area' present in the statute. However, it should be read as cultivable area or culturable area will not affect the controversy in question.

(34) Thus, in view of the above discussion, it is clear in the facts of the case that conditions prescribed under Rule 5 of 1964 Rules had been met while permitting the said exchange of land. Therefore, contentions raised by counsel for the petitioners, which on first brush looked attractive, are rejected being devoid of any substance.

(35) For the reasons stated above, the writ petition is dismissed with no order as to costs.

R.N.R.

Before M.M. Kumar & Sabina, JJ.

GURKIRPAL SINGH,—***Petitioner***

versus

FINANCIAL COMMISSIONER (REVENUE) & SECRETARY, GOVT. OF PUNJAB AND OTHERS,—***Respondent***

C.W.P. 10511 of 2007

9th May, 2008

Constitution of India, 1950—Art. 226-Land Acquisition Act, 1894—Ss. 16, 17(1) & 48—Land of petitioners acquired for setting up a judicial Court Complex—Possession of land taken by State—State de-notifying acquisition of land—Whether acquired land could be de-notified after announcing award and undertaking proceedings for taking possession—Held, no—Once possession has been taken there is no possibility of State to de-notify acquisition—Mere physical possession by landowner would not entitle State to say that possession as envisaged under section 48 has not been taken & it is free to de-notify land—State is not barred from utilizing land for any other purpose than one for which it was acquired—Petition allowed, notification de-notifying land quashed.

Held, that a perusal of the provisions of Section 16 of the Land Acquisition Act, 1894 shows that after the award under Section 11 of the Act has been announced by the Collector then he can take possession of the land, which is to vest absolutely in the Government free from all encumbrances. It has come on record that possession of the land in question was taken on 10th July, 1997 by the respondents and entry in that regard was made in the Rapat Roznamcha. From the bare perusal of Section 48(1) of the Act it appears to be plain that after taking possession under Section 16 of the Act, the land vest in the State Government free from all encumbrances and it cannot be de-notified.

(Para 10)

Further held, that the policy of law as reflected in Section 48(1) of the Act cannot be deviated because if the State Government is permitted to de-notify the land after it has vested in the State free from all encumbrances and after taking of its possession then any person whose land has been acquired would be permitted to move the Court for release of his land. It would be negation of the proprietary rights because Section 16 and 17(1) of the Act contemplates that the land is to vest in the Government free from all encumbrances. It is thereafter that the expatriate person would not remain the owner and the proprietary rights are transferred to the State. Therefore, consistent with the public policy and the policy of law as implicit in Section 16, 17(1) and 48(1) of the Act, once the possession has been taken there is no possibility of the respondent State to de-notify the acquisition..

(Para 13 & 14)

Further held, that the respondent State is not barred from utilizing the land for any other purpose than the one for which the land was acquired. Therefore, the respondent State cannot put forward the excuse that since the site of the acquired land was not suitable for construction of a Judicial Court Complex it cannot be used for another purpose.

(Para 18)

M.L. Sharma, Advocate for the petitioner.

Suveer Sehgal, Additional AG, Punjab, for the respondents

M.M. KUMAR, J.

(1) Challenge in this petitions filed under Article 226 of the Constitution is to notification, dated 23rd February, 2007 (P-1), de-notifying the earlier notifications issued under Section 4 and 6 of the Land Acquisition Act, 1894 (for brevity, 'the Act').

(2) The petitioner is owner of land, which is subject matter of dispute in the instant petition. It is comprised in Khasra Nos. 5/12/2/1(0-2), 12/2/2(0-5), 12/2/3(0-7), 12/2/4(0-7), 13/1/1(0-8), 13/1/2(0-15), 13/1/3(0-15), 13/1/4(0-11), 13/2(4-16), 13/3(0-17), 14/1(0-12), 14/2(7-8), 17(8-0), 18(8-0), 19/1(2-2), 22/2/1 (0-19), 22/2/2(2-2), 22/2/2(4-0), 23/1(4-0), 23/2(4-0), 24(8-0), total measuring 54 Kanals 06 Marlas, situated in the revenue estate of Village Langarpur, Hadbast No. 115, Tehsil Dasuya, District Hoshiarpur.

