17. The extreme stand that where any or even an infinitesimal part of the larger building has become unsafe or unfit for human habitation that also would give the landlord a right to eject the tenant was not seriously pressed before us even by the learned counsel for the petitioner. Neither principle nor precedent could be cited in support of such a proposition. There is thus no option but to reject the same.

18. To conclude the answer to the question posed in para 2 above is rendered in the affirmative and it is held that if the substantial part of the integrated larger building has become unsafe and unfit for human habitation the tenant can be ejected from the demises forming part thereof, under section 13(3)(a)(iii) of the Act despite the fact that the particular portion in his occupation may not be so.

19. The answer to the legal question referred having been rendered in the terms above, the revision would now go back before a learned Single Judge for a decision on merits in accordance therewith.

G. C. Mital,—I agree.

N.K.S.

FULL BENCH

Before; S. S. Sandhawalia, C.J., P. C. Jain, I. S. Tiwana, JJ.

RADHEY SHAM and others,—*Petitioners.*

versus

STATE OF HARYANA and others,—*Respondents.*

Civil Writ Petition No. 3755 *of* 1981.

August 4, 1982.

Land Acquisition Act *(I of* **1894)***—Sections* **3(b), 4, 6, & 9***—Constitution of India* 1950*—Article* 226*—Land acquisition proceedings—Land purchased after the issuance of notification under section* 4*—Purchaser of the land—Whether a 'person interested'*

within the meaning of section 3(b)—Such a purchaser—Whether has a locus standi *to challenge the proceedings—Long and unexplained delay in the finalisation of acquisition proceedings—Whether evidence of colourable exercise of power by the State—Writ jurisdiction—Whether could be invoked for quashing proceedings on such a ground—Challenge to the acquisition proceedings by a writ petition on the ground of long unexplained delay in finalising such proceedings by the State—Writ petitioner—Whether could be non suited for laches in such circumstances—Writ of certiorari—Whether an appropriate relief in such cases.*

Held, that the statutory definition of a 'person interested' under section 3(b) of the Land Acquisition Act, 1894 is couched in wide terms and expressly includes within it any person claiming an interest in the compensation to be made on account of the acquisition and even includes within its ambit a person interested in any easement affecting the land. Now it is undeniable that the petitioners by virtue of being the purchasers of the land are entitled to and in any case can claim to be interested in the compensation of the acquired land. They, therefore, fall clearly within the ambit of section 3(b) and on principle it would not be easy to hold that a person interested in the compensation is lacking in *locus standi* to challenge the acquisition. Again the ground that the petitioners can not maintain the writ petition because they are merely the purchasers of the land after the issuance of the notification under section 4 has to be negatived. It would be manifest that merely because the petitioners purchased the land after the notification, they are in no way put on a pedestal lower than their predecessor-in-interest. Thus the challenge to the very *locus standi* of the writ petitioners is untenable and has to be repelled. (Paras 6 & 7).

Held, that where the gross delays on the part of the State are themselves the foundations for assailing the proceedings, the petitioner cannot be non-suited in the writ jurisdiction for approaching it after a long period of time from the initiation of the acquisition. It is by now elementary that the writ jurisdiction is for the vigilant and the litigant who sleeps over his rights inordinately is to be frowned upon heavily within this forum. However, it seems to be equally plain that where the cause of action itself stems wholly or in part from the allegations of un-explained delay and procrastination of the State, it can hardly lie in the mouth of the State to make a grievance thereof. Examining the matter in some detail, it may well be possible that when originally initiated, the acquisition proceedings may superficially appear to be well founded in the normal course. However, the absence of any meaningful public purpose or its expeditious execution may be plainly negatived by gross in-action in finalizing the acquisition. Indeed such long procrastination and unexplained delay by the State would itself be a pointer to the conclusion that the initiation of the original proceedings far from

being directed to an immediate or forceable public purpose and its execution, was but a device to misuse the provisions of Section 4 and peg down the prices of land in shadiwy anticipation of some vague unspecified need which might arise in future. Indeed it will be such inordinate delays which will put in a lurid light what might originally have appeared as a *bona fide* exercise of power.It must, therefore, be held that where long unexplained delay is a foundation stone for the attack on the ground of colourable exercise of power, it would be vain for the State to claim that the writ petitioner should have approached the Court at the very inception of the acquisition proceedings. (Para 10).

Held, that it is so well settled that colourable exercise of power would vitiate every action. If the writ court comes to the conclusion that any action under the statute is not *bona fide* but only a misuse or abuse of the power conferred then it has the power of quashing the same and indeed is duty bound to do so, including the acquisition proceedings.

(Paras 15 & 16).

Held, that delay in the context of execution proceedings may be placed in three categories (i) betwixt the issuance of the notification under Section 4 and that under Section 6: (ii) betwixt the date of the notification under Section 6 and the issuance of notices under Section 9 of the claimants; and (iii) betwixt the date of the notice under Section 9 till the rendering of the Award by the Collector. As regards category (i) Section 6 of the Act in terms lays down that no declaration under Section 6 shall be made after the expiry of three years from the date of publication of the notification under section 4. The end result, therefore, is that now by virtue of this statutory mandate itself, any delay beyond three years in issuing the notification under Section 6 would render the proceedings wholly void. Coming to category (ii), it has to be borne in mind that the proviso to Section 6(1) of the Act was intended to minimise the delay in the completion of the acquisition proceedings. It cannot be said that the moment Section 6 notification is issued within the prescribed time, the total non-action and unexplaintd delay would be totally wiped out of consideration. It must, therefore, be concluded herein that the delays betwixt, the notification under Section 6 and notices under Section 9 have to be viewed in the overall context from the initiation of the proceedings and not from the narrow terminus merely of the date of Section 6 notification. Coming to category (iii) there is no basic or qualitative differences betwixt proceedings under the Act upto the stage of issuing of notices under Section 9 and thereafter. Indeed, a look at part II of the Act in which sections 4 to 18 are contained, seems to indicate that all these provisions are only components of one integral whole. No artificial or finical line of distinction can be drawn with regard to proceedings upto Section 6 or

to Section 9 and the provisions that follow thereafter. Right upto the proceedings culminating in the rendering of the Award by the Collector, the procedure prescribed by the Act is one integrated whole which cannot, or in any case should not, be artificially compartmentalized. Inordinate delays, even after the issuance of notice under Section 9 are equally relevant and fit for consideration in determining the basic issue of the colourable exercise of power. It, therefore, inevitably follows that in construing the challenge to the acquisition proceedings on the ground of colourable exercise of power, the court has to take an overall perspective of the whole matter and irrespective of any fiinical division based on the various stages of acquisition.

