

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Writ Petition (M/S) No.93 of 2014

Yukti Constructions Pvt. Ltd.Petitioner

Versus

State of Uttarakhand & Ors.Respondents

Mr. Aditya Singh, Advocate for the petitioner
Mr. J.P. Joshi, Additional Advocate General along with Mrs. Anjali Bhargava, Additional C.S.C. and Mr. Sushil Vashishtha, Standing Counsel for the State.

Chronological list of cases:-

- (i) (2009) 15 SCC 705
- (ii) reported in (2010) 14 SCC 309
- (iii) 1987 (supp) Supreme Court Cases 687
- (iv) 1994 SCC (1) 1
- (v) (2010) 2 SCC 114
- (vi) (2010) 4 SCC 728
- (vii) (2016) 3 SCC 70
- (viii) (2019) 1 Scale 700
- (ix) 2009(10) SCC 501
- (x) (2010) 13 SCC 98
- (xi) AIR 2008 SC 901
- (xii) (2006) 5 SCC 255

JUDGMENT

Hon'ble Lok Pal Singh, J.

By means of present writ petition, moved under Article 226 of the Constitution of India, petitioner has sought the following reliefs:-

- (i) Issue a writ, order or direction in the nature of certiorari quashing the notifications under Sections 4 and 6 of the Land Acquisition Act issued on 21.09.1987 and 30.01.1988 (Annexure P-1).
- (ii) Issue a writ, order or direction in the nature of certiorari quashing the orders of the Collector/District Magistrate, Dehradun dated 11.03.2013 and 22.04.2013 (Annexure nos.17 and 16 respectively to this writ petition).

- (iii) Issue a writ, order or direction in the nature of mandamus directing the respondents not to dispossess the petitioner from plots bearing Khewat No.1 and Khasras included in it situated in Village Rikholi, Pargana Pachwadun, Tehsil and District Dehradun, having total area of 187.4890 hectares equivalent to 491 acres.
- (iv) Issue any other writ, order or direction which this Hon'ble Court may deem just and proper in the facts and circumstances of the case and in the interest of justice;
- (v) Award cost of petition to the petitioner.

2. Factual matrix of the case is that vide Notification dated 21.09.1987 issued under Section 4(1) read with sections 17(1) and 17(4) of the Land Acquisition Act, 1894 (*hereinafter to be referred as the Act*), the respondents proposed to acquire 172.91 acres of land situated at Park Estate, Pargana Pachwadun, Mussoorie, for a public purpose, namely, for the development of tourist activity in district Dehradun. Since the land was alleged to have been urgently required by the respondents/State, the provision of Section 17(1) of the Act was invoked and the inquiry under Section 5-A of the Act was dispensed with. Thereafter, declaration under Section 6 r/w Section 17(1) and (4) of the Act was made on 30.01.1988. On 19.02.1991, respondent no.2 the Special Land Acquisition Officer, Dehradun passed an award.

3. The petitioner claims to be owner and recorded tenure holder of the aforesaid land and contends that it has purchased plots bearing Khewat (esrstwhile khasra no.1) khasra nos.1298 to 1331 situated in Village Rikholi, Pargana Pachwadun, Tehsil and District Dehradun, having total area of 187.4890

hectares equivalent to 491 acres, through various sale deeds, from M/S U.B. Engineers, Arun Dev City Space and four others original proprietors i.e. Dinesh Singh, Harish Kumar Sehgal, Lalit Kumar Sehgal and Bhanu Pratap, all of who collectively and individually were proprietors of and in possession of the total area of 491 acres purchased by the petitioner. Petitioner contends that the villagers/tenure holders of Village Rikholi had executed sale deeds in favour of M/s U.B. Engineers on 06.10.1997 admeasuring 1000 bighas and on 30.12.1997 admeasuring 1000 bighas. It is also stated that in this regard there is a report of the Lekhpal of Village Rikholi dated 09.11.2000 which shows that M/s U.B. Engineers Pvt. Ltd. had purchased the land of Village Rikholi and the possession of the same had been transferred to U.B. Engineers, whereupon an order was passed by the Tehsildar on 09.11.2000 for the mutation of the name of M/s U.B. Engineers in the revenue records. It is also stated that by virtue of registered sale deeds dated 11.01.2007, 25.09.2009, 25.11.2009, 11.01.2010, 05.11.2009 and 06.08.2010 executed by the aforesaid recorded owners, the petitioner became the owner and in possession of the land in dispute.

4. Petitioner moved application for mutation of its name on the basis of sale deed dated 24.01.2007, whereupon the Lekhpal physically verified the land status and submitted a report. The collector Dehradun, on the basis of report, passed an order dated 24.06.2008, after due publication of notice inviting objections under Section 39 of the Land Revenue Act, for mutation of the name of the petitioner in the revenue record over the land in question. Subsequently, petitioner moved an application for demarcation of its entire land under Section 41 of the Land Revenue Act

whereupon the Assistant Collector 1st Class/S.D.M. Sadar, Dehradun passed an order for demarcation of the petitioner's land on 10.07.2009. It is stated that the said order has confirmed the said land to be Khewat-1, Khasra 1298-1331, Rikholi. It is further stated that on 21.03.2013, all of a sudden, certain officials along with S.D.M. Mussoorie visited the petitioner's land and began to take measurements of the petitioner's land without any authority or prior notice to the petitioner. On enquiry by the petitioner, it was informed by the State/revenue officials that possession of a part of the petitioner's land had already been acquired earlier for Tourism Department. Subsequent to such action, on 25.03.2013, the petitioner made a request to the District Magistrate/Collector, Dehradun requesting to restrain the Tourism Department from taking possession of the said land from the petition. The Collector, vide reply dated 22.04.2013, informed the petitioner that the land in dispute had already been acquired for the Tourism Department, thus, it is not possible for him to stop further action of taking possession of the land of the petitioner and the petitioner is at liberty to seek appropriate legal remedy. Thereafter, the petitioner made enquiry and came to know that the Collector, Dehradun had issued an order dated 11.03.2013 directing the Additional District Magistrate and the Sub Divisional Magistrate, Dehradun, to take possession of the selection land.

