



HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Appeal No.140 of 2023

*(Arising out of order dated 17-1-2023 passed by the learned Single Judge  
in W.P.(C)No.3243/2022)*

National Highways Authority of India, Through Project Director,  
NHAI, PIU Korba, Office of the Project Director, Korba, District  
Korba, Chhattisgarh.

(Petitioner)  
---- Appellant

Versus

1. State of Chhattisgarh, Through the Secretary, Department of Revenue and Disaster Management, Naya Raipur, District Raipur, Chhattisgarh
2. The Collector, Korba, District Korba, Chhattisgarh.
3. The Sub-Divisional Officer (Ra), Competent Authority for Land Acquisition (CALA), Katghora, District Korba, Chhattisgarh.

(Respondents)  
---- Respondents

For Appellant: Mr. Dhiraj Kumar Wankhede, Advocate.  
For Respondents / State: -  
Mr. H.S. Ahluwalia, Deputy Advocate General.

**Hon'ble Mr. Ramesh Sinha, Chief Justice  
and Hon'ble Mr. Sanjay K. Agrawal, Judge.**

Order on Board  
(04/04/2023)

**Sanjay K. Agrawal, J.**

1. This writ appeal preferred under Section 2(1) of the Chhattisgarh High Court (Appeal to Division Bench) Act, 2006 is directed against the judgment and order dated 17-1-2023 passed in W.P.(C) No.3243/2022 by which the writ court has dismissed the writ petition preferred by the National Highways Authority of India (NHAI) – writ petitioner / writ appellant herein declining to issue appropriate writ or direction to de-notify the land in left over stretch



at toll plaza location at Km. 84+000 of NH New No.130 (Old No.111) Pathrapali-Katghora Project, finding no merit.

2. Challenge to the impugned order of the writ court has been made on the following factual backdrop: -
3. For the purpose of widening of NH New No.130 (Old No.111) Pathrapali-Katghora Project, some lands situated at Village Madanpur, Tahsil Pali, District Korba and Village Mohanpur, Tahsil Katghora, District Korba, were undertaken for which initial notification under Section 3A of the National Highways Act, 1956 (for short, 'the Act of 1956') was published in the Gazette of India vide notification dated 17-6-2020 and thereafter, subsequent notification under Section 3D of the Act of 1956 was published in the Gazette of India dated 5-1-2021 (Annexure A/2). After the aforesaid publication, final awards in terms of Section 3G of the Act of 1956 were passed by the Competent Authority for Land Acquisition / Sub-Divisional Officer (Revenue), Katghora (CALA) for Villages Madanpur and Mohanpur on 19-2-2021 and the award was declared amounting to a total sum of ₹ 11,33,05,911/- (Annexure A/3).
4. It is the case of the NHAI / writ petitioner that due to implementation of 100% FASTag, the appellant herein – NHAI has decided that the toll plaza shall be accommodated within 60m RoW for 4-laning project and upon introduction of FASTag, there would not be any further use of toll plaza and it was for this the said land was acquired and now, the Department has dropped the idea of establishing toll plaza, thereby the land is no longer of any use for the NHAI. The matter was discussed with the then SDO





(Revenue), Katghora (CALA) on 13-9-2021 and subsequently, the NHAI vide letter dated 13-9-2021, requested the CALA for not to disburse the compensation amount for the said land i.e. 32 Khasras of Village Madanpur and 5 Khasras of Village Mohanpur, since the aforesaid lands were no longer required for the project subsequent to the decision taken by the appellant NHAI (Annexure A/4). It is the further case of the appellant NHAI that on its request, the NHAI Headquarter, New Delhi had withdrawn the limit provided in the joint account and the same was also intimated to the CALA, Katghora vide letter dated 21-9-2021 (Annexure A/5). However, on the issue of non-disbursement of compensation for additional land acquired, the Collector, Korba, vide letter dated 6-10-2021 directed the CALA, Katghora for necessary action in the matter (Annexure A/6.)