(Paras 17, 19, 22, 24, 25 & 26).

Held, that a writ of mandamus can only issue where there is a clear public duty laid upon an authority and an equally clear right in the petitioner to enforce the same. Admittedly, the Act does not provide any period of limitation within which acquisition proceedings have to be finalized from the date of the notification under section 4. There is thus no statutory duty to act within a strict prescribed time. Further more the respondent-State is never under a statutory duty to acquire the land right upto the time till the same gets vested in it. Therefore, in this context a mandamus can hardly lie because it would always be open to the State to take the stand that it is under no legal obligation to acquire and in any case at any time contemplate a withdrawal from the acquisition. Moreover in a case of colourable exercise of power mandamus cannot possibly provide the appropriate relief as it can only ensure compensation at those very pegged down prices of which the petitioners make a grievance. Indeed, once the conclusion is reached that in fact the exercise of power was a mere abuse and a colourable one then the only appropriate remedy is by way of writ of certiorari by quashing the impugned action.

(Paras 31, 32 and 33).

Amended Petition under Article 226 of the Constitution of India praying that in the facts and circumstances of the case and in the interest of equity, Justice and fair play, this Hon'ble Court may be pleased :

(a) *to issue a Writ of Certiorari quashing the impugned notice dated 5th August, 1981 (Annexure P. 6) issued by respondent No. 6 for making the award in respect of the lands comprised in Khasra Nos. 21/2(1—16) and 22/1(2—1) of Rectangle No. 68 situated within the revenue estate of Ballabgarh, owned by the petitioners.*

(b) to issue a Writ of Mandamus directing respondent No. 2 to for bear from making award under section 11 of the Act and taking possession of the aforesaid lands belonging to the petitioners comprised in Khasra Nos. 21/2(1—16) and 22/1(2—1) of Rectangle No. 68, in all measuring 3 kanals 17 marlas under section 16 of the Act in pursuance of impugned notice dated 5th August, 1981 (Annexure P. 6) issued under section 9 of the Act and from interfering with the possession of the petitioners qua the aforesaid lands, in any manner whatsoever.

(c) to issue any other appropriate Writ, Order or Direction to which the petitioners are found entitled to in the circumstances of the case.

(d) to dispense with the filing of certified copies of the documents attached as Annexures with the writ petition.

(e) to award costs of this writ petition to the petitioners against the respondents.

(f) to dispense with the requirement of service of notice of motion of the writ petition on the respondents.

It is, further prayed that an ad-interim order staying further proceedings initiated by respondent No. 2 (Land Acquisition Collector) under Section 9 of the Land Acquisition Act, 1894 pursuance of the impugned notice dated 5th August, 1981 (Annexure P. 6) issued under section 9 of the Act ibid, may kindly be granted by this Hon'ble Court during the pendency of the present writ petition in this Hon'ble Court....

Civil Misc. No. 2450 of 1981.

Application under Section 151 C.P.C. praying that the aforesaid writ petition filed by the petitioners may kindly be heard and decided alongwith the civil writ petition No. 4230 of 1981 filed by Shri Naval Singh entitled as "Naval Singh vs The State of Haryana and another."

Civil Misc. No. 2451 of 1981.

Application under Order 6, Rule 17 read with Section 151 C.P.C. praying that the petitioners may kindly be allowed to amend the writ petition by incorporating paragraphs 13-A to 13-E in the Writ petition as stated in the amended petition.

Civil Misc. No. 527 of 1982.

Application under order 1 rule 10 read with Section 151 C.P.C. praying that the name of Printers House Pvt. Ltd. Ballabgarh-respondent No. 3 may kindly be struck of from the arrary of respondents.

Radhey Sham and others v. State of Haryana and others
(S. S. Sandhawalia, C.J.)

M. S. Jain, Advocate with M. L. Sarin, I. C. Jain, and A. L. Jain, Advocates, *for the Petitioners.*

Harbhagwan Singh, A.G. (H) with R. P. Bali, Advocate, *for the State.*

J. K. Sibal with R. L. Handa, *for respondent No. 2.*

JUDGMENT

S. S. Sandhawalia, C.J.

1. Whether unexplained inordinate delay in the finalisation of the proceedings under the Land Acquisition Act might well taint them with the vice of a colourable exercise of power and thus wholly vitiate the same—is the meaningful issue which comes to the fore in this reference to the Full Bench.

2. Though the matrix giving rise to the aforesaid issue is not in serious dispute yet it calls for a somewhat detailed notice. Way back on the 8th of September, 1972, the respondent-State issued two notifications (annexures P. 1 and P. 2) under section 4 of the Land Acquisition Act (hereinafter called the Act) for acquiring a huge compact area of 134 Acres 3 Kanals and 1 Marla situated in the two separate revenue estates of Ballabgarh and Ranhera for the specific purpose of the development of a Mandi Township astride the Delhi—Mathura road. Comprised therein was an area of 8 Kanals within the revenue estate of Ballabgarh originally owned by Shri Nawal Singh who had sold the same on the 11th of September, 1961, to one Jaswant Rai for setting up an industry and he enclosed the same by a boundary wall. However in the month of August, 1980 the said Jaswant Rai sold the said area to the three petitioners,—*vide* two separate sale deed dated the 20th of August, 1980 and 29th of August, 1980 for a consideration of Rs. 50,000 each. This area adjoins the boundary wall of the factory of respondent No. 3, Messrs Printers House (Private) Ltd. Meanwhile on the 29th of November, 1972, a notification under section 6,—*vide* annexure P. 3 was issued in respect of an area measuring 10 Acres 4 Kanals in the revenue estate of Ballabgarh and 25 Acres 6 Kanals 7 Marlas in the revenue estate of Ranhera. Proceedings under section 9 of the Act were duly initiated by the Land Acquisition Collector and an

