REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.6662 OF 2004

Ramjas Foundation and another ……..Appellants

Versus

Union of India and others …….Respondents

J U D G M E N T

G.S. Singhvi, J.

1. This appeal is directed against judgment dated 18.5.2001 of the Division Bench of the Delhi High Court whereby the first appeal preferred by the appellants against the judgment of the learned Single Judge, who declined to nullify the acquisition of their land was dismissed.

2. Rai Sahib Kedar Nath, who retired as District Judge from the Punjab Judicial Service started three schools in Kucha Ghasi Ram, Chandni Chowk, Bazar Sita Ram and Daryaganj, Delhi between 1912 and 1916 in the memory of his father, Lala Ramjas Mal. He purchased land measuring

about 1800 bighas in villages Chowkri Mubarikabad and Sadhora Khurd, which now form part of NCR Delhi from his own resources and by collecting money in the form of donations from other philanthropists. In a public function held on 25.12.1916 in Ramjas School, Kucha Ghasi Ram, Chandani Chowk, Rai Sahib Kedar Nath is said to have made an announcement that he had created a Wakf and dedicated and donated all his movable and immovable properties including the land in villages Chowki Mubarikabad and Sadhora Khurd to the said school for charitable purposes, namely, advancement and promotion of education to the public and poor students. In 1917, he formed Ramjas College Society and got the same registered under the Societies Registration Act, 1860 as a charitable institution. The objects of the Society were as under:

"i) To provide school and university education for boys and girls.

ii) To maintain schools, colleges, boarding houses and training institutes for training of teachers.

iii) To provide means for imparting technical and industrial education in connection with the institutions under the control of foundation.

iv) To provide means for imparting a sound moral and catholic religious education free from superstitious and

controversial matters and based on the Vedas and ancient shastras.

v) To encourage and take part in Scientific Research of various kinds as well as in the study translation and publication of the Sanskrit literature and philosophy of ancient India.

vi) To amalgamate with the foundation any other societies having objects similar to those or any of these of the Foundation.

vii) To give loans to the institutions aided, run managed by or under the control of the Foundation and for the benefits of the students studying in the said institutions, aid, grants, donations, subscribe to Government and/or semi-Government relief funds, award scholarships, fellowships, stipends of any kind as also to take/accept donations, gifts and charities etc."

3. After some time, Rai Sahib Kedar Nath formed a managing committee of which he was the President. On 25.6.1936, he transferred the entire land to the Society by executing a release deed. In 1967, the name of the Society was changed from Ramjas College Society to Ramjas Foundation and the same was registered as such.

4. By notification dated 13.11.1959 issued under Section 4 of the Land Acquisition Act, 1894 (for short, 'the Act'), the Chief Commissioner of Delhi proposed acquisition of 34070 acres land including 872 bighas and 17 biswas land of appellant No.1 situated at Chowkri Mubarikabad and 730 bighas land situated at Sadhora Khurd for planned development of Delhi excluding the following categories of land:

(a) Government land and evacuee land;

(b) the land already notified under Section 6 of the Land Acquisition Act for any Government Scheme;

(c) the land already notified either under Section 4 or 6 of the Land Acquisition Act, for House Building Cooperative Societies mentioned in Annexure III;

(d) the land under graveyards, tombs, shrines and the land attached to religious institutions and Wakf property.

5. The objections filed on behalf of appellant No.1 under Section 5-A of the Act through Shri Ratan Lal Gupta, Advocate were rejected by the competent authority. Thereafter, three different notifications were issued under Section 6 of the Act.

6. The acquisition of land vide notification dated 13.11.1959 was challenged in large number of petitions filed in Delhi High Court which were dismissed. The appeals filed against the orders of the Delhi High Court were dismissed by this Court in **Aflatoon v. Lt. Governor of Delhi** (1975) 4 SCC 285 and **Lila Ram v. Union of India** (1975) 2 SCC 547.

7. Appellant No.1 also filed several cases in the Delhi High Court and this Court questioning the acquisition of its land and consequential actions taken by the respondents. The particulars of the cases filed by appellant No.1 and their result are detailed below:

Chowkri Mubarikabad

(i) The first writ petition bearing No.409/1968 was filed by appellant No.1 in the Delhi High Court for quashing notifications dated 13.11.1959 and 28.2.1968 issued under Sections 4 and 6 of the Act respectively mainly on the ground that its land is exempted from acquisition in terms of clause (d) of notification dated 13.11.1959 because it was a Wakf property. This assertion was contested by the respondents. They pleaded that the property in dispute is neither a Wakf nor it can be treated as Wakf because it had not been created by a Muslim. The learned Single Judge was of the view that the adjudication of the writ petition would need determination of complicated questions of fact and such questions cannot be decided under

Article 226 of the Constitution. Thereupon, the counsel appearing on behalf of appellant No.1 sought leave of the Court to withdraw the writ petition with liberty to file a civil suit. His prayer was granted by the Court.

