under purported Scheme No. 54 (Annexure P-4).
24.02.1968	Indore Improvement Trust proposed to withdraw the Scheme No. 54 due to paucity of the fund (Annexure P-6).
21.08.1970	The petitioner also purchased 2 Acres of land forming part of Khasra No. 257 & 259 (Annexure P-3).
10.06.1971	The respondent No.2 officially accepted the said proposal and declared that the land owners would be entitled to develop their land as per their own convenience by depositing Development Charges (Annexure P-7).
09.11.1973	The respondent No.2 published a Notification again regarding acquisition of the land (Annexure P-9) under M.P. Nagar Tatha Gram Nivesh Adiniyam.
11.08.1995	The respondent No.2 Housing and Environment Department wrote a letter to the respondent No.1 Indore Development Authority to release the land of approx. 5 Acres from the proposed acquisition (Annexure P-10).
13.05.1996	A Writ Petition No. 1181/88 was entertained by the Hon'ble High Court, wherein, it was directed to take a decision on the representations submitted by the petitioners therein on the petition filed by the members of the family of the petitioner (Annexure P-11).
12.07.1996	The respondent No.1 Indore Development Authority, while admitting the fact that around 7.50 Acres of land was acquired by the respondent No.1 in the name of Scheme No. 54 illegally and only 3.18 Acres of land



	out of 7.50 acres of land forming part of Khasra No. 257 & 259 remained vacant and un-allotted and thus offered to deliver 3.18 Acres of land to the petitioner and sought consent of the petitioner for the said proposal and the petitioner was also offered alternative land in the nearby Scheme on 'No Profit No Loss' basis (Annexure P-13).
15.07.1996	The petitioner gave the consent to the respondent No.1 (Annexure P-14).
24.02.1997	The State of Madhya Pradesh/ respondent No.2 while acknowledging the fact that in view of the earlier order dated 11.08.1995 modified on 30.09.1995, the representation of the petitioner be decided in the light of the orders passed in various Writ Petitions (Annexure P-15).
20.03.1997	The respondent No.2, acting through Addl. Secretary, directed Housing and Environment Department, to release 7.50 Acres of land in view of the consent given by the petitioner on 12.07.1997 (Annexure P-16).
23.10.1997	Writ Petition No. 511/97 was filed on account of the inaction on the part of the respondent No.1 Indore Development Authority, which was disposed of and the respondents were directed to decide the dispute within 2 months.
18.03.1998	The Addl. Secretary reviewed the decision dated 20.03.1997 on the strength of a Board Meeting conducted on 17.02.1998, and refused to release the land (Annexure P-18) and the Additional Secretary confirmed the same on 18.03.1998.
27.03.1998	The said decision was conveyed to the respondent No.1 (Annexure P-19).
24.06.1998	In the Contempt (Civil) Petition No. 69/98, the Hon'ble High Court quashed both the Board Resolutions dated 17.02.1998 and the



	order dated 27.03.1998, and directed the respondents to decide the dispute in terms of letter dated 26.09.1997 (Annexure-R/10) issued by Housing and Environment Department within 3 months from that date (Annexure P-20).
04.07.1998	Instead of complying the order dated 24.06.1998, the IDA filed and complaint against the petitioners and some officers of IDA and other Public Servants under the Prevention of Corruption Act which was registered as Special Case No. 44/2018 by the Special Judge Bhopal on the ground that the subject land was acquired by the IDA and the accused persons, in connivance, have sold the same to other persons and thus committed misconduct.
16.05.2019	All accused including petitioners were acquitted by the Court holding that no offence was committed by the Accused named therein, and in fact the order of releasing the land from acquisition was duly passed. <u>Annexure P/21</u> .

CONTENTIONS OF THE PETITIONERS.