award therefor followed and later the Colonization Department got prepared precise plans for the Mandi area and even auctioned plots therein on the 21st of March, 1974. On the 26th of July, 1975, two more notifications under section 6 (annexures P. 4 and P. 5) were issued with regard to substantial areas within the revenue estates of Ballabgarh and Ranhera for the same purpose of the establishment of Mandi Township. Certain areas of respondent No. 3 which were covered by the aforementioned notification were released by the respondent—State on a representation made by them. However, respondent No. 3 approached the Colonization Department for the transfer of lands now owned by the petitioners in order to widen the frontage of their factory on the Delhi—Mathura road and to effectuate that purpose a direction was issued to the Land Acquisition Collector to initiate proceedings for making the award in respect of the lands now owned by the petitioners and by Nawal Singh. On the 5th of August, 1981, the Land Acquisition Collector purporting to act under section 9 of the Act issued notice (annexure P. 6) to the predecessor-in-interest of the petitioners, namely. Jaswant Rai for, appearing before him on the 21st of August, 1981, for submitting a claim regarding the value of his land. The petitioners then preferred the writ petition to quash the impugned notice as also annexures P. 4 and P. 5 in so far as they relate to the land of the petitioners. The gravamen of the petitioners' case is that the issuance of the impugned notice after well nigh 9 years of the original notification under section 4 is a colourable exercise of power notivated by considerations entirely extraneous and collateral to the original purpose of the acquisition. It is also the stand that the land of the petitioners stood automatically released as it was not comprised within section 6 notification issuel on the 29th of November, 1952, annexure P. 3.

3. In the return filed on behalf of respondents Nos. 1 and 2, a preliminary objection was raised that the challenge to the original notification after a lapse of about 9 years suffered from unexplained laches and therefore merited dismissal on that score alone. The broad outlines of the facts in the writ petition are not disputed and the respondent-State rests itself on the legalistic stand that no limitation being prescribed the land of the petitioners continued to be subject to the acquisition proceedings and consequently the notices under section 9 as also the original notifications were valid *qua* them. Significantly not a hint of any explanation for a delay of 9 years in

finalising the acquisition *qua* the land of the petitioners is even suggested.

4. In the written statement filed on behalf of respondent No. 3, a challenge to the very *locus standi* of the petitioners is raised on the ground that they had purchased the land in August, 1980 with the knowledge that the same was the subject-matter of notifications under sections 4 and 6 and were, therefore, estopped from assailing the same. The plea of laches was also sought to be reiterated. Specifically it stands admitted that the land of the answering respondent was released from the acquisition proceedings,—*vide* notification dated 28th November, 1975 (annexure R. 2). The averments in paragraph 9 of the writ petition have, however, been denied and it is stated that the acquisition proceedings had not been initiated at the instance of the answering-respondent.

5. As the very *locus standi* of the petitioners and the consequent maintainability of the writ petition has been challenged it is apt to first dispose of this preliminary issue. The stand of the respondents herein is that in essence the petitioners with their eyes open had purchased not property but litigation as the mere speculators in land for claiming enhanced compensation. It was contended on their behalf that the petitioners knowing fully well that acquisition proceedings had been initiated in 1972 purchased the land in August 1980 and within less than a year thereafter notices under section 9 had been issued. Therefore they could hardly complain of any gross laches from the date of their purchase and the more so when the original land owner had not raised any objection thereto and must be deemed to have waived or acquiesced therein. The petitioners, it was submitted could not claim a better or superior right than their predecessor-in-interest Jaswant Rai.

6. Despite the vehemence with which the *locus standi* of the petitioners was assailed, it appears to me that neither on principle nor precedent can they be non-suited on that ground alone. Reference in this connection is first called for to the statutory definition of a "person interested" under section 3(b) of the Act which is couched in wide terms and expressly includes within it any person claiming an interest in the compensation to be made on account of the acquisition and even includes within its ambit a person interested in any easement affecting the land. Now it is undeniable that the

petitioners by virtue of being the purchasers of the land are entitled to and in any case can claim to be interested in the compensation of the acquired land. They, therefore, fall clearly within the ambit of section 3(b) and on principle it would not be easy to hold that a person interested in the compensation is lacking in locus *standi* to challenge the acquisition. Again the ground that the petitioner cannot maintain the writ petition because they are merely the purchasers of the land after the issuance of the notification under section 4 stands well negatived by the binding precedent in Smt. *Gunwant Kaur and others* v. *Municipal Committee, Bhatinda and others,* (1). Therein also some of the petitioners had purchased the land more than three years after the issuance of the notification under section 4. Nevertheless their Lordships upheld their right to assail the acquisition in the following:

> "It was urged by Mr. Hazarnavis on behalf of the Municipal Committee, Bhatinda, that the three appellants were purchasers of the lands claimed by them after the notification under Section 4 was issued and they had no right to challenge the issue of the notification. If, however, the notification under Section 4 was vague, the three appellants who are purchasers of the land had title thereto may challenge the validity of the notification. The appellants have spent in putting up substantial structures considerable sums of money and we are unable to hold that merely because they had purchased the lands after the issue of the notification under Section 4 they are debarred from challenging the validity of the notification or from contending that it did not apply to their lands."

The aforesaid enunciation of the law has been followed and applied in terms within this jurisdiction by the Division Bench in *Tulsa Singh* v. *State of Haryana and Ors.* (2), in the context of a purchase of land long after the original notification under Section 4. It would thus be manifest that merely because the petitioners purchased the land after the notification, they are in no way put on a pedestal lower than their predecessors-in-interest. Mr. M. S. Jain, the learned counsel for the petitioners had rightly relied on the recent pronouncements of the final Court exhibiting a clear trend

(1) A.I.R. 1970 S.C. 802.

(2) 1972 Revenue Law Reported 651.

against a narrow and technical view about *locus standi*. Apart from this, it was highlighted on behalf of the petitioners that herein the continued non-action on the part of the respondent-State for well-nigh nine years had rightly led the earlier owner Shri Jaswant Rai to believe that the land was no longer required for acquisition and stood tacitly released therefrom. Equally, the petitioners were thereby induced *bona fide* to accept this position and make purchases in August, 1980. Meanwhile in February, 1980 this Court in *Man Singh and others* v. *State of Punjab*, (3) had opined in no uncertain terms on the invalidity of an acquisition which was tainted by long and unexplained delays thus further buttressing the petitioner's position.

7. For the aforesaid reasons it seems to follow that the challenge to the very *locus standi* of the petitioners is untenable and has to be repelled and the maintainability of the writ petition must be up-held.