5. Petitioner contends that the respondents, vide the aforesaid notification under Section 4(1) of the Act, proposed to acquire the area of 172.91 acres situated in Park Estate, Pargana Pachwadun, Mussoorie, however, they acquired 172.91 acres of the land out of 491 acres land of the petitioners, which is part of village Rikholi.

Municipality of Mussoorie came into existence, which included in its area land of six adjoining villages namely Misras Patti, Binsar, Rikholi, Bhitarli, Chamasari and Kairkuli. It is contended that without there being any Gazette Notification under Clause 2 of the Article 243-Q, the land of village Rikholi cannot be brought within the ambit of Section 5 of the Municipalities Act. Petitioner contends that M/s U.B. Engineers and five others were the legitimate owners and were in effective possession over the land sold to the petitioner. There was no notification under Section 4 of the Act in respect of the land of village Rikholi.

6. Petitioner contends that the Notifications issued under Section 4(1) and 6(1) of the Land Acquisition Act are only confined to Park Estate, Mussoorie, District Dehradun, and it is not the land of Village Rikholi, and the same does not actually exist in revenue records but is recorded in municipal records of Mussoorie. According to the petitioner, it is a clear case of duplication of the same land in two different government records i.e. Village Rikholi in revenue records and Park Estate in municipality Mussoorie. The Notification was issued by the Government to acquire the land of Park Estate but it ended up acquiring khasra no.1 of village Rikholi, now known as khasra nos.1298 to 1231. It is the case of the petitioner that the notifications issued by the respondents under Sections 4 and 6 of the Act are void and cannot be made basis of the acquisition of the petitioners land, which is in Village Rikholi and wherefor no acquisition proceedings were ever carried out by the Government.

7. Counter affidavit has been filed on behalf of respondent nos.2 and 3, Special Land Acquisition

Officer, District Dehradun and District Magistrate/Collector, Dehradun, where it is stated as follows:-

- A. The writ petition is not maintainable as the Notification as well as the Award passed by the Collector has attained finality.
- B. There is a confusion in the mind of the petitioner with respect of identification of land in dispute, as the land acquired in the year 1990, was specifically earmarked and had been preserved by a boundary and the possession had already been handed over to the Tourism Department.
- C. Before taking possession of the aforesaid piece of land, notices under Section 9 of the Land Acquisition Act, had been issued to the concerned parties and most of the affected parties, had submitted their objections before the Land Acquisition Officer and the concerned officer. After adjudicating the objections submitted before it, the Special Land Acquisition Officer had passed an award on 19.02.1990.
- D. The sale deed, so executed by the petitioner, cannot be said to be bonafide inasmuch as from the basis of the sale deed referred by the petitioner, they cannot claim any right or interest over the land, which was acquired by the State Government. It is also stated that the aforesaid land do not form part of Village Rikholi. Said land formed part of Nagar Palika Parishad, Mussoorie.
- E. It is stated that the khasra numbers, so referred, are not situated within the territory of village Rikholi and infact are situated within the Municipal limits of Nagar Palia Parishad, Mussoorie and this particular area was known as

the Park Estate George Everest House and right from the year 1993, the aforesaid piece of land comes within the municipal limits of Nagar Palika Parishad, Mussoorie. It is further stated that the records available in the office of Nagar Palika Parishad, Mussoorie clearly reveals that the aforesaid piece of land is situated within the municipal limits of Nagar Palika Parishad, Mussoorie and this fact is substantiated from the reasons that the land has been acquired and notice under section 9 of the Land Acquisition Act, had been issued to those persons whose name stood recorded in the records of Nagar Palika Parishad, Mussoorie and after considering and adjudicating the said objections, the award has been passed. Furthermore, the map available with the revenue department of district Dehradun clearly shows that the khasra numbers of village Rikholi from 1298 to 1331 are situated in the municipal limits of Nagar Palika Parishad, Mussoorie and there is no ambiguity to the aforesaid fact. It is also stated that the revenue map of village Rikholi has also been considered by the State Government and the said map also depicts that there is a line of demarcation and boundary pillars have been shown in the map of village Rikholi which clearly suggests that the aforesaid piece of land was earlier demarcated and segregated from the village Rikholi and formed the part of Nagar Palika Parishad Mussoorie.

- F. It is further stated that the villagers of Village Rikholi had no authority to transfer the piece of land as forming subject matter of the writ petition inasmuch as the aforesaid piece of land never

formed the part of village Rikholi and is situated within the territorial limits of Nagar Palika Parishad, Mussoorie and as such the sale deed for the land situated in Park Estate by the tenure holder of village Rikholi is non-est and void ab-initio and no right can be accrued in favour of the petitioner.

- G. It is further stated that even if mutation entries have been made by the concerned Tehsildar on the report of the Patwari, the same do not confer any right or title on the petitioner, their predecessor-in-interest or successor-in-interest inasmuch as the mutation entries are only made for the fiscal purpose.
- H. It is further stated that the khasra nos.1298 to 1331 were segregated from the village Rikholi in the year 1993 itself and situated within the Park Estate and formed the municipal limit is also shown in the map of land available in the office of Nagar Palika Parishad, Mussoorie. Thus, it is wrong to say that there is any confusion in the mind of the respondents with respect of identification of the land situated within the Park Estate. The State Government has rightly mentioned the aforesaid piece of land as Park Estate.
- I. It is further stated that the petitioner cannot be said to be a bonafide purchaser inasmuch as the revenue notifications, maps available with the Nagar Palika Parishad, Mussoorie clearly shows that the land in issue forms the part of the Park Estate and was acquired long back and since then the Tourism Department of the State of Uttarakhand is in effective possession.