(3) It is pertinent to mention that the respondent State had issued notification, dated 8th September, 1994, under Section 4 of the Act (P-2) and declaration, dated 13th June, 1995, under Section 6 of the Act (P-3). The award in respect of the land was announced on 7th July, 1997 (P-4). The purpose of acquisition was setting up of a Judicial Court Complex. Thereafter certain writ petitions were filed including C.W.P. No. 7740 of 2001, seeking directions for payment of compensation of the land of the expatriate, which was disposed of on 8th November, 2001. The compensation was to be paid within two weeks from the date of order. When full compensation was not paid, another application was filed seeking directions for payment of full compensation. On the statement made by the State Counsel the entire amount was undertaken to be paid, as is evident from the perusal of order, dated 8th May, 2002 (P-5).

(4) It has also come on record that *Rapat Roznamcha* was entered and the possession of the land was taken on 10th July, 1997, as is evident from the *Rapat Roznamcha* , dated 10th July, 1997 P-28), which is usual mode of taking possession by the Government. Accordingly, Mutation No. 1672, dated 10th July, 1997regarding transfer of ownership was also recorded.

(5) It is further appropriate to mention that on 19th July, 1997 various references under Section 18 of the Act were filed (P-8 & P-9) which were referred to the District Judge, Hoshiarpur, who enhanced the compensation,—*vide* his order, dated 5th June, 2004 (P-12). After the enhancement of compensation on 23rd August, 2004, execution proceedings were initiated for execution of decree (P-13). The executing Court passed various interlocutory order showing that it was about to proceed for attachment process of the respondents. The copies of zimni order, dated 4th September, 2004, 20th November, 2004, 5th February, 2005, 14th March, 2005, 2nd April, 2005, 23rd April, 2005, 4th June, 2005 and 20th August, 2005 have been placed on record as Annexure P-14 to P-21. The Superintending Engineer-respondent No. 4 wrote a letter to the Chief Engineer-respondent No.3 for payment of compensation of the land acquired otherwise they were to face attachment proceedings (P-22). A similar letter was written by the Chief Engineer to the Secretary, P.W.D. (B & R)- respondent No. 2 (P-23). Eventually, order of attachment and warrants were issued on 10th September, 2005 (P-25). The respondents filed objections against the warrants of attachment stating that another site for Judicial Court Complex has been finalized because this site was not considered suitable. It was at that stage that the respondent State took the stand that proceedings for de-notifying the acquisition of land have been initiated and, therefore, the amount of compensation was not to be paid. Then the impugned notification for de-notifying land was issued on 23rd February, 2007 (P-1) and the executing Court dismissed execution proceedings on 12th March, 2007.

(6) The stand taken by respondent Nos. 1 and 6 in their written statement is that the Executing Court had dismissed the application filed by the petitioner for recovery of compensation,—*vide* its order dated 12th March, 2007, on the basis of impugned notification, dated 23rd February, 2007. However, the broad facts have not been disputed. It has also been pointed out that the purpose for which the land was notified, namely, construction of Judicial Court Complex, could not be executed as the Building Committee of the High Court has asked the respondent State to find more suitable land for construction of the Judicial Court Complex, which is in the full swing at alternative site at Village Khera Kotli since March, 2007. It has further been asserted

that the land owner continues to be in cultivating possesstion till *Hadi* 2006 as is evident from Khasra Girdawari, which reflects the season and the crop sown (R-1). It has been claimed that the physical possession of the land in question has continued with the petitioner and that the State Government is fully empowered to de-notify the land.