(ii) Immediately after disposal of the writ petition, appellant No.1 filed Suit No.451/1971 with the following substantive prayer:

> "A decree for declaration be passed in favour of the plaintiffs and against the defendants to the effect that since the plaintiffs society is a charitable education institution and the land in dispute is a wakf property or in the nature of wakf property, the same is exempt from the purview of notification under Section 4 of the Land Acquisition Act by virtue of clause (d) of para 2 of the Notification No.F.15(iii)/59-L.S.G dated 13.11.1959 and the impugned notifications, acquisition notices and the proceedings consequent thereon are void abinitio, without jurisdiction, discriminatory, arbitrary, vague, indefinite, ultra vires, against the principles of natural justice and the provisions of the Land Acquisition Act and are liable to be set aside and cancelled."

(iii) After detailed consideration of the pleadings and documents produced by the parties, the learned Single Judge dismissed the suit. Appellant No.2 – Shri Ram Kanwar Gupta joined appellant No.1 in filing appeal against the judgment of the learned Single Judge, which was dismissed by the Division Bench of the High Court vide judgment dated 18.5.2001. Thereafter, notification under Section 17 of the Act was issued on 23.7.2001 and possession of the land was taken by the Land Acquisition Collector and handed over to the Delhi Development Authority.

Sadhora Khurd

(i) W.P. No.213/1973 filed by appellant No.1 challenging the acquisition of land situated at Sadhora Khurd was dismissed by the learned Single Judge as withdrawn.

(ii) After 5 years, appellant No.1 filed CWP No.106/1978 for quashing the notifications issued under Sections 4 and 6 and notices issued under Sections 9 and 10 of the Act. The same was dismissed by the Division Bench of the High Court vide its order dated 31.1.1978.

(iii) Civil Appeal No. 2213 of 1978 filed by appellant No.1 against the order of the Division Bench was dismissed by this Court on 13.11.1972 on the ground of delay and blameworthy conduct of appellant No.1 – **Ramjas Foundation v. Union of India** (1993) Supp 2 SCC 20.

(iv) After dismissal of the civil appeal, the Land Acquisition Collector passed Award No.10/94-95 dated 7.6.1994 and supplementary Award Nos.10-A/94-95, 10-B/94-95, 10-C/94-95 and 10-D/94-95 all dated 11.11.1994 in respect of 718 bighas 14 biswas land situated at Sadhora Khurd and took possession of 676 bighas and 8 biswas of land.

(v) Appellant No.1 challenged the awards in CWP No.4343/1997 and prayed for quashing the action of the respondents to take possession of the

acquired land. It further prayed for issue of a mandamus to respondents to release land by issuing notification under Section 48 of the Act. Appellant No.1 filed another writ petition (CWP No.5493/1999) for grant of a declaration that land situated in village Sadhora Khurd continues to be in its possession. By an order dated 26.4.2000, the Division Bench of the High Court dismissed CWP No. 4343/1997 but gave a direction to the Lt. Governor to pass appropriate order on the application made by appellant No.1 for denotification of the acquired land. Similar order appears to have been passed in CWP No. 5493/1999.

(vi) In the meanwhile, Bhagwan Dass filed CWP No.1811/1995 by way of public interest litigation and prayed for issue of a mandamus to the respondents to take possession of 730 bighas of land and use the same as per the plan of Zone B-5. That petition was disposed of by the Division Bench of the High Court on 26.4.2000 by taking cognizance of the statement made by the counsel appearing for the Delhi Development Authority that a decision had been taken not to release land of appellant No.1 from acquisition.

(vii) The orders passed by the High Court in CWP Nos.1811/1995, 4343/1997 and 5493/1999 were challenged before this Court in S.L.P. (C) Nos.15017, 15216 and 19741 of 2000 on several grounds including the following:

> "(iii) Because the petitioner society having been created by Rai Sahab Kedar Nath, Retired District Judge, Punjab thereby dedicating all his movable and immovable properties, for Charitable purposes establishing to run the schools and colleges for public charity of education covered under and/or is waqf and property held is or in the nature of a waqf property even if the Waqf Act may not be applicable to such society being not attached to any specific caste and/or religion.
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> (iv) Because a notification issued under the provisions of the Land Acquisition Act also being "Law" is liable to be struck down if it is contrary to the fundamental rights guaranteed under Part III of the Constitution of India, as in view of the decision of this Hon'ble Court in Indian Express Newspapers Vs Union of India, reported at [1985] 1 SCC 641, para 83 at 693.
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> (v) Because any law and/or notification under the statute i.e. the Land Acquisition Act being discriminatory on ground of caste or religion is liable to be declared as ultra vires of the Constitution and must be quashed as a whole."
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> (emphasis supplied)

(viii) All the special leave petitions were disposed by this Court on 4.2.2002 in the following terms:

> "We have heard Shri Shanti Bhushan, learned senior counsel, appearing for the petitioners. We are not satisfied that this petition merits further consideration by this Court. However, it is pointed out that in spite of the directions issued by the High Court that the representation filed by the petitioners before the Lt. Governor of Delhi for considering their case for denotification of the land in question has not been disposed of till date. If that be so we direct that the application so filed will be disposed of within a period of six weeks from today."