- J. It is further stated that, while issuing the Notification u/s 4 of the Act, there was no requirement to mention the name of Village Rikholi, inasmuch as the land is situated within the Park Estate and boundary of the Park Estate is well identified and earmarked by the boundary pillars forming the part of municipal limit of Nagar Palika Parishad, Mussoorie.
- K. It is further stated that the reports submitted by the concerned Lekhpal, Tehsildar and any order made thereon by the Collector, are non-est in the eyes of law, inasmuch as, once the land of Park Estate is situated within the municipal limit of Nagar Palika Parishad, Mussoorie, there was no occasion available to make mutation in the revenue record of village Rikholi. The necessary mutation has to be carried out in the Nagar Palika Parishad, Mussoorie, which the petitioner could not have done as the name of State Government already stood recorded in the record of Nagar Palika Parishad.
- L. The petitioner has no right on the land in issue, therefore, the petitioner cannot question the action of the State Government invoking Section 17 (1) read with Section 17 of the Land Acquisition Act.
- M. It is further stated that the Section 4 of the Land Acquisition Act nowhere prescribes that the khasra numbers of the land proposed to be acquired is mandatorily required to be given and infact the requirement of law is that the land proposed to be acquired must be identified and earmarked and a perusal of the notification under Section 4(1) on the face of it, shows that the Park

Estate George Everest House, had clearly been mentioned and the boundaries of the said Park Estate was well defined in the Nagar Palika Parishad, Mussoorie and as such requirement of land have been fulfilled.

8. Counter affidavit has also been filed on behalf of respondent no.4-Regional Tourism Officer, Dehradun, wherein it is inter-alia stated that the property situated within the municipal limits of Nagar Palika Parishad, Mussoorie was popularly known as Park Estate George Everest House and this particular piece of land which is well identified, had been acquired by the State Government in accordance with the provisions of Land Acquisition Act in the year 1990 vide award dated 19.02.1990. It is also stated that the aforesaid land had been acquired by the State Government, the same was handed over to the tourist department vide order dated 03.06.1988 and the tourism department had taken over the possession of the said piece of land and had made efforts for the development of the aforesaid piece of land, so that some kind of activity may be promoted on the aforesaid piece of land. It is stated that time and again initiatives were taken by the State Government so as to develop the land for the purpose of tourism, however, the same could not be materialized at that point of time, and finally in the year 2007, the State Government has taken the initiative for establishing the Dehradun-Mussoorie Ropeway and other related activities, so that the tourist activity may be promoted in the said region. In pursuance of the initiatives so taken, the State Government had mandated Uttarakhand Infrastructure Project Company Ltd. to develop the facilities for the ropeway under PPP mode and further to develop the entire area to make it a tourist destination. The process

of getting environmental clearance and other activities, are in advance stage. Thereafter, in the year 2008, the State Government has deputed two Security Guards for providing safety and security of said acquired property. In this regard, on 26.02.2013, the Garhwal Mandal Vikas Nigam had been provided funds to establish pillar for the protection of the possession of the aforesaid piece of land and the said work has partially been completed.

9. Besides above, it is stated that the Park Estate property was acquired by the State Government in the year 1988 and the same was given in the possession of the tourism department and the same is still in the possession of the tourism department.

10. A rejoinder affidavit has also been filed by the petitioner to the counter affidavit filed on behalf of respondent nos.2 and 3 stating therein that the petitioner had drawn the proceedings under Section 41 of the Land Revenue Act, in the proceedings of demarcation which was held in relation to khasra no.1298 to 1331 had culminated by the judgment dated 10.07.2009. In the proceedings u/s 41 of the Land Revenue Act since the respondent authorities of the municipal board and forest department were already on record, and since they initially participated in the proceedings and thereafter they have voluntarily chosen to not to participate in the same consequent thereto the proceedings under section 41 has attained finality by the judgment dated 10.07.2009, and now the issue is no more *res integra* inter-se between the parties and the land would be deemed to have been identified and segregated.

11. In the rejoinder affidavit, it is further stated that as in the map the land is shown to be within the boundaries of municipal board this in itself will not lead to an inference that the land belongs to municipal board. It is stated that the declaration of boundaries of municipal board is only for the purposes of managing the affairs and administration over the land by municipal board, inclusion of the land within the boundaries of municipal board in itself do not exclude the land to be outside the periphery of village Rikholi as settled in the Bandobasti. It is further submitted that mere depiction of boundary on the map on which reliance has been placed by the municipal board do not change the ownership of the land.

12. A supplementary counter affidavit has also been filed on behalf of respondent no.4 stating that the land which the writ petitioner alleges to be purchased from his predecessor was besides being recorded in revenue records as Khewat land was also recorded in Municipal records of Park Estate which was acquired under proceeding of Land Acquisition Act in the year 1990, and mere fact that the land records for this land was being maintained by two departments, and in one, mutation in favour of State after acquisition was not done, will not bestow any right or title or interest to the writ petitioner and as such the writ petition is liable to be dismissed with special cost.

13. A supplementary rejoinder affidavit has been filed denying the averments of the supplementary counter affidavit.

14. I have heard learned counsel for the parties and perused the entire material brought on record.

15. Learned counsel for the petitioner would argue that the land in dispute, being khasra nos.1298 to 1331, is situated in village Rikholi and is not a part of the acquisition proceedings, started pursuant to the impugned Notification, and nor were those lands/plots ever acquired, in accordance with law. It is also argued that petitioner purchased the land in dispute from the recorded tenure holders, through registered sale deeds with due diligence, and after carrying out verifications, inquiries and thus the petitioner is bona fide purchaser and cannot be dispossessed by the respondent authorities.

16. Learned counsel for the petitioner would further argue that no khasra numbers were mentioned in the impugned notification, and the State Government has acquired an un-identifiable land, which is a different property as from the land in dispute but the State Government has erroneously taken possession of the land in dispute from the petitioner under some confusion.