(7) On 25th April, 2008, we have recorded a short order broadly indicating that once possession of the acquired land is taken then there is no escape from acquisition. That order reads thus :—

> "Learned counsel for the petitioner has placed reliance on the judgement of Hon'ble the Supreme Court in **Mandir Shree Sitaramji @ Shree Sitaram Bhandar** *versus* **Land Acquisition Collector and others A.I.R. 2005 S.C. 3581** and has argued that once possession has been taken, then there cannot be any de-notification or acquisition under Section 48 of the Land Acquisition Act, 1894. He has also placed reliance on another judgment of Hon'ble the Supreme Court in the case of **Bal Mokand Khatri Educational and Industrial Trust** ***versus*** **State of Punjab (1996)4 SCC 212** to submit that once the possession is taken by making entry in the *Rapat Raznamcha*, then continuation of possession by the land owners would be unlawful. Learned State counsel requests for short adjornment to produce record concerning *Rapat Raznamcha* regarding possession of the land in question.
>
> List again on 2nd May, 2008."

(8) After hearing learned counsel for the parties and perusal of record with their able assistance, we are of the considered view that the only question which requires determination by this Court is as to whether the acquired land could be de-notified after the award and proceedings for taking possession under Section 16 of the Act has been undertaken. In order to appreciate the controversy raised, it would be appropriate to read Section 48 of the Act, which is as under :—

> "48. Completion of acquisition not compulsory, but compensation to be awarded when not completed.—(1) Except in the case

provided for in section 36, the Government shall be at liberty to withdraw from the acquisition of any land of which possession has not been taken.

(2) Whenever the Government withdraws from any such acquisition, the Collector shall determine the amount of compensation due for the damage suffered by the owner in consequence of the notice or of any proceedings thereunder, and shall pay such amount to the person interested, together with all costs reasonably incurred by him in the prosecution of the proceedings under this Act relating to the said land.

(3) The provisions of Part III of this Act shall apply, so far as may be, to the determination of the compensation payable under this section."

(9) A perusal of sub-section (1) of Section 48 of the Act would show that the State Government is at liberty to withdraw from acquisition of any land if possession has not been taken. Therefore, a subsidiary issue, which arise for determination is whether possession was taken or it continued to be with the expatriates. At this stage it is appropriate to consider the provisions of Section 16 of the Act, which reads thus :—

"16. Power to take possession.—When the Collector has made an award under section 11, he may take possession of the land, which shall thereupon vest absolutely in the Government, free from all emcumbrances."

(10) A perusal of the aforementioned provision shows that after the award under Section 11 of the Act has been announced by the Collector then he can take possession of the land, which is to vest absolutely in the Government free from all encumbrances. It has come on record that possession of the land in question was taken on 10th July, 1997 by the respondents and entry in that regard was made in the *Rapat Roznamcha.* From the bare perusal of Section 48(1) of the Act it appears to be plain that after taking possession under Section 16

of the Act, the land vest in the State Government free from all encumbrances and it cannot be de-notified. The aforementioned proposition came up for consideration before Hon'ble the Supreme Court in the case of **State of M.P.** *versus* **Vishnu Prasad Sharma,** (1), The view of Hon'ble the Supreme Court is evident from the concluding portion of para 19 of the judgement, which reads thus :—

> "19. ..... This power can be exercised even after the Collector has made the award under S. 11 but before he takes possession under S. 15 (S.16. ?) Section 48 (2) provides for compensation in such a case. The argument that S. 48 (1) is the only method in which the Government can withdraw from the acquisition has, therefore, no force because the Government can always cancel the notifications under Ss. 4 and 6 by virtue of its power under S. 21 of the General Clauses Act and this power can be exercised before the Government directs the Collector to take action under S. 7. Section 48 (1) is a special provision for those cases where proceedings for acquisition have gone beyond the stage of the issue of notice under S. 9 (1) and it provides for payment of compensation under S. 48 (2) read with S. 48 (3). We cannot, therefore, accept the argument that without an order under Section 48 (1) the notification under S. 4 must remain outstanding. It can be cancelled at any time by Government under S. 21 of the General Clauses Act and what S. 48 (1) shows is that once Government has taken possession it can not withdraw from the acquisition. Before that it may cancel the notifications under Ss. 4 and 6 or it may withdraw from the acquisition under S.48 (1)....." (emphasis added).