1. Thus, in the light of the aforesaid events, the petitioner's contention is as under :-
 - (i) That, the disputed land forming part of Khasra No. 257 & 259 admeasuring 7.5 Acres has already been illegally acquired by the respondent No.2 without following due process of law and in contempt of the orders passed by this Hon'ble High Court and various Lease Deeds were executed in favour of third parties excluding the petitioner as would be evident from the accompanying sale deeds/lease deeds filed along with an interim application.



- (ii) That, despite being aware of the fact that some exercise was done by the respondents to acquire the land illegally and to cover the said illegal acts, awards were also allegedly passed but it was an eye wash only as the land in question was already released from acquisition. (Although, it is also found that there is no reference of any award having been passed in the entire petition)
 - (iii) That, the petitioner is dispossessed from his own land since 04.04.1975 and admittedly, the possession of the aforesaid piece of land is still not with the petitioner.
 - (iv) That, the order dated 24.06.1998 (**Annexure P-20**) passed by this Court in Contempt Petition (Civil) No. 69 of 1998 has attained finality and not complied yet by the respondent No.1.
2. That, in view of the aforesaid admitted facts and in view of the order dated 24.06.1998, passed by this Court, the *status quo ante* as it stood on 20.03.1997, is restored as the subsequent Resolution passed by the respondent No.1 on 17.02.1998 and the order passed by the respondent No.2 on 27.03.1998 (**Annexure P-19**), have been quashed by this Court. The High Court in the said Contempt Petition No.69 of 1998 also directed the respondents to comply with the order passed in Writ Petition No.511/97 dated 23.10.1997 (**Annexure P-17**), and decide the dispute in terms of letter dated 26.09.1997, within three months under intimation of petitioner and to confirm the release of the subject land. But even the said decision was not taken by the respondents and instead a criminal prosecution was initiated against the petitioner by lodging a false and frivolous complaint alleging that the land acquired by Indore Development Authority/respondent No.1 has been sold by the accused persons



therein including petitioner and his other relatives and consequently, Special Police Establishment of Lokayukta filed a Charge Sheet in the Court of Additional Sessions Judge (Special Judge), Bhopal on 04.07.1998, and a Special Case No.44/18 was consequently registered and tried by the said Hon'ble Special Court, Bhopal.

3. That, in view of the additional documents filed along with the list by the petitioner, the land belonging to the petitioner situated and forming part of Khasra No. 257 & 279 have been leased out to various stakeholders, who have constructed malls and multistoried buildings on the said piece of land as evident from the map approved by the Town & Country Planning and filed as documents/annexures by the petitioner.
4. That, the respondents have also not contested the matter and offer made to the petitioner on 20.03.1997 (Annexure-P/16) still holds good. According to the order dated 20.03.1997, passed by the respondent No.2 acting through its Additional Secretary, the offer given by the respondent No.1 on 12.07.1996 (Annexure P-13) and the consent given by the petitioner on 15.07.1996 (Annexure P-14), the petitioner is entitled to get 4.0833 acres of land from the respondent No.1. Alternatively, the petitioner is entitled to get fair compensation as per the provisions of Right to Fair Compensation & Transparency in Land Acquisition Rehabilitation & Resettlement Act, 2013, keeping in view of the current Collector's rate of the said area.
5. That, the petitioner has not only been deprived of his land by such unlawful enrichment by the respondents, but the petitioner was also compelled to face the trauma of trial for almost 22 years, wherein, the petitioner was finally acquitted of all the charges framed by the



learned Sessions Judge, and it was also found that the land belonging to the petitioner was not forming part of Scheme No.54 and according to para 123 of the said Judgment, even the prosecution always believed that the land belonging to the petitioner was actually never acquired by the respondent No.1 and the same was relieved from the land acquired under Scheme No.54. But despite having not acquired the said piece of land under Scheme No.54 belonging to the petitioner by following due process of law and compensating the cost of the land to the petitioner, the respondent no.1 under the garb of such frivolous prosecution leased / sold out the same to third parties and the petitioner was deprived of the said property belonging to him and his family and was left to face the prosecution as well.