17. Learned counsel would further argue that the petitioner is the subsequent purchaser of the land in question, which is situated in Village Rikholi whereas the land acquired by the State Government vide Notification constitutes the land situated in Park Estate which forms part of Municipality Mussoorie. It is claimed that the land comprised in the above said khasra numbers owned and possessed by the predecessors-in-interest of the petitioners, did not fall within the boundary line laid down by the Section 4 notification and were therefore, not part of the acquisition proceedings.

18. Per contra, learned Additional Advocate General appearing for the State-respondents would argue that the writ petition has been filed after a lapse of 26 years. It is contended that after issuance of notification, the possession has been handed over to the Tourism Department; Award has been passed, and the respective tenure holders whose land was under acquisition have received compensation. Hence, this writ petition is liable to be dismissed on the ground of laches alone.

19. Learned Additional Advocate General would strongly oppose the submission of learned counsel for the petitioner to the effect that the State Government has acquired an un-identifiable land. He would submit that the details of the property were specifically mentioned in the Notification as well as in the map.

20. It is further argued on behalf of the respondents State that the petitioner has no concern with the impugned Notification. The petitioner is not an aggrieved person, therefore, the writ petition at the behest of a stranger to the acquisition proceedings, is not maintainable and is liable to be dismissed as such.

21. Having heard the rival submission of the learned counsel for the parties and upon perusal of the affidavits, counter affidavits and rejoinder affidavits and other material brought on record, this Court is of the considered view that the writ petition is liable to be dismissed, for the reasons enumerated herein:-

A. LOCUS STANDII

22. It is the case of the petitioner in the writ petition that the petitioner is the recorded tenure holder of the land in dispute and under some confusion the said land has been taken into possession by the State Government. It is also the case that the said land is part of village Rikholi and the same never vested with the State Government. Contrary to this, the stand of the respondents is that the land in dispute was demarcated and segregated from Village Rikholi and formed part of Nagar Palika Mussoorie and thereafter in the acquisition proceedings the land was specifically earmarked and preserved with boundaries, and possession was handed over to the Tourism Department. It is also the stand of the respondents that the acquisition proceedings were carried out in accordance with law; the land has been acquired and notice under section 9 of the Land Acquisition Act, were issued to those persons whose name stood recorded in the records of Nagar Palika Parishad, Mussoorie and after considering and adjudicating the said objections, the award has been passed finally, giving end to the acquisition proceedings. The respondents have specifically stated that there is no dispute with regard to identification of the land in dispute.

23. A perusal of the award would reveal that objections were invited from the tenure holders and ample opportunity of hearing and evidence was given to the respective tenure holders, and after due process, acquisition proceedings were carried out. The said land was acquired by the State Government and was handed over to the Tourism Department which took possession over the said piece of land on 03.06.1988.

Subsequently, an award u/s 11 of the Act was passed on 19.02.1990. Possession certificate and certified copy of the map dated 30.11.2002 also indicate the position of khasra nos.1298 to 1331 in Mussoorie Municipality. Though the petitioner contends that the land in dispute was purchased by it from M/s U.B. Engineers and four others and that this land was never acquired by the State Government, but the fact remains that neither the names of predecessors-in-interest of the petitioner were found mentioned in the Award as recorded tenure holder nor any objections were received by them while the acquisition proceedings were going on and the possession was handed over to the Tourism Department. At no point of time, the steps taken by the State Government, for acquiring the land in question, were objected by the alleged tenure holders, nor the petitioner which claims itself to be a subsequent purchaser of the land in question, raised any objection thereafter. Thus, the petitioner's contention that the land in dispute is not the same property which was acquired by the State Government, is untenable. The land in question was acquired by the State Government followed by a Notification dated 21.09.1987. In the Notification, there was a clear description of the land proposed to be acquired, by its metes and bounds, which is sufficient enough to locate the property in view of the provisions of Order 7 Rule 3 of CPC. For convenience, Order VII Rule 3 of CPC is quoted hereunder:-

“3. Where the subject-matter of the suit is immovable property.- Where the subject-matter of the suit is immovable property, the plaint shall contain a description of the property sufficient to identify it, and, in case such property can be identified by boundaries

or numbers in a record of settlement or survey, the plaintiff shall specify such boundaries or numbers.

24. The petitioner has not come with a case that the land acquired by the State Government under the impugned notifications does not fall within the boundaries which is adjacent to the municipal area. Contrary to it, the petitioner has filed the sale deeds, which clearly depicts that the land purchased by the petitioner being khewat no.1 present khasra nos.1298 to 1381 is situated at a distance of about more than 17 kms. from the main Dehradun-Mussoorie municipal area. Relevant portion of the one such sale deed is extracted as under:-

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25. The notification provided description of land by metes and bounds and, therefore it cannot be said that the State Government has acquired an un-identifiable land. Furthermore, there is a possession of the Tourism Department of the State of Uttarakhand over the land in dispute as on date. Acquisition proceedings have been carried out in accordance with law and no objections whatsoever were received at that point of time.

26. As far as the contention of the petitioner that the villagers whose names were recorded in the revenue records they sold the properties to M/s U.B. engineers and others and, subsequently the petitioner purchased the property from them and the petitioner's name has been mutated, and based on such mutation, proceedings under section 41 of the U.P. Land Revenue Act, has been culminated in its favour, has no effect, as the mutation as well as demarcation proceedings under

Section 41 of the U.P. Land Revenue Act are summary in nature and do not decide the title of a party with respect to the land in dispute.

27. Furthermore, on the one hand the petitioner has contended that the land which it has purchased is distinct from the land acquired by the State Government, whereas on the other hand, the petitioner has challenged the acquisition proceedings. In case the land purchased by the petitioner is distinct from the land acquired, then the petitioner has no locus to challenge the notification. It is apt to note here that the land owners who were in possession of the land, regarding which the notification was issued, they took the compensation in lieu thereof, and invoking urgency clause u/s 17 of the Land Acquisition Act the possession was taken on 03.06.1988, but none of the tenure holder/recorded owners of the land raised the plea that the State Government should not have invoked the urgency clause. This plea could have been available to those persons whose lands were going to be acquired and they could have question the invoking of urgency clause u/s 17 of the Act but they did not choose to do so. The petitioner, who claims itself to be a stranger to the acquisition proceedings, has no right to challenge the notification.