(ix) In compliance of the direction given by the High Court and this Court Lt. Governor, Delhi passed order dated 18.6.2002 and rejected the prayer of

appellant No.1 for denotification of its land by recording the following reasons:

> "I have gone through all the papers on record and have considered the matter at length. Possession of area admeasuring 563 bighas 07 biswas was taken by DDA on "as is where is" basis as land was not physically vacant. The said area is replete with factories. The Anand Parbat Industrial Area as it has come to be popularly known, has come up in a haphazard and unplanned manner and has over the years, also become degraded and decrepit. The congested and unsystematic growth of factories in the area has turned it into a veritable public hazard. Safety considerations are wanting. Most of the lanes are too narrow for a fire tender to enter. The electricity distribution system is problematic. The other infrastructure and basic services are also inadequate. Apart from being a congested and degraded cluster of factories operating in sub-optimal conditions, the area is also hazardous where public safety requirements warrant early remedial measures. The area is mentioned in the Master Plan of Delhi as "Industrial".
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> There are thus sound and compelling reasons to effect redevelopment of the area in the overall public interest. For this the entire land mass needs to be physically taken over, planned, roads and lanes straightened and widened to the extent feasible and new infrastructure laid down as per the plans. Institutional services like fire service, electricity substations etc. will have to be properly located. A redevelopment plan on these lines has, in fact, been prepared after consulting the occupants. The only possible way to achieve implementation of the redevelopment plan is through land acquisition. Without physically taking over the entire chunk of land, laying of infrastructure as per the redevelopment plans will not be possible. Nor is it desirable or safe to delay any longer redevelopment of the area, which is an imminent necessity.
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> For the aforesaid considerations, I do not find it prudent, desirable or feasible to denotify the said chunk of land. Denotification of 67 bigha 14 biswas land has already been made in favour of the petitioners who have thereby received a fair degree of consideration from the government already. Any further denotification will be contrary to public interest and as

> such cannot be made. The petitions/representations in this regard are hereby disposed of accordingly."

(x) Appellant No.1 challenged the order of the Lt. Governor in W.P. No.5138/2002, which was dismissed by the Division Bench of the High Court by detailed judgment dated 6.2.2004. S.L.P. (C) No.7026 of 2004 filed against that judgment was dismissed as withdrawn.

8. Shri R. Venkataramani, learned senior counsel for the appellants reiterated the argument made before the High Court that in view of clause (d) of notification dated 13.11.1959, the land of the appellant was liable to be excluded from acquisition because it was a Wakf property. Learned counsel argued that the dedication of land by Rai Sahib Kedar Nath was for a charitable purpose and this, by itself, is conclusive evidence of his intention to create a Wakf. Learned counsel emphasized that dedication made by Rai Sahib Kedar Nath was without any reservation in favour of any beneficiary as trustee or otherwise and, as such, the land in question became part of Wakf property and argued that the same could not be acquired in the name of planned development of Delhi. Learned counsel invited the Court's attention to the amended definition of 'Wakf' contained in Section 3(1) of the Wakf Act, 1954 and argued that a non-Muslim can also create Wakf. Learned senior counsel submitted that there is no injunction under the uncodified or codified Muslim Law against dedication of property to a

charitable purpose recognized by Muslim Law by a non-Muslim or a person not professing the Islamic faith. He further submitted that merely because Rai Sahib Kedar Nath was a Hindu and had performed havan etc. before renouncing the property in favour of the Society for a charitable purpose is not sufficient to deny benefit of exemption to appellant No.1 in terms of clause (d) of notification dated 13.11.1959. Learned counsel further argued that exemption clause contained in notification dated 13.11.1959 should be liberally construed in a manner which will benefit dedication made for charitable purpose irrespective of caste and/or religion, else the impugned notification will become discriminatory and violative of Articles 14 and 15 of the Constitution. In support of his arguments, learned counsel produced three compilations of which one contains copies of the orders passed by the Delhi High Court, this Court as also the one passed by the Lt. Governor of Delhi and a copy of notification dated 4.4.2002 issued under Section 48 of the Act for release of 67 bighas 14 biswas of land of village Sadhora Khurd. The second volume contains extracts of text books and commentaries on Mohammadan Law/Muslim Law and the third volume contains compilation of various judgments. During the course of submissions, Shri Venkataramani produced a fresh compilation of the list of dates incorporating therein the developments which have taken place after filing of the special leave petition. This compilation shows that the area in which land of appellant No.1 is situated has developed as a residential locality and

is recognized as unauthorized colony for the purpose of regularization; that some parts of the land have also been developed as Anand Parbat Industrial Area and the Delhi Development Authority has invited applications and declarations from the residents/unauthorized occupants of Anand Parbat Industrial Area for deciding the licence fee. The appellants have also claimed that they are running 19 schools and one degree college and one Sports and Mountaineering Institute at Chowkri Mubarikabad.