8. Equally apt it is to deal next with the preliminary objection pressed on behalf of the respondents on the ground of gross laches. It was strenuously submitted that the acquisition proceedings having been commenced in 1972, the challenge by way of this writ petition in 1981 is belated. It was sought to be contended that their predecessors-in-interest having not chosen to challenge the proceedings, the petitioners were either barred or in any case not on better footing in now raising the challenge on the ground of colourable exercise of power.

9. To rightly appraise the aforesaid objection, what pointedly falls for consideration is, whether gross unexplained delay is a factor or circumstance relevant for establishing the colourable nature of the exercise of power either by itself alone or in any case when added to other factors ? The answer to this issue appears to me as being rather plainly in the affirmative. What perhaps calls for reiteration herein is the fact that the core of the attack on behalf of the petitioners is the colourable exercise of power and not mere delay by itself. However, long unexplained procrastination, either by itself and in any case coupled with other factors clearly tends to prove the lack of *bona fides* in the exercise of the power of acquisition. If it can be established beyond cavil that the real motivation behind

(3) 1980 P.L.J. 414.

the acquisition was not any specific public purpose and its expeditious execution but was a mere ruse to peg down the prices by an issuance of notification under Section 4 and thus holding the citizens to ransom for years at the whim and caprice of the State to finalise the acquisition proceedings when it chooses (if at all it is so done) is clearly a factor for establishing the colourable exercise of power. It must, therefore, be held that unexplained inordinate delay is certainly a starkly relevant factor if not a conclusive one for determining the colourable exercise of power or otherwise in the context of proceedings under the Act.

10. Once it is held as above, it would seem to follow logically therefrom that where the gross delays on the part of the State are themselves the foundations for assailing the proceedings, the petitioner cannot be non-suited in the writ jurisdiction for approaching it after a long period of time from the initiation of the acquisition. It is by now elementary that the writ jurisdiction is for the vigilant and the litigant who sleeps over his rights inordinately is to be frowned upon heavily within this forum. However, it seems to be equally plain that where the cause of action itself stems wholly or in part from the allegations of un-explained delay and procrastination of the State, it can hardly lie in the mouth of the respondent-State to make a grievance thereof. Examining the matter in some detail, it may well be possible that when originally initiated, the acquisition proceedings may superficially appear to be well founded in the normal course. However, the absence of any meaningful public purpose or its expeditious execution may be plainly negatived by gross in-action in finalizing the acquisition. Indeed such long procrastination and unexplained delay by the State would itself be a pointer to the conclusion that the initiation of the original proceedings far from being directed to an immediate or forseeable public purpose and its execution, was but a device to misuse the provisions of Section 4 and peg down the prices of land in shadowy anticipation of some vague unspecified need which might arise in futuro. Indeed it will be such inordinate delays which will put in a lurid light what might originally have appeared as a *bona fide* exercise of power. It must, therefore, be held that where long unexplained delay is a foundation stone for the attack on the ground of colourable exercise of power, it would be vain for the respondent-State to claim that the writ petitioner should have approached the Court at the very inception of the acquisition proceedings, and in a way is an attempt to take advantage of its own

wrong. Indeed in this context the very cause of action (namely, the colourable exercise of power) may well arise only by virtue of a long drawn-out unexplained inaction of the State and far from providing a shield to the respondent-State, it would only sharpen the sword of attack on the basis of the taint of colourable exercise of power. It must therefore, be concluded that in the peculiarities of this particular context the mere chronological delay in approaching the writ Court from the initiation of the acquisition proceedings cannot by itself non-suit the petitioners and indeed as noticed earlier may well be a factor in their favour rather than against them.

11. Indeed, the matter here can be looked at from another refreshing angle. If, as it has been held above, unexplained inordinate delay by the respondent-State, either by itself or coupled with other factors furnishes the cause of action to the writ petitioner then in essence, there is no delay on his part to approach the writ court. Indeed, the petitioners, in such a case knocks at the door of the court soon from the arising of the cause of action or a part of it. The real terminus for determining delay in such cases if not from the initiating of proceedings, but from the long inaction of the respondents in finalizing the acquisition proceedings which would taint it with a colourable exercise of power. Therefore, it can hardly be said that the writ petitioners have in any way not been vigilant in seeking relief within a reasonable time.

12. However, a strong note of caution must be sounded in this field. Learned counsel for the petitioners had gone to the extreme length of contending that delay in challenging the validity of the acquisition proceedings on any ground is irrelevant in the writ jurisdiction. Particular reliance was sought to be placed on para-9 of the report in Man Singh's case (supra) for submitting that the Bench had on an ancillary ground struck down the notification under Section 4 on the ground of its non-publication in the locality after a period of more than 6 years. I, however, regret my inability to subscribe to any such doctrinaire stand. A reference to the judgment in *Man Singh's case* would show that the issue of laches in approaching the Court was not even remotely raised nor this question was canvassed or pronounced upon. Again the challenge to the notification under section 4 for non publication in the locality was merely an ancillary ground, to the main issue of the colourable

exercise of power on which the writ petition was allowed. It was only as an additional ground that the observations were made with regard to the issue of the violation of section 4(1) of the Act. Nevertheless if the observations in Man Singh's case are projected as a warrant for the proposition that delay in approaching the writ Court on any ground whatsoever for quashing the acquisition proceedings is irrelevant, then this is plainly contrary to binding precedent. In *Aflatoon and others* v. *Lt. Governor of Delhi and others*, (4), their Lordships have held in unequivocal terms as follows :—

> "***. A valid notification under section 4 is a sine qua non for initiation of proceedings for acquisition of property. To have set on the fence and allowed the Government to complete the acquisition proceedings on the basis that the notification under section 4 and the declaration under section 6 were valid and then to attack the notification on grounds which were available to them at the time when the notification was published would be putting a premium on dilatory tactics. The writ petitions are liable to be dismissed on the ground of laches and delay on the part of the petitioners."

And again in *State of Mysore* v. *V. K. Kangan*, (5), the same view has been reiterated as follows :—

> "The notification under section 4 was published on 13th April, 1967. Objections were filed by the respondent under Section 5-A of the Act. The Deputy Commissioner submitted his report to the Government. The Government overruled the objections. The notification under Section 6 was published in the gazette on 19th October, 1968. The writ petition challenging the validity of the notifications was filed some time in July or August, 1969. We do not think that the respondent was entitled to challenge the validity of the notification under section 4 of the Act as the writ petition challenging the notification was filed after an unreasonable lapse of time."