28. For the sake of arguments, if it is assumed that the petitioner, being ignorance of the acquisition proceedings, has purchased the land in question, and is a subsequent purchaser, in that event also, it has no right to challenge the acquisition. Law is well settled in this regard by a catena of decisions of this Court that an incumbent, who had purchased the land after Section 4 notification, has no right to question the acquisition.

29. Hon'ble Supreme Court in the case of **Shanti Sports Club v. Union of India**¹, reported in, wherein it has been held as under:-

“63. This being the position, the appellants cannot plead equity and seek court's intervention for protection of the unauthorized constructions raised by them. It is trite to say that once the land is acquired by following due process of law, the same cannot be transferred by the landowner to another person and that any such transfer is void and is not binding on the State. A transferee of the acquired land can, at best, step into the shoes of the landowner and lodge claim for compensation – Gian Chand v. Gopala, Jaipur Development Authority v. Daulat Mal Jain, Yadu Nandan Garg v. State of Rajasthan and Jaipur Development Authority v. Mahavir Housing Coop. Society.

67. The present case falls within the ambit of Section 3 of the 1972 Act. The landowners and Shri Satish Khosla must have been aware of the prohibition on transfer of the acquired land, but by taking advantage of the stay order passed by the High Court in Writ Petition No.1753 of 1980, they appear to have entered into some clandestine transaction pursuant to which Shri Satish Khosla acquired possession of the land and proceeded to build the sports complex and commercial facilities to which reference has been made in the order of the Division Bench. We have described the transaction as clandestine because the appellants are conspicuously silent as to how Shri Satish Khosla came in possession of land in question after 35 years of initiation of the acquisition proceedings and 10 years of finalization thereof. During the course of hearing, Shri Mukul Rohatgi, learned Senior Counsel appearing for the appellants did make a statement that his client were put in possession in furtherance of an agreement of sale, but no document has been produced in support of this statement. Therefore it is not possible to take cognizance of the so-called agreement of sale. In any case, even if such a

transaction did take place, the same will have to be treated as void in view of the express prohibition contained in Section 3 of the 1972 Act.”

B. DELAY AND LACHES

30. The matter with regard to land acquisition has the effect on the society in general and the action is taken in public interest. In such a case the aggrieved person has to be very conscious and alert for challenging any right immediately rather than taking shelter of other acts where the public interest is not involved. In the case at hand, the petitioner has filed the present writ petition challenging the Notifications dated 12.09.1987 and 30.01.1988 issued under Section 4 and 6 of the Land Acquisition Act, after a lapse of almost 26 years. Since then, much water has flown under the bridge.

31. Law on the subject of delay and laches is no more res integra. The Hon'ble Supreme Court, in **Tamil Nadu Housing Board, Chennai v. M. Meiyappan & Ors.**² has held that in land acquisition proceedings the Court should not encourage stale litigation as it may hinder projects of public importance. It was, thus, held as follows:-

"13. At the outset, we must state that on the facts of this case, the High Court was not justified in entertaining the writ petition. In our opinion, the writ petition must fail on the short ground that the writ petition had been filed 16 years after the award was announced by the Collector. It is trite law that delay and laches is one of the important factors which the High Court must bear in mind while exercising discretionary power under Article 226 of the Constitution. If there is such negligence or omission on

the part of the petitioner to assert his right which, taken in conjunction with the lapse of time and other circumstances, causes prejudice to the opposite party, the High Court must refuse to invoke its extra-ordinary jurisdiction and grant relief to the writ petitioner.

14. In *Durga Prashad Vs. Chief Controller of Imports and Exports*, this Court had held that it is well-settled that the relief under Article 226 is discretionary, and one ground for refusing relief under Article 226 is that the petitioner has filed the petition after delay for which there is no satisfactory explanation. It was noted that:

"4. Gajendragadkar, C.J., speaking for the Constitution Bench, in *Smt Narayani Devi Khaitan v. The State of Bihar* observed:

"It is well-settled that under Article 226, the power of the High Court to issue an appropriate writ is discretionary. There can be no doubt that if a citizen moves the High Court under Article 226 and contends that his fundamental rights have been contravened by any executive action, the High Court would naturally like to give relief to him; but even in such a case, if the petitioner has been guilty of laches, and there are other relevant circumstances which indicate that it would be inappropriate for the High Court to exercise its high prerogative jurisdiction in favour of the petitioner, ends of justice may require that the High Court should refuse to issue a writ. There can be little doubt that if it is shown that a party moving the High Court under Article 226 for a writ is, in substance, claiming a relief which under the law of limitation was barred at the time when the writ petition was filed, the High Court would refuse to grant any relief in its writ jurisdiction. No hard and fast rule can be laid down as to when the High Court should refuse to exercise its jurisdiction in favour of a party who moves it after considerable delay and is otherwise guilty of laches. That is a matter

which must be left to the discretion of the High Court and like all matters left to the discretion of the Court, in this matter too discretion must be exercised judiciously and reasonably."

15. In *Rabindranath Bose & Ors. Vs. The Union of India & Ors.*⁶, a Constitution Bench of this Court, dealing with the same issue in relation to Article 32 of the Constitution, had observed that: -

"32 ... We are of the view that no relief should be given to petitioners who, without any reasonable explanation, approach this Court under Article 32 of the Constitution after inordinate delay. The highest Court in this land has been given original jurisdiction to entertain petitions under Article 32 of the Constitution. It could not have been the intention that this Court would go into stale demands after a lapse of years. It is said that Article 32 is itself a guaranteed right. So it is, but it does not follow from this that it was the intention of the Constitution-makers that this Court should discard all principles and grant relief in petitions filed after inordinate delay."