(11) The aforementioned proposition also came up for consideration of Hon'ble the Supreme Court in the case of **Lt. Governor of H.P.** *versus* **Sri Avinash Sharma (2)** where placing reliance on the view taken in **Vishnu Prasad Sharma's case (Supra),**

(1) AIR 1966 S.C. 1593
(2) AIR 1970 S.C. 1576

the same view has been reiterated. Interpreting the observation made in para 19, their Lordships' clarified as under :—

> "But these observations do not assist the case of the appellant. It is clearly implicit in the observations that after possession has been taken pursuant to a notification under S. 17 (1) the land is vested in the Government, and the notification can not be cancelled under S. 21 of the General Clauses Act, nor can the notification be withdraw in exercise of the powers under S. 48 of the Land Acquisition Act. Any other view would enable the State Government to circumvent the specific provision by relying upon a general power. When possession of the land is taken under S. 17 (1), the land vests in the Government. There is no provision by which land statutorily vested in the Government reverts to the original owner by mere cancellation of the notification." (emphasis added)

(12) Similarly, in the case of **Bangalore Development Authority** *versus* **R. Hanumaiah, (3)** there Lordships' while noticing the earlier judgements rendered in the case of **Avinash Sharma (Supra) ; Pratap** *vesus* **State of Rajasthan (4), Mohan Singh** *vesus* **International Airport Authority of India. (5)** and **Printers (Mysore) Ltd.** *versus* **M.A. Rasheed (6)** has held as under :—

> "45. Again in Pratap *versus* State of Rajasthan [(1996) 3 SCC 1] it was reiterated that once the possession is taken and the land vests in the Government then the Government cannot withdraw from acquisition under Section 48 of the Land Acquisition Act. Same view was reiterated by this Court in Mohan Singh *versus* International Airport Authority of India [(1997) 9 SCC 132, and in Printers (Mysore) Ltd. *versus* M.A. Rasheed [(2004) 4 SCC 460].
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> 46. The possession of the land in question was taken in the year 1966 after the passing of the award by the land

(3) (2005)12 S.C.C. 508
(4) (1996)3 S.C.C. 1
(5) (1997)9 S.C.C. 132
(6) (2004)4 S.C.C. 460

Acquisition Officer. Thereafter, the land vested in the Government which was then transferred to CITB, predecessor-i0n-interest of the appellant. After the vesting of the land and taking possession thereof, the notification for acquiring the land could not be withdrawn or cancelled in exercise of powers under Section 48 of the Land Acquisition Act. Power unader Section 21 of the General Clauses Act cannot be exercised after vesting of the land statutorily in the State Governemt."

(13) We are further of the view that the policy of law as reflected in Section 48 (1) of the Act cannot be deviated because if the State Government is permitted to de-notify the land after it has vested in the State free from all encumbrances and after taking of its possession then any person whose land has been acquired would be permitted to move the Court for release of his land. It would be negation of the proprietary rights because Section 16 and 17 (1) of the Act Contemplates that the land is to vest in the Government free from all encumbrances. It is thereafter that the expatriate person would not remain the owner and the proprietary rights are transferred to the State. Such an argument was raised before Hon'ble the Supreme Court in the case of **Mandir Shree Sitaramji alias Shree Sitaram Bhandar** *versus* **Land Acquisition Collector, (7).** In para 16 of the judgement, the argument has been rejected by observing as under :—

"16. Even otherwise, we have seen the scheme sought to be relied upon. We find from the scheme that it only applies in respect of persons/agencies who own and possess the land. In this case possession of the land had already been taken. The scheme also categorically states that the scheme would not take away the rights of the Delhi Development Authority to acquire for development of Delhi. Thus the scheme was not applicable to lands of the appellants. Even under Section 48 of the Land Acquisition Act once possession is taken the Government cannot withdraw from the acquisition. We thus see no substance in this contention also."