9. Shri Amarendra Sharan, Senior Advocate and Shri Vishnu B. Saharya, Advocate appearing for the Delhi Development Authority and Smt. Gita Luthra, Senior Advocate and Shri D.N. Goburdhun, Advocate appearing for the Union of India supported the impugned judgment and argued that the appeal should be dismissed as a frivolous piece of litigation. Learned counsel extensively referred to the judgment in **Ramjas Foundation v. Union of India** (supra), order dated 4.2.2002 passed in S.L.P.(C) No. 15017/2000 and connected matters and argued that when this Court has already negatived the plea of appellant No.1 that the property situated at Sadhora Khurd is a Wakf property and is exempted from acquisition, the appellants cannot resurrect the same plea in respect of the land situated at Chowkri Mubarikabad. Learned counsel then argued that the appellants' claim for exemption was rightly rejected by the learned Single Judge and the Division Bench of the Delhi High Court because no

evidence was produced to prove that Rai Sahib Kedar Nath had created a Wakf and the property transferred to the Society became a Wakf property. Shri Amarendra Sharan emphasized that renouncement of property by Rai Sahib Kedar Nath in favour of the Society formed by him for educational purposes did not result in creation of a Wakf and the property did not become Wakf property because the dedication made by him was preceded by "Samarpan" and "Sankalp" which are well known concepts of Hindu Law. Another argument of the learned senior counsel is that clause (d) of notification dated 13.11.1959 cannot be interpreted as including every dedication of property for charitable purpose and the expression `Wakf property' must be given a restricted interpretation so as to include the property attached to the Wakf created by Muslims only.

10. We have considered the respective submissions. In our view, the appeal deserves to be dismissed because the appellants have not approached the Court with clean hands. In **Ramjas Foundation v. Union of India**, acquisition of the land situated at Sadhora Khurd was challenged on the ground of violation of Section 5-A of the Act and also on the ground that land in question is exempted from acquisition because it is a Wakf property. Another plea taken by appellant No.1 was that if the land belonging to educational and charitable institutions established by Hindus and non-Muslims is not treated as Wakf property, then the exemption clause (d) is

liable to be declared void for violation of Article 14 of the Constitution. While rejecting the argument that the acquisition proceedings were vitiated due to violation of Section 5-A of the Act, this Court noted that the appellants had made a patently incorrect statement on the issue of denial of opportunity of personal hearing and observed:

> "As regards the objection of the violation of the mandatory provisions of Section 5-A of the Act in not affording an opportunity of personal hearing while deciding such objections, we granted an opportunity to the learned Additional Solicitor General to place material after examining the original record. We granted this opportunity to the respondents on account of the reason that the writ petition had been dismissed by the High Court in limine without issuing notice to the respondents and as such the respondents had not been given any opportunity before the High Court to place any material to refute the allegations made by the appellants in this regard. The Additional Solicitor General during the course of the hearing of the matter placed an order of the Land Acquisition Collector, Delhi dated February 23, 1968 which has been taken on record and for the purposes of identification has been marked as Annexure 'X'. A copy of the said Annexure 'X' was also given to the learned counsel for the appellants. A perusal of the aforesaid order dated March 22, 1968 clearly shows that the Ramjas Foundation Society was represented through Shri Ratan Lal Gupta, Advocate who was given a personal hearing. From a perusal of the aforesaid document Annexure 'X' dated February 23, 1968 it is clear that full opportunity of hearing through counsel was afforded to the Ramjas Foundation. It has been further mentioned in this order that the Ramjas Foundation Society was also allowed to file fresh objections if so desired, but Shri Ratan Lal Gupta, learned Advocate for the petitioner Society declined and stated that there was nothing more to add in the previous objection petition. After bringing the said document Annexure 'X' to the notice of the learned counsel for the appellants, no satisfactory explanation or argument came forward on behalf of the appellants. <u>The conduct of the appellants in raising the plea that no opportunity of personal hearing was given to the appellants</u>

> in respect of the objections filed under Section 5-A of the Act was totally baseless and factually incorrect and such conduct is reprehensible. It is well settled that a person invoking an equitable extraordinary jurisdiction of the Court under Article 226 of the Constitution is required to come with clean hands and should not conceal the material facts. The objection regarding not affording an opportunity of personal hearing in respect of objections filed under Section 5-A of the Act was one of the main planks of the grounds raised in the writ petition as well as in the special leave petition filed before this Court and ought we know if such ground had not been taken this Court would have entertained this appeal or not. The appellants have taken the advantage of obtaining the stay order also from this Court which is continuing for the last 14 years as the special leave petition was filed in 1978 itself.
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> It may be further noted that a common objection petition under Section 5-A of the Act in respect of both the lands situated in Mubarikabad as well as in Sadhurakhurd was filed on December 11, 1959 through Shri Ratan Lal Gupta, Advocate. The said objections were heard in the presence of Shri Ratan Lal Gupta, Advocate and disposed of by one common order Annexure 'X' and we cannot believe an ipse dixit explanation made orally during the course of arguments on behalf of the appellants that they had no knowledge of any personal hearing being given to Shri Ratan Lal Gupta, Advocate. It is also important to note that no such objection was taken in respect of land in Mubarikabad."
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> (emphasis supplied)

The Court also criticized appellant No.1 for playing a game of hide and seek and observed:

> "It may be noted that the reference with regard to suit No. 451 of 1971 decided on March 21, 1977 is in respect of the land of petitioners situated in Mubarikabad. It is surprising that though the opportunity was sought for filing a fresh suit, the appellants again filed a Writ Petition No. 106 of 1978 in the High Court on January 7, 1978 which was ultimately dismissed by the High