6. That, despite the acquittal order passed by the learned Sessions Judge, Bhopal, the request submitted by the petitioner vide Annexure P-22, is not even responded and the reply to the instant petition is also not filed confirming the finding arrived by the learned Sessions Judge in Para 15 has observed that no action whatever appears to have been taken by the respondents after the order passed by this Court in the Contempt (Civil) Petition on 24.06.1998. Thus, the inevitable conclusion arrived from the aforesaid discussions is that the land was unlawfully taken into possession by the respondent No.1 and despite the order of releasing the same passed by the respondent No.2, and despite the quashment of the order of non-release of the aforesaid land by the this Court, neither the compensation has been paid to the petitioner, nor the petitioner has been allotted alternative land admeasuring 4.0833 acres depriving his valuable fundamental rights of the property. The respondents, in



collusion with each other, not only have deprived the petitioner from their land admeasuring 4.0833 acres, but have also compelled them to face the prosecution on false and frivolous charges for more than twenty-two years and thereafter once the petitioner requested for release of their land or alternatively pay compensation, the same has yet not been responded leaving the petitioner with no remedy except to knock the doors of this Court.

7. That, in view of the admitted facts that the land situated and forming part of Khasra No. 257 & 259 admeasuring 4.0833 Acres belonging to the petitioner is currently in possession of other leaseholders by virtue of the lease executed by the respondent No.1, the said land cannot be now released from the aforesaid construction and deliver back to the petitioner, the only alternative left for the respondents is to allot alternative piece of land to the proportionate value of the land situated at Khasra No. 257 & 279 treating the same to be a commercial land prevailing as on today or alternatively, pay compensation calculated as per the provisions of Right to Fair Compensation & Transparency in Land Acquisition Rehabilitation & Resettlement Act, 2013.

CONTENTIONS OF THE RESPONDENT.

8. On the other hand, the respondent No.1 has come up with the defence that a Joint Tribunal was setup after acquisition of the land of the petitioner and the said Joint Tribunal had passed an award dated 30.07.1992 (Annexure R/3) under Section 72(3) of M.P. Town Improvement Trust Act, 1960 (hereinafter referred to as 'the Act of 1960'), fixing the compensation of Rs.7,000/- per acre against the said acquisition, and being aggrieved of the said award the respondent No.1 IDA filed a Miscellaneous Appeal No.32/1993



before this Court under Section 147 of the Act of 1960, but the same was dismissed in M.A. No.27/1993 on 04.03.1997 by the Division Bench of this Court. Thus, the award of compensation has attained finality.

9. In rebuttal, the petitioner's contention is that the aforesaid defence of passing of the award and payment of compensation is *per se* incorrect as once the State in exercise of powers conferred under Sections 24, 52, 56, 72 and 73 of the M.P. Nagar Tatha Gram Nivesh Adhiniyam, 1973 (hereinafter referred to as 'the Act of 1973') vide their order dated 11.08.1995 (Annexure R/6) and then again on 20.03.1997 (Annexure R/9) have admitted to have released the land of the petitioner from such alleged acquisition then the award passed thereafter becomes redundant and *void ab initio*. Moreover, the respondents are estopped from taking shelter of the common award passed after releasing the subject land from acquisition. The powers of the State Government under Section 52 of the Act of 1973 are absolute and binding on all concerned. Section 73 of the same also confers such powers on the State to give directions, hence, the orders passed by the State would supersede the proceedings of arbitration and the said facts were suppressed by the respondent No.1 in the said arbitral proceedings, and the subject land was shown to be wrongly included in the list of acquired land despite clear orders passed by this Court quashing the alleged acquisition. Hence, the reply filed by the respondent No.1 is of no assistance to the respondents. Hence, the petition deserves to be allowed.

FINDINGS RECORDED BY THIS COURT.