16. Though the afore-extracted observations in *Rabindranath Bose (supra)* relate to Article 32 of the Constitution, a fortiori, they would apply to writ petitions filed under Article 226 of the Constitution as well.

17. Similarly, in *Tridip Kumar Dingal & Ors. Vs. State of West Bengal & Ors.*⁷, (to which one of us (D.K. Jain, J.) was a party), this Court had observed as under:

"56. We are unable to uphold the contention. It is no doubt true that there can be no waiver of fundamental right. But while exercising discretionary jurisdiction under Articles 32, 226, 227 or 136 of the Constitution, this Court takes into account certain factors and one of such considerations is delay and laches on the part of the applicant in approaching a writ court.

It is well settled that power to issue a writ is discretionary. One of the grounds for refusing reliefs under Article 32 or 226 of the Constitution is that the petitioner is guilty of delay and laches.

57. If the petitioner wants to invoke jurisdiction of a writ court, he should come to the Court at the earliest reasonably possible opportunity. Inordinate delay in making the motion for a writ will indeed be a good ground for refusing to exercise such discretionary jurisdiction. The underlying object of this principle is not to encourage agitation of stale claims and exhume matters which have already been disposed of or settled or where the rights of third parties have accrued in the meantime."

18. Moreover, in relation to the land acquisition proceedings, the Court should be loathe to encourage stale litigation as the same might hinder projects of public importance. The Court are expected to be very cautious and circumspect about exercising their discretionary jurisdiction under Article 226 or Article 32 of the Constitution if there has been inordinate unexplained delay in questioning the validity of acquisition of land. In this regard, it will be useful to advert to the observations made in *P. Chinnanna v. State of A.P.* (1194) 5 sCC 486 wherein this Court had observed thus:

"11. ... In fact, in relation to acquisition proceeding involving acquisition of land for public purposes, the court concerned must be averse to entertain writ petitions involving the challenge to such acquisition where there is avoidable delay or laches since such acquisition, if set aside, would not only involve enormous loss of public money but also cause undue delay in carrying out projects meant for general public good."

32. In the case of **State of Punjab v. Hari Om Cooperative House Building Society Ltd. Amritsar**³ it was observed by the Hon'ble Supreme Court that the writ petition challenging acquisition proceedings filed long after publication of notifications under Sections 4 and 6 is liable to be dismissed on the ground of delay.

33. In the instant case, though it is the stand of the petitioner that it is only in the year 2013 that the petitioner came to know about the acquisition proceedings with respect to the land in dispute, when the revenue officials came at the spot and started to take measurements of the land in dispute, but the fact remains that the writ petition has been filed at a much belated stage when all the three stages of acquisition proceedings had been finalized long time back. The writ petition is clearly barred by time and this Court cannot entertain the writ petition for the aforesaid relief after lapse of 26 years. Thus, the writ petition is liable to be dismissed on this count also.

C. FRAUD/SUPPRESSION OF MATERIAL FACT

34. In the case at hand, the petitioner, on many instances, has played fraud upon the Court and has suppressed the material fact from the Court.

- (i) Against the order dated 24.09.2014 passed by a Coordinate Bench of this Court, whereby the Coordinate Bench declined to grant interim relief to the petitioner, the petitioner had approached the Division Bench of this Court by way of SPA No.571 of 2014. In the said special appeal, the Division Bench was apprised by the learned counsel for the parties that the writ petition has ripe up for

hearing and would come up for hearing in short time. On being told about the final hearing of the case, the Division Bench, without expressing any opinion as to the interim order passed in writ petition, disposed of the appeal with a request to the learned Singh Judge to give an expeditious hearing of the matter. However, this fact was not brought to the notice of this Court that the parties have made statement before the Division Bench that the matter has ripe up for final hearing and this Court was kept in dark. On one hand, learned counsel for the petitioner made statement before the Division Bench that the matter has ripe up for final hearing whereas on the other hand after passing of the judgment in Special Appeal, the petitioner moved an application for appointment of Advocate Commissioner in the writ petition.

- (ii) There was a direction of the Division Bench of this Court to give expeditious hearing in the matter but the petitioner suppressed this material fact from the Court and instead moved misc. application no.4636 of 2015 with a prayer to appoint an Advocate Commissioner to conduct spot inspection and to ascertain the exact location of the piece of land in question. For this purpose, the petitioner suggested names of three retired judges, namely, Mr. Justice K. D. Shahi (retired), Mr. Justice Ram Avatar Singh (retired) and Mr. Justice Bharose Lal (retired). Before the Court, the petitioner projected Mr.

Bharose Lal as a former judge of High Court. The Coordinate Bench of this Court, vide order dated 28.03.2016, appointed Mr. Bharose Lal (Retd.) as an Advocate Commissioner. Subsequently, the matter came up for hearing before this Court. This Court came to know that Mr. Bharose Lal is not a retired Judge of High Court but he is a retired Additional District Judge. This Court took serious note of this fact and observed that the order of appointment of Advocate Commissioner has been obtained by playing fraud upon the court. It was thus directed that the petitioner as well as the petitioner's counsel shall remain present and shall explain as to why they, in a very clandestine manner, drafted the application for appointment of Advocate Commissioner and projected Mr. Bharose Lal as former judge of High Court before this Court. Deponent Brig. S.S. Yadav as well as petitioner's counsel Mr. Deepak Dhingra accepted their mistake and tendered their unconditional apology before the Court, which although was accepted by the Court but it was recorded in the order by the Court that there was suppression of material fact at the hands of petitioner and petitioner's counsel.

35. It is settled position in law that if an applicant does not disclose full facts or suppresses relevant materials or is otherwise guilty of misleading the Court, then such an act would disentitle him from any relief.