It is plain from the above authoritative enunciation that the question of laches in approaching the writ Court is always a material

(4) A.I.R. 1974 S.C. 2077.
(5) A.I.R. 1975 S.C. 2190.

and sometimes a crucial factor. I would, however, wish to make it clear that for the detailed reasons delineated hereafter I would unhesitatingly affirm the view in *Man Singh's case* on the other issue of the colourable exercise of power.

13. Before adverting to the merits, it deserves highlighting that in pristine essence the challenge on behalf of the petitioners (and even more lucidly advanced by Mr. M. L. Sarin on behalf of the interveners) is rested solely on the ground of colourable exercise of power and not mere delay. Indeed, gross unexplained delay is only one factor or evidence to establish the basis of the attack namely, that the original notification under section 4 and the subsequent acquisition proceedings was a mere colourable exercise of power, the real intent whereof was not so much to acquire for an immediate public purpose but to merely peg down the prices for some remote unforeseeable contingencies in the future.

14. Herein the main stay of the learned counsel for the petitioners is that the scheme of the Act enjoins a duty on the respondent-State to act with expedition in finalizing the acquisition proceedings. Once that duty or obligation is deviated from and there is wholly unexplained delay in the proceedings, then *prima facie* the exercise of power of eminent domain for acquisition becomes unreasonable and arbitrary. Counsel contended with plausibility, that reasonableness in exercising the power vested by the Act was inherent in the statute itself and in the peculiar context reasonableness herein, in essence, means acting within reasonable period of time, even though no specific limitation has been prescribed. In the converse it was argued that merely because no limitation has been prescribed, it would not give a licence or a carte-blanche to the State to act at any time, however, remote after the promulgation of the notification under section 6. Consequently, it was contended that unexplained delay is the plainest indicia in the absence of any public purpose either in the present or in a forseeable future which conclusively establishes that the original exercise of power was a colourable one and thus fit to be quashed.

15. The issue at once arises at the threshold — Whether writ jurisdiction warrants the quashing of acquisition proceedings on the ground of colourable exercise of power ? There appears to be so

long a line of unbroken enunciation of principle and equally of precedent that colourable exercise of power would vitiate every action that it seems unnecessary to launch on a long dissertation. As a general principle, it was not even contested before us on behalf of the respondents that if the writ court comes to the conclusion that any action under the statute is not *bona fide* but only a misuse or abuse of the power conferred, then it has the power of quashing the same and indeed is duty bound to do so. Within the specific field of acquisition proceedings, under the Act, the final Court, though originally not saying so in terms, has made consistent observations which are a pointer to the view that such proceedings would be vitiated if they are tainted by a colourable exercise of power. This first emerges from the tenor of the judgment in *State of Madhaya Pradesh and others* v. *Vishnu Parsad Sharma and others* (6), whereby it was held categorically that it was not open to the appropriate government to issue successive notifications under section 6 of the Act with respect to land comprised within one notification under section 4(1) of the Act and once a declaration under section 6 has been made, the earlier declaration under section 4(1) would be exhausted for it has served its purpose. As is well known, this judgment then led to an amendment of section 6 by Act No. 13 of 1967 and the insertion of the proviso expressly specifying a period of three years for a declaration under section 6 from the date of the notification under section 4(1). More forthright observations in this context, however, were made in *Ambalal Purshottam etc.* v. *Ahmedabad Municipal Corporation of the City of Ahmedabad and others* (7), in the following terms.—

> "***. We are not hereby to be understood as suggesting that after issue of the notifications under sections 4 and 6 the appropriate Government would be justified in allowing the matters to drift and to take in hand the proceedings for assessment of compensation whenever they think it proper to do. It is intended by the scheme of the Act that the notification under section 6 of the Land Acquisition Act must be followed by a proceeding for determination of compensation without any unreasonable delay.

(6) 1966 S.C. 1593.

(7) 1968 S.C. 1223.

> But on the facts of the present case, it does not appear that there was any scope for holding that with a view to prevent the landowners or the persons claiming derivative title from them from getting the benefit of the rise in prices, notifications under sections 4 and 6 were issued without any intention to take steps for acquisition of the lands."

However, the final seal of approval to the proposition that acquisition proceedings under the Act would be vitiated if they lack *bona fides* and are only a colourable exercise of power, has been set by the recent judgment of their Lordships in *The State of Punjab and another* v. *Gurdial Singh and others* (8), while dismissing a Special Leave Petition against a judgment of this Court. In no uncertain terms, it was observed as under:—

> "***When the custodian of power is influenced in its exercise by considerations outside those for promotion of which the power is vested the court calls it a colourable exercise and is undeceived by illusion. In a broad, blurred sense, Benjamin Disraeli was not off the mark even in law when he stated. "I repeat—that all power is a trust—that we are accountable for its exercise—that, from the people, and for the people, all springs and all must exist." Fraud on power voils the order if it is not exercised *bona fide* for the end designed. Fraud in this context is not equal to moral turpitude and embraces all cases in which the action impugned is to affect some object which is beyond the purpose and intent of the power, whether this be malice-laden or even being. If the purpose is corrupt the resultant act is bad. If considerations, foreign to the scope of the power or extraneous to the statute, enter the verdict or impels the action *mala fide* or fraud on power vitiates the acquisition or other official act."

Within this Court, the Division Bench in *Man Singh's case* (supra) has, in terms, held that where the notifications were issued not for the *bona fide* purpose of acquisition but for the collateral purpose of

(8) AIR 1980 S.C. 319.

pegging down the prices and preventing the petitiiners from securing benefit, then the same must be quashed. I would notice that though the correctness of the aforesaid judgment was sought to be assailed on behalf of the respondents on certain other aspects, yet on the specific issue that the writ court has the power to quash acquisition proceedings once the conclusion has been reached that it involves a colourable exercise of power, was never disputed either on behalf of the respondent -State or by Mr. J. K. Sibal on behalf of the private respondents.

16. I would, therefore, conclude that a colourable exercise of power would vitiate acquisition proceedings under the Act thus warranting the writ court to quash the same.