- 6] In the considered opinion of this Court, the grievance of the petitioner is that despite alleged illegal possession of the land



belonging to the petitioner at Khasra Nos.257 and 259, situated at Gram Bhamori Dubey, Agra-Mumbai Road, Indore, ad-measuring around 177870 sq.ft., 4.0833 acres, no compensation has been paid to him, nor any alternative land has been provided to him corresponding to the value of the land originally belonged to the petitioner prevailing at today's rate. The petitioner is also claiming the compensation in terms of the provisions of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as the 'Act of 2013')

7] From the aforesaid narration of facts, the important fact which can be culled out is that vide Annexure-P/13, the Indore Development Authority gave a letter to the petitioner on 12.07.1996, asking his consent. The same reads as under:-

“इंदौर विकास प्राधिकारी इंदौर

7 रेसकोर्स रोड, इंदौर 452003 (म.प्र.)

क्रमांक 11631

दिनांक 02 JUL 1996

प्रति,

- 1 श्री विजयकुमार पिता स्व. राजमल जैन
 - 2 श्री वीरेन्द्र कुमार पिता स्व. राजमल जैन
 - 3 श्रीमती उषा पति श्री परसरामचन्द्र धाकड
 - 4 श्रीमती आशा पति स्व. श्री प्रतापसिंह पनगारिया
 - 5 श्री अशोक पिता स्व. श्री राजमल जैन
 - 6 श्री सुशील पिता स्व. श्री राजमल जैन
- निवासी 1 व 2 साकेत मनीषपुरी एक्सटेंशन इंदौर

विषय:- योजना क्रमांक 54 में सम्मिलित ग्राम भगोरी दुबे तहसील इंदौर के सर्वे क्रमांक 257 पार्ट एवं 259 पार्ट की 7.50 एकड भूमि बाबत।

संदर्भ:- अतिरिक्त सचिव म.प्र. शासन, आवास एवं पर्यावरण विभाग, भोपाल का



पत्र क्रं. 5019/एम/95/32/95 दिनांक 11.08.95

उपरोक्त विषय एवं संदर्भ में म.प्र. शासन द्वारा जारी संदर्भित पत्र की छायाप्रति संलग्न है।

इस संबंध में आपको सूचित किया जाता है कि प्राधिकारी द्वारा विषयांकित 7.50 एकड़ भूमि में से अब तक पांच व्यापारी एसोसिएशन एवं थोक किराना व्यापारी एसोसिएशन के सदस्यों को आवंटित भूखंडों को छोड़कर उक्त भूमि में यो.क्र. 54 पी.यु. 4 अपठीत के भूखंड क्रं. 299ए, 299, 301, 205 एवं 306 की भूमि कुल क्षेत्रफल 12870 वर्गमीटर या 3.19 एकड़ किसी को आवंटित नहीं होने से उपलब्ध है जो आपको दी जा सकती है। शेष 4032 एकड़ भूमि उक्त यो. क्रं. 54 में अब तक जो भूखंड आवंटित किये गये हैं उसमें एवं यदि उसमें आवश्यक क्षेत्रफल की भूमि उपलब्ध न हो तो आसपास की योजना में लाभ न हानि के आधार पर शासन निर्देश द्वारा दी जा सकती है।

अतः सर्वप्रथम आप यह अवगत कराने का कष्ट करें कि आप शासन के संदर्भित पत्र में दिये गये निर्देशानुसार कार्यवाही करने पर विवाद का निराकरण करने हेतु सहमत हैं। आपकी ओर से सहमति प्राप्त होने पर प्रकरण पूर्ण तथ्यों अपठीत प्राधिकारी बोर्ड के अपठीत

आपके द्वारा अनुमोदित

संलग्न - उपरोक्तानुसार”

8] To the aforesaid letter, the petitioner gave his consent on 15.07.1996. Thereafter, the Additional Secretary vide his order dated 24.02.1997 gave the following directions to the Chief Executive Officer of the Indore Development Authority:-