36. In **S.P Chengalvaraya Naidu vs Jagannath**⁴ Hon'ble Supreme Court, while dealing with a case where a release deed was suppressed, came down heavily upon such tactics of litigants. It observed that the non-mentioning and non-production of the release deed amounted to "playing fraud upon the court" and concluded that:

"6. ...A litigant, who approaches the court, is bound to produce all the documents executed by him which are relevant to the litigation. If he withholds a vital document in order to gain advantage on the other side then he would be guilty of playing fraud on the court as well as on the opposite party."

37. In **Dalip Singh vs. State of Uttar Pradesh and others**⁵ the Hon'ble Supreme Court considered the question whether relief should be denied who did not state correct facts in the application filed before the prescribed authority and who did not approach the High Court with clean hands, observed that while exercising discretionary and equitable jurisdiction, the facts and circumstances of the case should be seen in their entirety to find out if there is miscarriage of justice. If the appellant has not come forward with clean hands, has not candidly disclosed all the facts that he is aware of and he intends to delay the proceedings, then the Court will non-suit him on the ground of contumacious conduct.

38. In **Oswal Fats and Oils Limited vs. Additional Commissioner (Administration), Bareilly Division, Bareilly and others**⁶ the Hon'ble High Court held that it is settled law that a person who approaches the Court for grant of relief, equitable or otherwise, is under a solemn obligation to candidly disclose all the

material/important facts which have bearing on the adjudication of the issues raised in the case. In other words, he owes a duty to the court to bring out all the facts and refrain from concealing/suppressing any material fact within his knowledge or which he could have known by exercising diligence expected of a person of ordinary prudence. If he is found guilty of concealment of material facts or making an attempt to pollute the pure stream of justice, the court not only has the right but a duty to deny relief to such person.

39. In **Sciemed Overseas Inc. vs. BOC India Limited and others**⁷ the Hon'ble Supreme Court held that filing false or misleading statement itself is enough to invite adverse reaction. It is apt to refer to relevant observation as contained in para-28 of the judgment which reads as under:

“28. Justice dispensation system would be adversely affected if restrictions are not imposed upon the litigants, who attempt to mislead the court by filing and relying upon the false evidence particularly in cases, the adjudication of which is dependent upon the statement of facts. The purity of proceedings of the court cannot be permitted to be engulfed by a party on frivolous, vexatious or insufficient grounds or relying upon false evidence inspired by extraneous considerations or revengeful desire to harass his opponent. Sanctity of the affidavits has to be preserved and protected discouraging the filing of irresponsible statements on oath.”

40. Again in **Sarvepalli Radhakrishnan University and another vs. Union of India and others**⁸ Hon'ble Supreme Court has held that it is trite that every litigant has to approach the Court with clean

hands. A litigant who indulges in suppression of facts and misrepresentation is not entitled for any relief. It is apt to reproduce the necessary observations as contained in the judgment, which read as under:

“11. It is trite that every litigant has to approach the Court with clean hands. A litigant who indulges in suppression of facts and misrepresentation is not entitled for any relief. The conduct of the College in this case to mislead this Court for the purpose of getting a favourable order is reprehensible and the College deserves to be dealt with suitably.

12. In *Re. Suo Motu Proceedings against R. Karuppan, Advocate* (2001) 5 SCC 289, this Court observed as under:

“13. Courts are entrusted with the powers of dispensation and adjudication of justice of the rival claims of the parties besides determining the criminal liability of the offenders for offences committed against the society. The courts are further expected to do justice quickly and impartially not being biased by any extraneous considerations. Justice dispensation system would be wrecked if statutory restrictions are not imposed upon the litigants, who attempt to mislead the court by filing and relying upon false evidence particularly in cases, the adjudication of which is dependent upon the statement of facts. If the result of the proceedings are to be respected, these issues before the courts must be resolved to the extent possible in accordance with the truth. The purity of proceedings of the court cannot be permitted to be sullied by a party on frivolous, vexatious or insufficient grounds or relying upon false evidence inspired by extraneous considerations or revengeful desire to harass or spite his opponent. Sanctity of the affidavits has to be preserved and protected discouraging the filing of irresponsible statements, without any regard to accuracy.”

41. Since the petitioner has not approached the Court with clean hands and have rather suppressed the material facts in order to obtain a favourable order from the Court, no indulgence much less discretion can be exercised in favour of the petitioner.

D. DISPUTED QUESTION OF FACTS

42. According to the petitioner, the land in dispute being khasra nos. 1298 to 1331, is situated in village Rikholi, and the same is not a part of the acquisition proceedings started pursuant to the Notification in 1988. The petitioner purchased the lands/plots through registered sale deeds with due diligence, and after carrying out verifications, inquiries and that the petitioner is thus bona fide purchaser and cannot be dispossessed by the respondent authorities. It is also the case that no khasra numbers, were mentioned in the notification and, on this ground alone, the acquisition deserves to be set aside. Contrary to this, according to the respondent State, land in dispute was acquired by the State Government vide a Notification dated 21.09.1987 for the purpose of development of tourist place, and possession thereof was taken applying the urgency clause. It is also their case that the possession had been handed over to the Tourism Department by the State Government on 03.06.1988. It is respondents' specific case that the land was specifically earmarked and preserved by boundaries.

43. Indisputably, the Tourism Department of the State of Uttarakhand had been handed the possession over the land in dispute by the State Government vide possession memo dated 03.06.1988, as is evident from

the possession certification filed as Annexure-5 to the counter affidavit of respondent nos.2 and 3. It is also on record that the respondent now has also raised some construction over the land in dispute for establishing the Dehradun-Mussoorie Ropeway and other related activities, which fact also gets support from the application moved by the petitioner before this Court being Civil Miscellaneous Application No.8891 of 2020 under Section 151 of CPC, whereby the petitioner sought a direction for the respondents not to take any further construction activity with respect to subject pieces of land and further to demolish the construction raised at the dispute site.