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(7) AIR 2005 S.C. 3581

(14) Therefore, consistent with the public policy and the policy of law as implicit in Sections 16, 17(1) and 48 (1) of the Act, once the possession has been taken there is no possibility of the respondent State to de-notify the acquisition.

(15) The argument that physical possession of the land has remained with the petitioner would pale into insignificance because it is well settled that the usual mode of taking possession by the Government is by making entry in the Rapat Roznamcha immediately after announcement of award. In the case of **Balmokand Khatri Educational and Industrial Trust, Amritsar** *versus* **State of Punjab (8)**, Hon'ble the Supreme Court has considered the aforementioned proposition and in para 4 such an argument was rejected by observing as under :—

> "4. It is seen that the entire gamut of the acquisition proceedings stood completed by April 17, 1976 by which date possession of the land had been taken. No doubt, Shri Parekh has contended that the appellant still retained their possession. It is now well-settled legal position that it is difficult to take physical possession of the land under compulsory acquisition. The normal mode of taking possession in drafting the Panchanama in the presence of Panchas and taking possession and giving delivery to the beneficiaries is the accepted mode of taking possession of the land. Subsequent thereto. the retention of possession would tantamount only to illegal or unlawful possession." (emphasis added)

(16) The judgement of Hon'ble the Supreme Court in the case of **Balwant Narayan Bhagde** *versus* **M.D. Bhagwat,** (9), does not come to the rescue of the respondents because it has been observed that there can be no hard and fast rule laying down that what act would be sufficient to constitute taking possession of the land. On the contrary it supports the view taken by Hon'ble the Supreme Court in the case of **Balmokand Khatri Educational and Industrial Trust, Amritsar**

(8) (1996)4 S.C.C. 212
(9) AIR 1975 S.C. 1767

(Supra). as is evident from the perusal of the following observations made in paras 1, 2, 28 and 29 of the judgment in **Balwant Narayan Bhagde** *(Supra)* :—

> "1. We think it is enough to state that when the Government proceeds to take possession of the land acquired by it under the Land Acquisition Act, 1894, it must take actual possession of the land since all interests in the land are sought to be acquired by it, There can be no question of taking 'symbolical' possession in the sense understood by jusdicial decisions under the Code of Civil Procedure. Nor would possession merely on paper be enough. What the Act contemplates as a necessary condition of vesting of the land in the Government is the taking of actual possession of the land. How such possession may be taken would depend on the nature of the land. Such possession would have to be taken as the nature of the land admits of. There can be no hard and fast rule laying down what act would be sufficient to constitute taking of possession of land. We should not, therefore, be taken as laying down an absolute and inviolable rule that merely going on the spot and making a declaration by beat of drum or otherwise would be sufficient to constitute taking of possession of land in every case. But here, in our opinion, since the land was lying fallow and there was no crop on it at the material time, the act of the Tehsildar in going on the spot and inspecting the land for the purpose of determining what part was waste and arable and should, therefore, be taken possession of and determining its extent, was sufficient to constitute taking of possession. It appears that the appellant was not present when this was done by the Tehsildar, but the presence of the owner or the occupant of the land is not necessary to effectuate the taking of possession. It is also not strictly necessary as a matter of legal requirement that notice should be given to the owner or the occupant of the land that possession would be taken

at a particular time, though it may be desirable where possible, to give such notice before possession is taken by the authorities, as that would eliminate the possibility of any fraudulent or collusive transaction of taking of mere paper possession, without the occupant or the owner ever coming to know of it.

2. .....This was plainly erroneous view, for the legal position is clear that even if the appellant entered upon the land and resumed possession of it the very next moment after the land was actually taken possession of and because vested in the Government, such act on the part of the appellant did not have the effect of obliterating the consequences of vesting. There can, therefore, be no doubt that actual possession 1770 of 19 acres 16 gunthas of waste and arable land was taken by the Tahsildar on 3rd April, 1959 and it became vested in the Government. (Neither the Government nor the Commissioner could thereafter withdraw from the acquisition of any portion of this land under S.48(1) of the Act.