“मध्यप्रदेश
आवास एवं पर्यावरण विभाग
मंत्रालय

क्रमांक /32/97

भोपाल दिनांक 24 फवरी 1997



प्रति,

मुख्य कार्यपालन अधिकारी,
इंदौर विभास प्राधिकरण
इंदौर

.....
विषय:- योजना क्रमांक 54 में श्री अशोक कुमार जैन एवं अन्य के पक्ष में भूमि मुक्त किये जाने हेतु शासन के पत्र क्रमांक 5019/एम/96/32/95 दिनांक 11/08/95 व पत्र दिनांक 30/09/95 एवं शासन के पत्र दिनांक 13/09/96 के द्वारा कियान्वयन स्थगित किये जाने संबंधी निर्देश।

इंदौर विकास प्राधिकरण एवं श्री अशोक कुमार जैन पक्षकारों की सुनवाई करने पर प्रकरण का सक्षम रूप में परीक्षण करने के पश्चात पत्र क्रमांक 2/स्टेनो/32/96, दिनांक 13/09/96 के द्वारा दिये गये स्थगन को निरस्त किया जा है। साथ ही इंदौर विकास प्राधिकरण को यह भी निर्देश दिये जाते हैं कि शासन के पत्र क्रमांक 5019/एम/96/32/95 दिनांक 11 अगस्त 1995 एवं संशोधन पत्र दिनांक 30/09/95 के द्वारा दिये गये सुझाव/निर्देश के परिपेक्ष्य में प्राधिकरण द्वारा पक्षकारों के साथ दिनांक 12 जुलाई 1996 के द्वारा किये गये पत्राचार एवं पक्षकारों द्वारा प्रस्तुत पत्र दिनांक 17/07/96 के ध्यान में रखते हुए ही अपने स्तर से दिनांक 28/02/97 तक नियमानुसार पालन किया जाकर माननीय उच्च न्यायालय एवं शासन को सूचित किया जाये।

(आर.डी. अहेरदार)

अतिरिक्त सचिव

म.प्र. शासन आवास एवं पर्यावरण विभाग

पृ. क्रमांक/547/32/97

भोपाल दिनांक 24 फरवरी 1997

प्रतिलिपि:-

श्री अशोक कुमार जैन, श्री विजय कुमार जैन निवासी साकेत मनीषपुरी इंदौर व आमुख्त्यार श्री मनीष कुमार जैन व श्री शशिभूषण खण्डेलवाल निवासी- 12/1 आर.एस भण्डारी मार्ग इंदौर की ओर सूचनार्थ अग्रेषित।”

9] In W.P. 511/1997, which was filed seeking the following relief:-

“In the facts and circumstances of the case the petitioner most respectfully prays that this Hon’ble Court may kindly be pleased



to:-

- i) issue appropriate writ, direction or order quashing the Annexures P/2, P/12, P/13, P/16 and P/17 thereby quashing allotment/release of any land to the respondents 5 to 10.
- ii) issue appropriate writ, direction or order to the respondent no. 1 to refer the case to the CBI for appropriate inquiry and thereafter filing challans for appropriate punishment to respondent nos. 2 to 12.
- iii) issue appropriate writ, direction or order directing the respondent no. 1 to constitute departmental enquiry against the respondent nos. 2 to 4 for indulging into ground of largesses to the respondents 5 to 10 without competence, jurisdiction and authority of law on the basis of enriching their pockets under oblique reasons,
- iv) any other and further orders which this Hon'ble Court may deem fit to pass.
- v) allow this petition with costs."

The following order was passed by the Division Bench on 23/10/1997:-

"On a consensus emerging from the arguments advanced by the parties, we dispose of this petition with following direction:-

"Since the State Government has passed orders on 26.09.97 requiring Indore Development Authority to decide the dispute in accordance with law, we direct the Authority to pass appropriate orders and decide the dispute within two months from today keeping in regard the whole history of the matter including previous agreements between the parties and the judgments of court if any"

The parties shall bear their own costs.

C.c. today."