44. **In Sita Ram Bhandar Society, New Delhi Vs. Lt. Governor, Government of N.C.T. Delhi and others**⁹ Hon'ble Supreme Court after referring to earlier decisions observed that while taking possession, symbolic and notional possession is perhaps not envisaged under the Act but the manner in which possession is taken must of necessity depend upon the facts of each case. Where a large area of land with a large number of owners is subject matter of possession, Court said, that, it would be impossible for Collector or Revenue officials to enter each bigha or biswa and take possession thereof. Pragmatic approach has to be adopted by Court. It was accordingly held as under:-

"..... that while taking possession of a large area of land with a large number of owners, it would be impossible for the Collector or the revenue official to enter each bigha or biswa and to take possession thereof and that a pragmatic approach has to be adopted by the Court. It is also clear that one of the methods of taking possession and handing it over to the beneficiary department is the recording of a Panchnama

which can in itself constitute evidence of the fact that possession had been taken and the land had vested absolutely in the Government."

45. In **May George vs. Special Tahsildar and others**¹⁰ it has been held as under:-

"28. In fact, the land vests in the State free from all encumbrances when possession is taken under Section 16 of the Act. Once land is vested in the State, it cannot be divested even if there has been some irregularity in the acquisition proceedings..."

46. Thus, admittedly, the respondents are in possession over the land in dispute and the petitioner who, by virtue of alleged sale deeds and revenue entries, is claiming itself to be recorded tenure holder of the said property, is not having possession over the same. In **Gurunath Manohar Pavaskar and others Vs. Nagesh Siddappa Navalgund and others**¹¹ the Court said:

"A revenue record is a not a document of title. It merely raises a presumption in regard to the possession. Presumption of possession and/or continuity thereof both forward and backward can also be raised under Section 110 of the Indian Evidence Act."

47. In the light of aforesaid, it appears to this Court that the petitioner itself is not of the definite mind set in respect of the land in question. In the prayer clause, the petitioner is seeking mandamus against the respondents, for 491 acres of land, whereas from the Notification it is evidently clear that the State Government has acquired 172.91 acres of land. It further appears to me that the petitioner has filed the

present writ petition, in order to grab the public property, under the guise of mutation proceedings carried out in regard to the land khasra no.1298 to 1331, which is about 17 kms. away from Dehradun-Mussoorie municipal area, without there being any possession of the petitioner over the said property.

48. Be that as it may. The fact remains that disputed question of fact is involved in the writ petition as to whether the property claimed by the petitioner is the same property as had been acquired by the State Government vide Notifications dated 21.09.1987 and 30.01.1988.

49. It is settled position in law that where question of facts are involved and such disputed questions are of complex nature which for their determination will require elaborate evidences to be taken into account such as oral statements etc., such writ petitions may not be appropriately tried under the writ jurisdiction.

50. **In Sanjay Sitaram Khemka vs. State of Maharashtra**¹² the High Court, having regard to the allegations and counter-allegations made by the parties was of the opinion that a writ petition was not the remedy in view of the nature of the controversy and the disputed questions of fact. The Apex Court affirmed the High Court's order observing that a matter involving a great deal of disputed questions of fact cannot be dealt with by the High Court in exercise of its power of judicial review. Paragraphs 8 and 9 of the judgment are relevant, which are as under:-

“8. Having regard to the allegations and counter-allegations¹ made by the parties before us, we

are of the opinion that no relief can be granted to the petitioner in this petition. The writ petition has rightly been held by the High Court to be involving disputed questions of fact. The petitioner has several causes of action wherefor he is required to pursue specific remedies provided therefor in law.

9. A writ petition, as has rightly been pointed out by the High Court, for grant of the said reliefs, was not the remedy. A matter involving a great deal of disputed questions of fact cannot be dealt with by the High Court in exercise of its power of judicial review. As the High Court or this Court cannot, in view of the nature of the controversy as also the disputed questions of fact, get into the merit of the matter; evidently no relief can be granted to the petitioner at this stage. We are, therefore, of the opinion that the impugned judgment of the High Court does not contain any factual or legal error warranting interference by this Court in exercise of its jurisdiction under Article 136 of the Constitution.

51. In view of the above, this Court is of the view that title and possession claimed by the petitioner over the land in dispute cannot be decided in writ jurisdiction. Since the petitioner itself admits the respondents' possession over the land in dispute, the only remedy available to the petitioner is to approach to competent court of jurisdiction to institute the suit for possession and declaration of its alleged rights.

CONCLUSION

52. Relief no.(i) - This Court has observed in foregoing paragraphs that the petitioner has no locus standii to challenge the Notification dated 21.09.1987 and 30.01.1988, and there is delay and laches also in filing the writ petition. That apart, the petitioner has failed out to make out any case for interference of this

Court. As such, the petitioner is not entitled to get the relief no.(i).

Relief no.(ii) – As far as the relief sought by the petitioner for quashing of orders of the Collector/district is concerned, the same has been passed on the basis of acquisition proceedings carried out by the State Government pursuant to Notification 21.09.1987. The petitioner has failed to point out any arbitrariness or illegality in the said orders, which may call any interference of this Court. Thus, relief no.(ii) also stands rejected.

Relief no.(iii) – This relief sought by the petitioner is in the nature of prohibitory injunction, which firstly can be granted by the competent civil court and secondly that the petitioner, in Civil Miscellaneous Application No.8891 of 2020, has itself admitted the fact that the respondents are in possession over the land in dispute and are raising some constructions over there.

53. Considering all the facts and facets of the case, the writ petition is dismissed. An exemplary cost of ₹2,00,000/- (Rupees two lakhs) is saddled upon the petitioner, for suppressing the material facts and playing fraud upon the Court. The cost so imposed shall be deposited by the petitioner with the Uttarakhand State Legal Services Authority within one month from today. In case of failure in depositing the amount, the said amount shall be recovered as arrears of land revenue.

(Lok Pal Singh, J.)

21.12.2020

Rajni