17. Having held as above, one may now revert back to the main issue of the unexplained inordinate delay in the finalization of the acquisition proceedings. It has already been observed that this is a starkly relevant factor for determining whether the exercise of power is colourable or otherwise. However, in its practical application the question boils down to the fact whether the delay, if any, is either unerplained or is factually ir statutority justifiable. On a closer analysis, delay in this context may be placed in three categories for clarity's sake:—

(i) betwixt the issuance of the notification under section 4 and that under section 6;

(ii) betwixt the date of the notification under section 6 and the issuance of notices under section 9 to the claimants; and,

(iii) betwixt the date of the notice under section 9 till the rendering of the Award by the Collector;

18. As would be evident later, in the ultimate analysis, the determination of the issue of the colourable exercise of power calls for an over-all perspective of the issue of delay and not in any finical compartmental divisions thereof. Nevertheless, it seems apt to first view the matter in the context of the aforesaid three individual categories.

19. Catetory (i) need not detain one for long because it would appear that it is now well covered both the statutory provisions and by biding precedent. Nevertheless, the matter calls for a brief notice in the context of its legislative history. Prior to 1967, the statute had provided no limit of time betwixt the issuance of the notification under section 4(1) and the declaration visualised under section 6. The vice and the anomalies of inordinate delays in the issuance of the notification under section 6 had come up for consideration before their Lordships in *Vishnu Prasad Sharma's case* (supra). Though the issue was formulated in the strictly legal terms whether successive notifications under section 6 could be issued on the basis of the original notification under section 4, the gross hardship and the inequity of issuing of notification under section 6 after more than 11 years of the original notification under section 4 name prominently to the fore. The Court held that successive notifications under section 6 could not be issued on the basis of the original notification under section 4. This judgment led to the issuing of an Ordinance by the President on January 20, 1967 which was later enacted as Act No. 13 of 1967 whereby substantial amendments in section 6 were introduced. The proviso to sub-section (1) now, in terms lays down that no declaration under section 6 shall be made after the expiry of three years from the date of the publication of the notification under section 4(1). The end result, therefore, is that now by virtue of this statutory mandate itself, any delay beyond three years in issuing the notification under section 6 would render the proceedings wholly void.

20. However, as regards the delay within the period of three years, the learned counsel for the petitioners was insistent in arguing that even if this is unexplained and unjustifiable, it would taint the proceedings. The submission was that the proviso to Section 6(1) spells out only an outer limit beyond which the notification under Section 6 cannot be issued but does not provide any blanket protection to the State forwarding within the said period. This stand might have some tinge of plausibility of logic alone, which appears to me that herein the matter is concluded against the petitioners by the binding precedent in *Gujarat State Transport Corporation etc.* v.

Valji Mulji Soneji and others, etc. (9). Therein, it was observed as follows:—

> "The question then is: When a statute confers power and prescribes times within which it can be exercised, could it ever be said that even though the power is exercised within the statutory period yet the Court can examine the question of delay and record a finding that there was an unreasonable delay in exercise of the power and, therefore, the exercise of the power is bad? This approach would defeat the very purpose for prescribing a sort of a period of limitation on exercise of power. When a period is prescribed for exercise of power it manifests the legislative intention that the authority exercising the power within the prescribed time could not at least be accused of the inaction or dithering and, therefore, such exercise of power could not be said to be bad or invalid on the only ground that there was unreasonable delay in the exercise of the power. The very prescription of time inheres a belief that the nature and quantum of power and the manner in which it is to be exercised would consume at least that much time which the statute prescribes as reasonable and, therefore, exercise of power within the time could not be negatived on the only ground of unreasonable delay. Therefore, in this case it is difficult to agree with the High Court that there was an unreasonable delay in exercise of power and hence the exercise was either bad or invalid".

And again:

> "— — — Therefore, while appreciating the anxiety of the High Court we are of the opinion that once the legislature stepped in and prescribed a sort of period of limitation within which power to issue notification under S. 6 could be exercised it was not necessary to go in search of a further fetter on the power of the Government by raising the implication."

(9) A.I.R. 1980 S.C. 64.

In view of the aforesaid enunciation, it does not seem possible for the courts now to still examine the justifiability or otherwise of the period of strict three years betwixt the notification under Section 4 and one under Section 6.

21. In view of the above learned counsel for the petitioners' challenge to the Section 6 notification on the ground that it was issued after a period of 2 years and 10 months of the initiation of proceedings cannot succeed. Admittedly herein the notification under Section 4 was issued on the 8th of September, 1972. In view of the amendment in Section 6 successive notifications thereunder can be issued within a period of 3 years. In the present case this second notification under section 6 was issued on the 26th of July, 1975, which is within the time which their Lordships of the Supreme Court have described as a sort of a period of limitation for the exercise of this power. The petitioners' stand on this limited ground, is thus unsurmountable.

22. Coming to the category (ii), what was hotly agitated in this context was—whether the terminus for delay herein is the notification under Section 6 or the overall delay from the very initiation of the acquisition proceedings. The learned counsel for the respondents had taken up the hypertechnical stand that the legislature having itself provided the statutory limit for three years in future the added delays in finalizing the acquisition proceedings must be counted from the date of the notification under Section 6 and not earlier. I am unable to accept this somewhat doctrinaire stand which does not seem to have either the sanction of principle, nor any precedent was cited in its support. It is plain that the legislature while adding the proviso to Section 6(1) had only prescribed the outer limit for the exercise of the power of making the requisite declaration. That the object of the legislature was to minimise the delays in this context, is evident from the fact that the moment the threshold of three years is crossed, the power to issue a notification under Section 6 would be exhausted. It is true that the time within this period of 3 years does not now taint the proceedings but this would certainly be relevant & would call for consideration in the context of any prolonged subsequent delays as well. It cannot, therefore, be said that the moment Section 6 notification is issued within the prescribed time, the total non-action and unexplained delay for the said period would be totally

wiped out of consideration. It must, therefore, be concluded herein that the delays betwixt notification under Section 6 and notices under Section 9 have to be viewed in the overall context from the initiation of the proceedings and not from the narrow terminus merely of the date of Section 6 notification.

23. Applying the above rule, it has to be borne in mind that though the last notification under Section 6 was issued on the 26th of July, 1975, proceedings had been initiated nearly three years earlier by the notification under Section 4 on the 8th of September 1972. The issue of delay in the overall context has, therefore, to be viewed from 1972 itself and not from any artificial terminus of the date of Section 6 notificaton later.