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28.....It is, therefore, clear that taking of possession within the meaning of Ss. 16 or 17 (1) means taking of possession on the spot. It is neither a possession on paper or a "symbolical" possession as generally understood in Civil Law. But the question is what is the mode of taking possession ? The Act is silent on the point. Unless possession is taken by the written agreement of the party concerned the mode of taking possession obviously would be for the authority to go upon the land and to do some act which would indicate that the authority has taken possession of the land. It may be in the form of a declaration by beat of drum or otherwise or by hanging a written declaration on the spot that authority has taken possession of the land. The presence of the owner or the occupant of the land to effectuate the taking of possession is not necessary. No further notice beyond that under Section 9 (1) of the Act is required. When possession has been

taken the owner or the occupant of the land is dispossessed. Once possession has been taken the land vests in the Government.

29. .....Viewed in the light of the discussion of law I have made above , it would be noticed that possession of the land, in any event, was taken on the spot and it vested in the Government. The appellant's resuming possession of the land after once it was validly taken by the Governnment had not the effect of undoing the fact of the vesting of the land in the Government. The Government or the Commissioner was not at liberty to withdraw from the acquisition of any portion of the land of which possession has been taken, under Section 48 (1) of the Act." (emphasis added)

(17) When the principles laid down in the aforementioned paras are applied to the facts of the present case, especially in the light of the *Rapat Raznamcha,* dated 10th July, 1997 (P-28), it becomes evident that the possession was taken by 'Beat of Drum' in the presence of the owner when there was no crop and the land was vacant. The reoccupation of the land, despite the above mentioned proclamation and *Rapat Roznamcha,* is unlawful and, therefore, mere physical possession by the land owner would not entitle the respondent State to argue that possession as envisaged under Section 48 of the Act has not been taken and it is free to de-notify the land. Acceptance of such an argument would result into violation of the basic principles and the public policy enshrined under Sections 16, 17 and 48 of the Act. It is, thus, evident that the possession of the expatriate or any other person would tantamount to only illegal and unlawful possession. The respondent State is not without remedy to proceed against such person.

(18) We are further of the view that the respondent State is not barred from utilizing the land for any other purpose than the one for which the land was required. It is well settled principle laid down in a catena of judgments. In the case of **Union of India versus Jaswant Rai Kochhar (10),** it has been held that land acquired for public

(10) (1996)3 S.C.C. 491

purpose may be used for another purpose. Therefore, when notification had mentioned that land was sought to be acquired for housing scheme but it is sought to be used for District Centre then the public purpose does not cease and notification on that ground could not be quashed. Similar view has been taken in the cases of **Ravi Khullar** *versus* **Union of India, (11) State of Maharashtra** *versus* **Mahadeo Deoman Rai alias Kalal (12)** and **Bhagat Singh** *versus* **State of U.P., (13).** Therefore, the respondent State cannot put forward the excuse that since the site of the acquired land was not suitable for construction of a Judicial Court Complex it cannot be used for another purpose.

(19) In view of the above, the instant petition succeeds. The impugned notification, dated 23rd February, 2007 (P-1) is hereby set aside. The petitioner shall be entitled to make recovery of the amount of compensation from the respondents in accordance with law.

(20) The writ petition stands disposed of in the above terms.

R.N.R.

Before M. M. Kumar & Sabina, JJ

VEN JAMPEL GYASTSO,—*Petitioner*

versus

POST GRADUATE INSTITUTE OF MEDICAL EDUCATION AND RESEARCH THROUGH ITS DIRECTOR AND ANOTHER,—*Respondents*

C.W.P. No. 2749 of 2008

28th March, 2008

Constitution of India, 1950-Art.226—Petitioner seeking kidney transplant—Petitioner's friend voluteering to donate kidney—No money consideration involved—Authorization Committee of PGI failing to grant permission to donor to donate his kidney—Petition disposed of on respondent's assurance that

(11) (2007)5 S.C.C. 231
(12) (1990)3 S.C.C. 579
(13) (1999)2 S.C.C. 384