Court in limine on January 31, 1978 by a Division Bench comprising T.P.S. Chawla and Awadh Behari, JJ. In this Writ Petition No. 106 of 1978 the appellants conveniently omitted to mention that the permission to withdraw the Petition No. 213 of 1973 was granted on the statement of Shri M.C. Gupta that his clients reserved the liberty to file a fresh suit and not writ. Thus no liberty was sought or given for filing a fresh writ petition. In any case there were no fresh ground or circumstances available to the appellants to file a fresh Writ Petition No. 106 of 1978 on January 7, 1978 on identical grounds when the earlier Writ Petition No. 213 of 1973 had been dismissed as withdrawn on March 30, 1977. Nothing had happened between March 30, 1977 and January 7, 1978 for giving a fresh cause of action to the appellants to file the Writ Petition No. 106 of 1978. Awadh Behari, J. had dismissed the suit No. 451 of 1971 by order dated March 21, 1977 in regard to the lands in Mubarikabad and he was also one of the Judges of the Division Bench who passed the impugned order dated January 31, 1978 dismissing the writ petition in limine as he was fully aware of the entire background of this litigation. The appellants are themselves responsible for creating confusion in initiating separate proceedings at different periods of time in respect of the lands situated in Mubarikabad and Sadhurakhurd though challenge to the acquisition proceedings was on common grounds. Learned counsel for the appellants was unable to satisfy in respect of such conduct of hide and seek on the part of the appellants. In case, as sought to be explained by Mr. Tarkunde, learned senior counsel for the appellants, the appellants were depending on the result of the civil suit filed in respect of the lands situated in Mubarikabad there was no justification for filing the Writ Petition No. 213 of 1973 in respect of the land situated in Sadhurakhurd as the suit was not decided in 1973 but was in fact dismissed on March 21, 1977. We find no justification for filing the writ petition in respect of the land situated in Sadhurakhurd in 1973 and subsequently withdrawing the writ petition on March 30, 1977 reserving the liberty to file a fresh suit but thereafter again filing the writ petition on January 7, 1978 instead of suit."

(emphasis supplied)

11. In S.L.P.(C) No. 15017/2000 and connected matters, appellant No.1 had specifically raised a plea that its property is exempted from acquisition because it is a Wakf property, but failed to convince the Court to nullify the acquisition proceedings on that ground.

12. A careful reading of the judgment in the **Ramjas Foundation v. Union of India** (supra) and the order passed in the special leave petitions clearly shows that even though the question whether the land belonging to appellant No.1 is exempted from acquisition in terms of clause (d) of notification dated 13.11.1959 was not decided in the first case and the appeal was dismissed mainly on the ground of delay and contumacious conduct of the appellants, that question will be deemed to have been answered in negative in the second case because in the special leave petitions it was specifically pleaded that the land belonging to appellant No.1 is exempted from acquisition being Wakf property and this Court held that there was no merit in the appellant's case. It is true that the Court did not record detailed reasons for not entertaining the special leave petitions but use of the expression "we are not satisfied that this petition merits further consideration by this Court" clearly shows that the claim of exemption was turned down by this Court. If appellant No.1 did not feel satisfied with order dated 4.2.2002 and felt that its claim for exemption under clause (d) of notification dated 13.11.1959 was on firm footing, then it could have applied for review

of that order. However, as the subsequent events reveal, instead of questioning correctness of order dated 4.2.2002, appellant No.1 accepted the negation of its claim based on clause (d) of the notification and vigorously pursued the case for denotification of the land and partially succeeded inasmuch as vide notification dated 4.4.2002 issued under Section 48 of the Act, the Lt. Governor released 67 bighas 14 biswas of the acquired land.

13. Strangely, in the list of dates of the special leave petition out of which this appeal arises, there is not even a whisper about large number of cases filed by appellant No.1 challenging the acquisition of land situated at village Sadhora Khurd, the grounds on which the challenge was founded and the orders passed by the High Court and this Court. The appellants also suppressed the fact that after dismissal of the first appeal by the Division Bench of the High Court, possession of the land was taken by the Land Acquisition Collector on 13.7.2001 and transferred to the Delhi Development Authority. What could be the possible reason for these omissions? Any person of reasonable prudence will at once respond to this question by saying that sole object of not disclosing the facts relating to other cases was to keep the Court in dark about rejection of challenge to the acquisition of a portion of land which the appellants are claiming to be Wakf property. We have no doubt that the appellants did so for the purpose of persuading this Court to pass an interim order and they succeeded in this

venture because while issuing notice on 26.11.2001, this Court directed that there shall be stay of dispossession.