24. Coming now to the category (iii), the main stay of the arguments on behalf of the State and the private respondents, was that any delay after the issuance of notices under Section 9 is qualitatively different from the delay prior thereto. In substance, an ingenious analogy was sought to be raised that proceedings after notice under Section 9 were in the nature of execution or procedural proceedings which cannot in any way affect, what was called the decretal or the substantive proceedings of acquisition prior thereto. Counsel submitted that whilst delay in the proceedings subsequent to notice under Section 9 may merit a *mandamus* or a direction for expeditious disposal the same is not relevant to, nor can be made a basis for nullifying the acquisition proceedings themselves. In sum, the stand of the respondents was that no amount of consequential delay after issuance of notice under Section 9 is either relevant or germane to the validity of the notifications under Stctions 4 & 6

25. The argument aforesaid does credit to the ingenuity of the learned counsel and in fairness one must notice that it was presented with plausibility and ability by Mr. J. K. Sibal. However, a deeper analysis would show that, in essence, the stand is untenable if not wholly fallacious. I am unable to see any basic or qualitative difference betwixt proceedings under the Act up to the stage of issuing of notices under Section 9 and thereafter. Indeed, a look at Part-II of the Act in which Sections 4 to 18 are contained, seems to indicate that all these provisions are only components of one integral whole. No artificial or finical line of distinction can be drawn with regard to proceedings up to 6 or to Section 9 and the

provisions that follow thereafter. Right upto the proceedings culminating in the rendering of the Award by the Collector, the procedure prescribed by the Act is one integrated whole which cannot, or in any case should not, be artificially compartmentalized. I am, therefore, of the view that inordinate delays even after the issuance of notice under Section 9 are equally relevant and fit for consideration in determining the basic issue of the colourable exercise of power.

26. From the aforesaid discussion of the three categories enumerated in para 17, it inevitably follows that in construing the challenge to the acquisition proceedings on the ground of colourable exercise of power, the Court has to take an overall perspective of the whole matter and irrespective of any financial divisions based on the various stages of acquisition. As their Lordships have pointed out repeatedly in *Vishnu Prasad Sharma; Amb*[illegible]*alal Purshottam;* and *Gurdial Singh and others'* cases (supra), the whole scheme of the Act visualises an expeditious finalization of the acquisition proceedings once they are commenced. Unexplained and inordinate delays which tend to hold the claimants at ransom, whose properties are sought to be acquired and are further denied compensation within a reasonable time would be sharp and pointed pieces of evidence to establish the lack of *bona fides* for the exercise of power. The Court has, therefore, to take into consideration the whole spectrum from the initiation of the proceedings till the time of the challenge raised thereto by the petitioners in which delay may well be the most important, if not, the conclusive factor. Herein, the statutory period of three years provided for the exercise of the power of declaration under Section 6, does not provide any blanket protection to the respondent-State to rest on its ores. Though it must now be held that on the ground of delay alone, challenge to the notification under section 6 cannot be raised, if it comes within the three years period prescribed by the statute. It does not follow therefrom that this is to be entirely excluded from the overall delay that may follow the finalisation of the proceedings after Section 6 notification as well. If, even after the notification under Section 6, the State procrastinates over a number of years, then the whole period from the corner-stone of the notification under Section 4 (1) has to be viewed in a larger perspective. The intervals between Sections 4 and 6 Notifications are, therefore, not irrelevant as a factor for examining

the *bona fides* of the acquisition proceedings. To use a homely phrase, this period can certainly be tagged to other inordinate delays after the issuance of notification under Section 6 to examine the matter in a total perspective. It deserves recalling that unexplained delay operates only to the hardship and prejudice of the citizen alone and not to the State which has the power at any time to withdraw from the acquisition either by virtue of Section 48, (and as authoritatively held in *Ambalal Purshottam's case,* (supra) or the broader provisions of the General Clauses Act.

27. As has been repeatedly emphasised by the final Court, the issue of delay has to be visualised in the context of the larger scheme of acquisition under the Act. Section 4 requires the satisfaction of the appropriate government that the land is likely to be needed for a public purpose and a declaration under Section 6 concretises that intention. To satisfy the test of *bona fides* herein it is elementary that there must exist a present need for acquisition for the execution of an existing public purpose. To put it in a term of art, both the public purpose and the need for execution must be *in presenti* and not wholly in *futuro.* Any purported acquisition for a vague public purpose which may or may not arise in the future on the pegged down market value is thus assailable as a colourable exercise of power and an abuse by the State to compulsorily take the property of the citizen at a pittance for illusory futuristic needs. This is more so when judicial notice can be, and indeed has been taken by the final Court, of a continued and inexorable up-trend in the prices of real estate. Consequently, if there exists no explanation at all for long delays to finalize the proceedings and concretise the alleged public purpose the inference inevitably arises that no immediate public purpose existed or was in sight which could be put in practical shape. Once that is so, it may well follow that the exercise of power was a colourable attempt to freeze prices forthwith for an acquisition years later when they may well be double or treble of the existing ones. For a welfare State to do so at the cost of citizen, would thus be something which would be a fraud on the power conferred by the statute and, therefore, quashable.

28. The immediate effect of the issue of a notification under Section 4 plainly is that the market value of the land is artificially pegged down on that date. The owner virtually loses the beneficial enjoyment of his property because any improvements made on the land thereafter are not to be compensated at all. Apart from

this fact, the citizen is left dangling at the mercy of the State to acquire or not to acquire because the power remains with the State to withdraw from the acquisition at any time. If the prices fall, the respondent-State can cancel the notification to the grave prejudice of the landowner. On the other hand the respondent-State who holds the whip hand, is not at all likely to be adversely affected. Consequently, it is the duty of the respondent-State to act with the utmost expedition in acquisition proceedings because acting within a reasonable time even where no limitation is provided, is the unwritten premise of the statute. Equally, it has to be borne in mind that the act is, expropriatory and has, therefore, to be narrowly construed. The strictness with which the final Court has viewed the acquisition proceedings is highlighted by the judgments of the Supreme Court holding that even a violation of the procedural provisions like the publication of Section 4 notification in the locality would vitiate the whole acquisition proceedings. Not only this, the publication must be simultaneous with the notification and in case it is not, each day's delay has to be satisfactorily explained in order to save the validity of the notification. Similarly, the proviso to Section 6(1) now lays down a strict outer limit and even a day's delay beyond three years would bar the State from issuing a notification under Section 6 thus wiping off any earlier intention to acquire the land. It would thus appear that where the very initiation of the proceedings is rested on nothing more than an illusory need in the future, rather than immediate need for existing public purpose, the same can hardly be sustainable. Equally, a total unexplained inaction and procrastination in this context would lead to an inflexible presumption that in fact there was no immediate need for an existing public purpose and the exercise of the power of acquisition would thus be a colourable one.