10] So far as the order passed by this Court in Contempt Petition (Civil) No.69/1998 dated 24.06.1998 is concerned, which was filed for non-compliance of the order dated 23.10.1997 passed in W.P. 511/1997, the following directions were made:-

"21. Hence on a careful consideration, we thus conclude that we should not exercise our jurisdiction to punish and instead should deem it proper to drop the case and discharge notices on apology made bona fide and to the satisfaction of this Court in terms of proviso to Section 12 of the Act but with undernoted directions and writs:-

- (i) Resolution dated 17/02/1998 is quashed.
- (ii) Order dated 27/03/1998, passed by State Government on linchpin of this resolution is quashed.
- (iii) Indore development authority/ non applicants are directed to



comply with the order dated 23.10.1997, passed in Writ Petition No.511 of 1997 and decide dispute in terms of letter dated 26.09.1997, now within THREE MONTHS from today under intimation to the petitioner of aforesaid petition who may have liberty to proceed further if decision is contrary to law or direction.”

11] It is also found that the criminal prosecution which was initiated against the petitioner has also resulted in acquittal in Special Case No.44/2018 vide the judgement dated 16.05.2019, passed by the Additional Sessions Judge (Special Judge), Bhopal.

12] It is also found that so far as, the respondents’ stand is concerned, they have clearly resiled from their stand taken in various proceedings as aforesaid in the High Court, and now they have relied upon the award dated 30.07.1992 (Annexure-R/3) passed by the Joint Tribunal, constituted under Section 72(3) of the Act of 1960, fixing the compensation @ 7,000/- per acre against the said acquisition. The said order was also challenged by the IDA in an appeal M.A.No.32/1993 (Annexure-R/4-A), filed under Section 147 of the Act of 1960. Since many such appeals were filed, the final order was passed in the main appeal M.A.No.27/1993, which was dismissed by the Division Bench of this Court vide order dated 04.03.1997 (Annexure-R/4-B). Thus, the award dated 30.07.1992 (Annexure-R/3) became final and binding on the parties. As per the reply filed by the IDA the awarded amount have already been paid vide documents Annexure-R/20, which have not been rebutted by the petitioner.

13] It is surprising that despite passing of the aforesaid award dated 30.07.1992 (Annexure-R/3), by the Joint Tribunal, and its confirmation by the Division Bench of the High Court in M.A.No.27/1993 vide order dated 04.03.1997(Annexure-R/4-B), none



of the parties to the *lis*, viz., neither the petitioners nor the IDA or the State Government, ever raised this issue of passing of the aforesaid award, and its confirmation by this Court.

14] This Court is of the considered opinion that when the final award passed under Section 72 (3) of the Act of 1960 had already become final and binding on the parties, it was their bounden duty to bring to the notice of this Court, in the aforesaid proceedings/contempt proceedings that an award has already been passed on 30.07.1992, which has also been affirmed by this Court on 04.03.1997, and thus, their failure to inform this Court about the same, which also suited their purpose, cannot to be allowed to be played in their favour. This Court holds that such non-communication of the aforesaid award and its confirmation by the High Court has the serious consequences of nullifying all the orders passed by this Court in W.P. No.1181/1998 dated 13.05.1996, M.P. No.885/1987 dated 19.04.1994, W.P. No.511/1997 dated 23.10.1997 and Conc No.69/1998 dated 24.06.1998, as also the communications regarding consent issued by the IDA/State.

15] Regarding the finality of an order passed by a competent authority/court, this Court can fruitfully rely upon the following decisions of the Supreme Court:-

1. *Krishnadevi Malchand Kamathia v. Bombay Environmental Action Group*, (2011) 3 SCC 363 :

“18. In *Sultan Sadik v. Sanjay Raj Subba* [(2004) 2 SCC 377 : AIR 2004 SC 1377] , this Court took a similar view observing that once an order is declared non est by the court only then the judgment of nullity would operate *erga omnes* i.e. for and against everyone concerned. Such a declaration is permissible if the court comes to the conclusion that the author of the order lacks inherent jurisdiction/competence and therefore, it comes to the conclusion



that the order suffers from patent and latent invalidity.