14. The principle that a person who does not come to the Court with clean hands is not entitled to be heard on the merits of his grievance and, in any case, such person is not entitled to any relief is applicable not only to the petitions filed under Articles 32, 226 and 136 of the Constitution but also to the cases instituted in others courts and judicial forums. The object underlying the principle is that every Court is not only entitled but is duty bound to protect itself from unscrupulous litigants who do not have any respect for truth and who try to pollute the stream of justice by resorting to falsehood or by making misstatement or by suppressing facts which have bearing on adjudication of the issue(s) arising in the case. In **Dalglish v. Jarvie** 2 Mac. & G. 231, 238, Lord Langdale and Rolfe B. observed: "It is the duty of a party asking for an injunction to bring under the notice of the Court all facts material to the determination of his right to that injunction; and it is no excuse for him to say that he was not aware of the importance of any fact which he has omitted to bring forward. In **Castelli v. Cook** (1849) 7 Hare, 89, 94 Wigram V.C. stated the rule in the following words: "A plaintiff applying ex parte comes under a contract with the Court that he will state the whole case fully and fairly to the Court. If he fails to do that, and the Court finds, when other party applies to dissolve the injunction, that any

material fact has been suppressed or not property brought forward, the plaintiff is told the Court will not decide on the merits, and that, as he has broken faith with the Court, the injunction must go." In **Republic of Peru v. Dreyfus Brothers & Company** 55 L.T. 802, 803, Kay J. held as under:

> "I have always maintained, and I think it most important to maintain most strictly, the rule that, in ex parte applications to this Court, the utmost good faith must be observed. If there is an important misstatement, speaking for myself, I have never hesitated, and never shall hesitate until the rule is altered, to discharge the order at once, so as to impress upon all persons who are suitors in this Court the importance of dealing in good faith in the Court when ex parte applications are made."

The same rule was restated by Scrutton L., J in **R. v. Kensington Income Tax Commissioner** (1917) 1 K.B. 486. The facts of that case were that in April, 1916, the General Commissioners for the Purposes of the Income Tax Acts for the district of Kensington made an additional assessment upon the applicant for the year ending April 5, 1913, in respect of profits arising from foreign possessions. On May 16, 1916, the applicant obtained a rule nisi directed to the Commissioners calling upon them to show cause why a writ of prohibition should not be awarded to prohibit them from proceeding upon the assessment upon the ground that the applicant was not a subject of the King nor resident within the United Kingdom and had not been in the United Kingdom, except for temporary purposes, nor with any view or intent of establishing her residence therein, nor for a period equal to six months in any one year. In the affidavit on which the rule was obtained the applicant

stated that she was a French subject and resident in France and was not and had not been a subject of the United Kingdom nor a resident in the United Kingdom; that during the year ending April 5, 1913, she was in the United Kingdom for temporary purposes on visits for sixty-eight days; that she spent about twenty of these days in London at her brother's house, 213, King's Road, Chelsea, generally in company with other guests of her brother; that she was also in the United Kingdom during the year ending April 5, 1914, for temporary purposes on visits, and spent part of the time at 213, King's Road aforesaid; and that since the month of November, 1914, she had not been in the United Kingdom. From the affidavits filed on behalf of the Commissioners and of the surveyor of taxes, who showed cause against the rule nisi, and from the affidavit of the applicant in reply, it appeared that in February, 1909, a leasehold house, 213, King's Road, Chelsea, had been taken in the name of the applicant's brother. The purchase-money for the lease of the house and the furniture amounted to 4000*l.*, and this was paid by the applicant out of her own money. The accounts of household expenses were paid by the brother and subsequently adjusted between him and the applicant. The Divisional Court without dealing with the merits of the case discharged the rule on the ground that the applicant had suppressed or misrepresented the facts material to her application. The Divisional Court observed that the Court, for its own protection is entitled to say "we refuse this writ of prohibition without going

into the merits of the case on the ground of the conduct of the applicant in bringing the case before us". On appeal, Lord Cozens-Hardy M.R. and Warrington L.J. approved the view taken by the Divisional Court. Scrutton L.,J. who agreed that the appeal should be dismissed observed:

> "and it has been for many years the rule of the Court, and one which it is of the greatest importance to maintain, that when an applicant comes to the Court to obtain relief on an ex parte statement he should make a full and fair disclosure of all the material facts – facts, not law. He must not misstate the law if he can help it – the court is supposed to know the law. But it knows nothing about the facts, and the applicant must state fully and fairly the facts, and the penalty by which the Court enforces that obligation is that if it finds out that the facts have not been fully and fairly stated to it, the Court will set aside any action which it has taken on the faith of the imperfect statement."

15. The above noted rules have been applied by this Court in large number of cases for declining relief to a party whose conduct is blameworthy and who has not approached the Court with clean hands – **Hari Narain v. Badri Das** AIR 1963 SC 1558, **Welcome Hotel v. State of A.P.** (1983) 4 SCC 575, **G. Narayanaswamy Reddy v. Government of Karnataka** (1991) 3 SCC 261, **S.P. Chengalvaraya Naidu v. Jagannath** (1994) 1 SCC 1, **A.V. Papayya Sastry v. Government of A.P.** (2007) 4 SCC 221, **Prestige Lights Limited v. SBI** (2007) 8 SCC 449, **Sunil Poddar v. Union Bank of India** (2008) 2 SCC 326, **K.D. Sharma v. SAIL** (2008) 12 SCC 481, **G. Jayashree v. Bhagwandas S. Patel** (2009) 3 SCC 141 and **Dalip Singh v. State of U.P.** (2010) 2 SCC 114. In the last

mentioned judgment, the Court lamented on the increase in the number of cases in which the parties have tried to misuse the process of Court by making false and/or misleading statements or by suppressing the relevant facts or by trying to mislead the Court in passing order in their favour and observed:

> "For many centuries Indian society cherished two basic values of life i.e. "satya" (truth) and "ahimsa" (non-violence). Mahavir, Gautam Buddha and Mahatma Gandhi guided the people to ingrain these values in their daily life. Truth constituted an integral part of the justice-delivery system which was in vogue in the pre-Independence era and the people used to feel proud to tell truth in the courts irrespective of the consequences. However, post-Independence period has seen drastic changes in our value system. The materialism has overshadowed the old ethos and the quest for personal gain has become so intense that those involved in litigation do not hesitate to take shelter of falsehood, misrepresentation and suppression of facts in the court proceedings.
>
> In the last 40 years, a new creed of litigants has cropped up. Those who belong to this creed do not have any respect for truth. They shamelessly resort to falsehood and unethical means for achieving their goals. In order to meet the challenge posed by this new creed of litigants, the courts have, from time to time, evolved new rules and <u>it is now well established that a litigant, who attempts to pollute the stream of justice or who touches the pure fountain of justice with tainted hands, is not entitled to any relief, interim or final</u>."
>
> (emphasis supplied)

16. In our view, the appellants are not entitled to any relief because despite strong indictment by this Court in **Ramjas Foundation v. Union of India**, they deliberately refrained from mentioning details of the cases

instituted by them in respect of the land situated at Sadhora Khurd and rejection of their claim for exemption under clause (d) of notification dated 13.11.1959 by the High Court and this Court.

17. Notwithstanding the above noted conclusion, we have thought it proper to deal with the issue raised in the appeal on merits. The institution of Wakf owes its origin to a rule laid down by the prophet of Islam. It means "the tying up of property in the ownership of God the Almighty and the devotion of the profits for the benefit of human beings. When once it is declared that a particular property is Wakf, or any such expression is used as implies Wakf, or the tenor of the document shows, if there is a wakf-nama that a dedication to pious or charitable purpose is meant, the right of Wakif is extinguished and the ownership is transferred to the Almighty. In his book on Mohammadan Law (Fourth Edition) Volume I, Ammer Ali has said "Any person or whatever creed may create Wakf, but the law requires that the object for which the dedication is made should be lawful according to the creed of the dedicator as well as the Islamic doctrines. Divine approbation being the essential in the constitution of a Wakf if the object for which a dedication is made is sinful, either according to the laws of Islam or to the creed of the dedicator it would not be valid." This shows that a non Muslim can also create a Wakf for any purpose which is religious under the

Mohammedan Law. However, the object of the Wakf must be lawful according to the religious creed of the maker as well.

18. While dealing with the question whether the land belonging to appellant No.1 is Wakf property and is exempted from acquisition, the learned Single Judge analysed the pleadings and documents produced by the parties, referred to the concept of 'Wakf' propounded by Ammer Ali, outlines of Mohammadan Law by Prof. A.A.A. Fayzee (Chapter IX pg.274-275), the judgments of the Privy Council and various High Courts in **Vidya Viruthi v. Baluswami** AIR 1922 PC 123, **Mami v. Kallandar Ammal** 54 I.A. 23, **Motishah v. Abdul Gaffar** AIR 1956 Nagpur 38, **Arur Singh v. Badar Din** AIR 1940 Lahore 119, **Fuzlur Rahaman v. Anath Bandhu Pal** (1911) 16 Cal. WN 114, **Misra Hidavat Beg v. Seth Behari Lal** AIR 1941 All. 225 and **Jai Dayal v. Dewan Ram Saran Das** AIR 1939 Lahore 686 and observed:

> "I cannot read the term 'wakf' property as embracing property impressed with the character of a charitable trust amongst the Hindus. A property burdened with the obligation of a charitable trust as understood in Hindu law cannot be called a wakf property in a legal sense. In a non-legal, popular sense it may be possible to use the expression wakf indiscriminately for and in relation to any property set apart for charity. But in legal technology the word 'wakf' has a definite and accepted connotation. It is in that sense that the word has to be understood. For the true interpretation of the word one must turn to Mohammadan law and see what it means.

Now the question is was Rai Kedar Nath making a wakf of his properties when in the meeting of 1916 he made a declaration in favour of charity. The answer to this question is in a resounding negative. This is on the assumption that a Hindu can create a wakf though such cases are rare.

The function held at that meeting shows that Rai Kedar Nath did two things. He renounced his interest in his private property. He dedicated everything to the institution he founded. These are known as Samarpan and Sankalp in Hindu Law. There was a clear and unequivocal declaration of intention to create trust and vesting of the same in the doner as a Trustee. There was clear proof of dedication in the ceremony he performed. He divested himself of the property dedicated.

There was a Hawan ceremony. This shows that Rai Kedar Nath was an orthodox Hindu. He was a believer in religious ceremonies. What he wanted to do was to found a charitable trust of which he himself was the founder trustee, apart from being the Manager of the school and the President of the Society. He created a Foundation as the name of the plaintiff now shows. He established an institution together with provision for its perpetual maintenance.