29. Before parting with this aspect of the case it seems necessary to sound a sharp note of caution in the context of a frontal challenge to the validity of Section 4 notification itself. In the earlier part of the judgment, it has been observed that the proviso to Section 6(1) now protects a notification under Section 6 issued within three years of the initiation of proceedings. This must not be misunderstood to mean that there is any such limitation or protection in challenging the validity of the original notification under Section 4 itself. If the writ petitioner is in a position

to establsh conclusively that even at the very time of the issuance of the notification under Section 4, there was neither any public purpose in contemplation nor any need or plan for its expeditious execution then, it would be obviously open to the petitioner to challenge the notification under Section 4 forthwith. A long delay in issuing the notification under Setion 6 would equally be a relevant factor in laying siege to the original notification under Section 4 itself. The observations in *Gujarat State Transport Corporation's case* (supra) are thus obviously in the context of Section 6 notifition and in no way protect the challenge to the original notification under Section 4. It could not possibly have been the intention of the law that where the very initiation of the proceedings can be established to be tainted with *mala fides*, the citizen must still wait for another three years before assailing the same on the alleged ground that Section 6 notification can be issued within a period of three years. I am inclined to the view that irrespective of the consideration applicable to Section 6, a frontal challenge to Section 4 notification on the basis of a colourable exercise of power is open to the petitioners forthwith.

30. In fairness to Mr. J. K. Sibal, it is necessary to advert to nis twin contention that a writ of *certiorari* does not lie against the acquisition proceedings on the ground of delay and in any case the apt, if not the only remedy is one of *mandamus* commanding an expeditious culmination of the proceedings. Counsel contended that if at all the petitioners were aggrieved by the delay, they should have sought and can only claim a *mandamus* from the court for a quicker finalization of the proceedings.

31. The aforesaid contention does credit to the ingenuity of the learned counsel but an indepth examination would show that the stand is untenable. As has been oft repeated, a writ of *mandamus* can only issue where there is a clear public duty laid upon an authority and an equally clear right in the petitioner to enforce the same. It had to be conceded before us that the act does not provide any period of limitation within which acquisition proceedings have to be finalized from the date of the notification under Section 4. There is thus no statutory duty laid on the State to act within a strict prescribed time. Of course, as observed by the final Court, the general duty on the State to exercise the power within a reasonable amount of time exists. But what exactly is a reasonable amount of time herein? Obviously, this must differ from case to

case. Therefore, this unwritten premise cannot *stricto sensu* warrant the issuance of a writ of *mandamus*. Plainly enough, therefore, there is neither a statutory mandate to complete the acquisition proceedings wthin a time prescribed nor is there a corresponding inflexible right on the power of the claimant to such enforcement with any precision. Of course, Article 226 of the Constitution empowers the writ court to issue ancilliary direction apart from the grant of a particular writ but that by itself is not the true equivalent of writ of *mandamus*.

32. Again another cogent argument against the theory of a writ of *mandamus* being issued is that the respondent-State is never under a statutory duty to acquire the land right upto the time till the same gets vested in it. Section 48 in express terms gives the power to the State to withdraw at its discretion from the acquisition of any land of which possession has not been taken. This is apart from the power under the General Clauses Act. Therefore, in this context, a *mandamus* can hardly lie because it would always be open to the State to take the stand that it is under no legal obligation to acquire and in any case can at any time contemplate a withdrawal from the acquisition. Apart from that, the State can always claim an allegedly reasonable time for the finalization of the proceedings. What is reasonable time in a particular case would not be easy to determine nor apt for a court to lay down inflexibly as it must when issuing a *mandamus*.

33. In this context, counsel for the petitioner was equally on firm ground in contending that in a case of colourable exercise of power *mandamus* cannot possibly provide the appropriate relief. The grievance herein is that the writ petitioners have been denied a statutory right to get the market price of their land and it is actually sought to be taken over by a surreptitious device. The value thereof has been deviously pegged down to their disadvantage. A *mandamus* in such a situation can only ensure compensation at those very pegged down prices of which the petitioners make a grievance Consequently, if the writ petitioners are able to establish their case, a writ of *mandamus* far from being a remedy can only sanctify and enforce what is essence is challenged as a colourable exercise of power. Indeed, once the conclusion is reached that in fact the exercise of power was a mere abuse and a colourable one, then the only appropriate remedy is by way of writ of *certiorari* by quashing the impugned action.

34. To conclude on the legal aspect, the answer to the question posed at the out-set must be rendered in the affirmative and it is held that unexplained inordinate delay in the finalization of the acquisition proceedings under the Act may well taint it with the the vice of a colourable exercise of power and thus vitiate the same.

35. Coming now to the merits, it deserves highlighting that the proceedings herein were initiated a decade ago on September 8, 1972. A Section-6 notification had followed on November 29, 1972 specifying more than 35 acres of land for the specific purpose of the development of the Mandi Township. An Award was rendered in those proceedings and not only plans for the Mandi area were prepared but plots therein were auctioned way back on March 21, 1974. However, another notification under Section 6 was issued on July 26, 1975. Far from taking any follow-up action, the respondent-State for nearly six years relapsed into studied inactivity. It is the admitted position that the respondent-State itself released certain areas covered by the acquisition proceedings belonging to respondent No. 3 on a representation made by them. It is not denied that the public purpose of creating the Mandi Township has long since reached culmination. The petitioners alleged an ulterior motive for the acquisition, namely; the widening of the frontage of the factory of the private respondents on the Delhi-Mathura road, though it has been vaguely denied. It thus seems to be plain that the notice under Section 9 has been issued after a delay of nine years from the original notification under Section 4, and not a hint of explanation worth the name for the same is forthcoming on the record. The inevitable inference is that the notices under Section 9, now issued, are a merely colourable exercise of power to take over the land of the petitioners at pegged-down prices of a full decade earlier and long after the original purpose of acquisition stands virtually satisfied. I would accordingly quash the impugned notification as also the acquisition proceedings *qua* the petitioners only and allow this writ petition. In view of the somewhat ticklish legal issues involved, the parties are left to bear their own costs.

Prem Chand Jain, J.—I agree.

I. S. Tiwana, J.—I also agree.

H.S.B.