19. Thus, from the above it emerges that even if the order/notification is void/voidable, the party aggrieved by the same cannot decide that the said order/notification is not binding upon it. It has to approach the court for seeking such declaration. The order may be hypothetically a nullity and even if its invalidity is challenged before the court in a given circumstance, the court may refuse to quash the same on various grounds including the standing of the petitioner or on the ground of delay or on the doctrine of waiver or any other legal reason. The order may be void for one purpose or for one person, it may not be so for another purpose or another person.

2. Kerala v. M.K. Kunhikannan Nambiar Manjeri Manikoth, (1996) 1 SCC 435

“8. In Halsbury's Laws of England, 4th Edn., (Re-issue) Vol. 1(1) in para 26, p. 31, it is stated, thus:

“If an act or decision, or an order or other instrument is invalid, it should, in principle, be null and void for all purposes; and it has been said that there are no degrees of nullity. Even though such an act is wrong and lacking in jurisdiction, however, it subsists and remains fully effective unless and until it is set aside by a court of competent jurisdiction. Until its validity is challenged, its legality is preserved.”

In the Judicial Review of Administrative Action, De Smith, Woolf and Jowell, 1995 Edn., at pp. 259-60 the law is stated thus:

“The erosion of the distinction between jurisdictional errors and non-jurisdictional errors has, as we have seen, correspondingly eroded the distinction between void and voidable decisions. The courts have become increasingly impatient with the distinction, to the extent that the situation today can be summarised as follows:

(1) All official decisions are presumed to be valid until set aside or otherwise held to be invalid by a court of competent jurisdiction.”

Similarly, Wade and Forsyth in Administrative Law, Seventh Edn., 1994, have stated the law thus at pp. 341-342:

“... every unlawful administrative act, however invalid, is merely voidable. But this is no more than the truism that in most situations the only way to resist unlawful action is by recourse to the law. In a well-known passage Lord Radcliffe



said:

‘An order, even if not made in good faith, is still an act capable of legal consequences. It bears no brand of invalidity upon its forehead. Unless the necessary proceedings are taken at law to establish the cause of invalidity and to get it quashed or otherwise upset, it will remain as effective for its ostensible purpose as the most impeccable of orders.’

.....

The above statement of the law supports our view that the order of the Board dated 28-6-1977, declining to implead respondents 3 and 4 (which stood confirmed in revision) concludes the matter against respondents 3 and 4.”

3. *M. Meenakshi v. Metadin Agarwal*, (2006) 7 SCC 470

17. The competent authority under the 1976 Act was not impleaded as a party in the suit. The orders passed by the competent authority therein could not have been the subject-matter thereof. The plaintiff although being a person aggrieved could have questioned the validity of the said orders, did not chose to do so. Even if the orders passed by the competent authorities were bad in law, they were required to be set aside in an appropriate proceeding. They were not the subject-matter of the said suit and the validity or otherwise of the said proceeding could not have been gone into therein and in any event for the first time in the letters patent appeal.

18. It is a well-settled principle of law that even a void order is required to be set aside by a competent court of law inasmuch as an order may be void in respect of one person but may be valid in respect of another. A void order is necessarily not non est. An order cannot be declared to be void in a collateral proceeding and that too in the absence of the authorities who were the authors thereof. The orders passed by the authorities were not found to be wholly without jurisdiction. They were not, thus, nullities.