In evidence this trust has been called by the Secretary as 'Educational Charitable Institution'. In the deed of settlement dated November 26, 1946, it was described by the British Government as "a public educational charity". All in all it comes to a charitable endowment. It can be properly called a charitable trust. The Indian Trust Act will not govern it, as section 1 of that Act lays down what Rai Kedar Nath created was a charitable trust as known to Hindu Law. Reading the notification as a whole it appears to me that the wakf property as known to Muslim Law has been excepted from the acquisition proceedings. This has been done by the Government in exercise of its powers of eminent domain. I do not think that it will be proper to call the lands in question as wakf property. This is not the sense which the word bears in the notification. In my opinion, the Chief Commissioner's notification uses the expression 'Wakf property' in the sense in which wakf is understood in Mohammadan Law.

> The Chief Commissioner's notification under Section 4 Land Acquisition Act is in the nature of a statutory instrument. It uses the expression 'wakf property'. How do we interpret those words? I think these words must be construed according to the legal and technical meaning given to them by Muslim Law. They are not to be given the more popular, non-legal or ordinary dictionary meaning of the words. These words must be taken in their legal sense."

The Division Bench agreed with the learned Single Judge and observed:

> "In view of the aforesaid legal exposition of the 'waqf' it cannot be said that the property of appellants, which may be Hindu charitable trust, would be termed as 'waqf property'. The learned Single Judge, to our mind, rightly held that while using his expression in the impugned Notification issued by the statutory authority under Section 4 of the Act the statutory authority would be presumed to be aware of the legal implication of the term 'waqf property'. Therefore, this term cannot be read as to embrace property impressed with the character of a charitable trust amongst the Hindus. Once the meaning of the words 'waqf property' is clear, it is difficult to accept the argument of the learned counsel for the appellants that 'popular' meaning should be given or that statutory authority loosely used the expression 'waqf' and 'trust'. If the interpretation suggested by the appellants of the term 'waqf property' is accepted, it would amount to obliterating the distinction otherwise statutorily recognized by the Indian Trusts Act. No such interpretation can be given which nullifies the effect of the Provision of a Statute. While interpreting such a Notification like the one issued under Section 4 of the Act, the connotation of the word 'waqf' as legally accepted is to be preferred to a non-legal connotation. After all the Notification passed under Sections 4 and 6 of the Land Acquisition Act is in exercise of statutory powers and may have the effect of subordinate legislation. Such Notification has serious ramifications. It cannot be inferred, therefore, that framers of the Notification did not know the technical or legal meaning of the word 'waqf property' or used the expression loosely. It also cannot be presumed that authors of such statutory Notification

> were not aware of other religious charitable institutions and intended to include the same by the expression 'waqf property'. It appears that exclusion of 'Waqf property' was intentional knowing fully well the meaning thereof in Muslim Law with no intention to cover other religious charitable institutions."

19. The Division Bench also rejected the argument that if Wakf created by non-Muslims is excluded from clause (d) then the same would be violative of Articles 14 and 15 of the Constitution by observing that the said plea was not pressed before the learned Single Judge and even in the grounds of appeal, this plea was not taken. In the opinion of the Division Bench, by omitting to press the point before the learned Single Judge and not taking a ground in the memo of appeal, the appellants will be deemed to have abandoned this part of challenge to the acquisition proceedings.

20. The argument of Shri R. Venkataramani that by dedicating the land for a charitable purpose Rai Sahib Kedar Nath intended to create a Wakf lacks merit and deserves to be rejected. In the function organized on 25.12.1916 in Ramjas School, Kucha Ghasi Ram, Chandani Chowk, the dedicator is said to have made an announcement that he had created a Wakf and donated all his moveable and immoveable properties to the Society for charitable purposes but no evidence was produced before the learned Single Judge to prove this. Rather, the evidence produced before the learned Single Judge shows that even after the so called dedication of land for charitable

purposes, the same continued in the name of Rai Sahib Kedar Nath till 1936 when he executed the release deed in favour of the Trust of which he himself was the founder trustee apart from being the Manager of the school and the President of the Society. The hawan ceremony performed by Rai Sahib Kedar Nath which was preceded by Samarpan and Sankalp also shows that he did not intend to create a Wakf. This is the reason why the objects of Ramjas College Society formed in 1917 do not make a mention of the Wakf allegedly created by Rai Sahib Kedar Nath. In the deed of settlement executed by the British Government, the institution was described as a public educational charity and not as a Wakf. Therefore, the concurrent finding recorded by the learned Single Judge and the Division Bench that what was created by Rai Sahib Kedar Nath was a public charitable trust and not a Wakf and the property acquired vide notification dated 13.11.1959 was not a Wakf property does not call for interference.

21. In the result, the appeal is dismissed. We would have saddled the appellants with exemplary costs but keeping in view the fact that they are running educational institutions for benefit of the community, we refrain from passing an order to that effect and leave the parties to bear their own costs. However, it is made clear that henceforth the respondents shall be free to use the acquired land for the purpose of planned development of Delhi and the appellant shall not be entitled to obstruct the proceedings

which may be taken by the respondents for utilization of land for the purpose for which it was acquired or for any other public purpose.

……J.
[G.S. Singhvi]

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…..J.
[Asok Kumar Ganguly]

New Delhi
November 9, 2010.