4. *Sneh Gupta v. Devi Sarup*, (2009) 6 SCC 194

53. There cannot be any doubt that even if an order is void or voidable, the same must be set aside, as has been held by this Court in *M. Meenakshi v. Metadin Agarwal* [(2006) 7 SCC 470] and *Sultan Sadik v. Sanjay Raj Subba* [(2004) 2 SCC 377] .

xxxxxxx

67. We are concerned herein with a question of limitation. The



compromise decree, as indicated hereinbefore, even if void was required to be set aside. A consent decree, as is well known, is as good as a contested decree. Such a decree must be set aside if it has been passed in violation of law. For the said purpose, the provisions contained in the Limitation Act, 1963 would be applicable. It is not the law that where the decree is void, no period of limitation shall be attracted at all. In *State of Rajasthan v. D.R. Laxmi* [(1996) 6 SCC 445] this Court held: (SCC p. 453, para 10)

“10. The order or action, if ultra vires the power, becomes void and it does not confer any right. But the action need not necessarily be set at naught in all events. Though the order may be void, if the party does not approach the Court within reasonable time, which is always a question of fact and have the order invalidated or acquiesced or waived, the discretion of the Court has to be exercised in a reasonable manner. When the discretion has been conferred on the Court, the Court may in appropriate case decline to grant the relief, even if it holds that the order was void. The net result is that extraordinary jurisdiction of the Court may not be exercised in such circumstances. It is seen that the acquisition has become final and not only possession had already been taken but reference was also sought for; the award of the Court under Section 26 enhancing the compensation was also accepted. The order of the appellate court had also become final. Under those circumstances, the acquisition proceedings having become final and the compensation determined also having become final, the High Court was highly unjustified in interfering with and in quashing the notification under Section 4(1) and declaration under Section 6.”

68. Yet again, in *M. Meenakshi v. Metadin Agarwal* [(2006) 7 SCC 470] this Court held: (SCC p. 478, para 18)

“18. It is a well-settled principle of law that even a void order is required to be set aside by a competent court of law inasmuch as an order may be void in respect of one person but may be valid in respect of another. A void order is necessarily not non est. An order cannot be declared to be void in a collateral proceeding and that too in the absence of the authorities who were the authors thereof. The orders passed by the authorities were not found to be wholly without jurisdiction. They were not, thus, nullities.”

69. Yet again, in *Sultan Sadik v. Sanjay Raj Subba* [(2004) 2 SCC 377] this Court held: (SCC p. 390, para 39)

“39. An order may be void for one and voidable for the other. An invalid order necessarily need not be non est; in a given situation it has to be declared as such. In an election petition, the High Court



was not concerned with the said issue.”

(Emphasis Supplied)

16] In such circumstances, when the facts of the case are tested on the anvil of the aforesaid decision, it would be apparent that the award dated 30.07.1992 (Annexure-R/3), passed by the Joint Tribunal constituted under the provisions of the Act of 1960, which has also been affirmed by the Division Bench of this Court in M.A.No.27/1993 dated 04.03.1997, whereby the appeal of the IDA was dismissed, had already attained finality, and cannot be bypassed in any proceedings under any provision of the law, including a writ under Article 226 of the Constitution of India. This Court is also of the considered opinion that had this fact of passing of the award dated 30.07.1992, by the Joint Tribunal, and dismissal of IDA's appeal No.27/1993 on 04.03.1997, been brought to the notice of this Court in the aforesaid writ/contempt proceedings, their outcome might have been different. Similarly, any order passed under the provisions of M.P. Nagar Tatha Gram Nivesh Adhiniyam, 1973 is also of no avail to the petitioner if it is passed without adverting to the effect of the award passed under the Act of 1960. So far as the acquittal of the petitioner and the officials of the IDA in the criminal case is concerned, it is inconsequential and has no bearing on the outcome of this case.

17] Thus, this Court has no hesitation to conclude that all the orders as aforesaid, passed by this court, oblivious of the award dated 30.07.1992 and the order passed in M.A.No.27/1993 dated 04/03/1997, as also the various communications made by the IDA/State in the said proceedings, were also *non est* and could not be enforced.



18] Resultantly, the petition, *sans* merits, is hereby *dismissed*.

No orders as to costs.

(SUBODH ABHYANKAR)
JUDGE

Bahar