5. The NHAI preferred writ petition for issuance of appropriate writ / direction to the State and the CALA to initiate proceeding for de-notification of the land in left over stretch at toll plaza location at km. 84+000 of NH New No.130 (Old No.111) Pathrapali-Katghora Project, as published under Section 3D of the Act of 1956 on 5-1-2021. That writ petition was dismissed, as mentioned herein-above, by the learned Single Judge finding that there is no provision in the Act of 1956 for de-notification of the land once vested with the Central Government and the writ petition also suffers from want of necessary party which has been sought to be challenged in this writ appeal.
6. Mr. Dhiraj Kumar Wankhede, learned counsel appearing for the appellant NHAI, would make three fold submissions to question the order of the learned Single Judge, which state as under:-





1. The additional lands acquired pursuant to the notification under Section 3D of the Act of 1956 for establishment of toll plaza are currently in possession of the land owners / cultivators, who are cultivating and producing crops over the said lands and the appellant NHAI has not undertaken any construction activities on the said additional lands. Taking over of possession of land as per Section 3E of the Act of 1956 has not been given effect to by the NHAI and all the land owners are still enjoying their rights over their lands and ergo, disbursing the amount for lands, which are not required for the project and also not in possession of the appellant, will be an unnecessary loss to the public exchequer and public fund, particularly when the NHAI has dropped the idea of establishing toll plaza. Therefore, the land is no longer of any use to the NHAI which the learned Single Judge has even not addressed, as such, the impugned order deserves to be set aside on this ground.

2. By virtue of Section 21 of the General Clauses Act, 1897, a power to issue a notification includes a power to rescind it, therefore, by virtue of Section 21, even if there is no express provision in the Act of 1956 providing for de-notification of such lands in respect of which notification under Section 3D of the Act of 1956, the notification issued under Section 3D(1) can be de-notified under Section 21 of the General Clauses Act, 1897.

3. This Court under Article 227 of the Constitution of India vests with supervisory powers while under Article 226 vests with





reservoir of extraordinary jurisdiction to issue prerogative writs and orders and as such, to save the public exchequer from unnecessary burden, the power under Article 226 of the Constitution of India can be exercised even though there is no express provision in the Act of 1956 for de-notifying the acquired and unused land by the NHAI. Reliance has been placed upon the decision of the Punjab and Haryana High Court in the matter of **Kanwal Roop Singh Brar v. The Union of India and others**<sup>1</sup> and that of the Supreme Court in the matter of **G. Narsing Rao (Died) Thr. LRs. v. The National Highways Authority of India & Anr.**<sup>2</sup>.

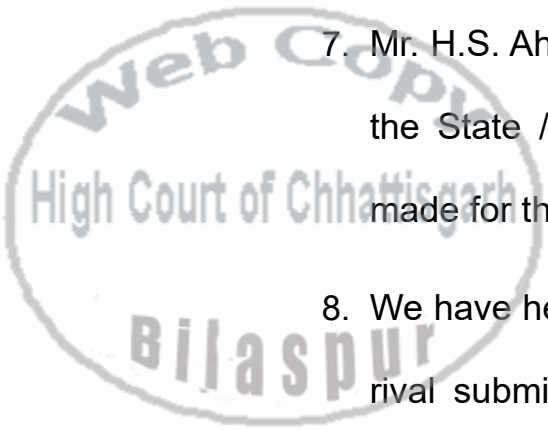
7. Mr. H.S. Ahluwalia, learned Deputy Advocate General appearing for the State / respondents, would submit that acquisition has been made for the purpose of NHAI under the Act of 1956.

8. We have heard learned counsel for the parties and considered their rival submissions made herein-above and also went through the records with utmost circumspection.

9. The first ground that has been contended on behalf of the appellant is that though notification has been issued under Section 3D(1) of the Act of 1956 for acquisition of the subject land, but the proceeding for taking possession under Section 3E of the Act of 1956 has yet not been initiated or land owners are continuing in possession over the subject land by cultivating the same and the subject land is no longer required for the purpose for which it is acquired, therefore, appropriate writ or direction be issued for de-notifying the subject land.

1 C.W.P.No.19923 of 2010, decided on 20-4-2011

2 Special Leave to Appeal (C) Nos.9314-9315/2022, decided on 8-6-2022





10. In order to consider the plea raised at the Bar, it would be appropriate to notice Section 3D of the Act of 1956 which states as under: -

**"3D. Declaration of acquisition.—**(1) Where no objection under sub-section (1) of section 3C has been made to the competent authority within the period specified therein or where the competent authority has disallowed the objection under sub-section (2) of that section, the competent authority shall, as soon as may be, submit a report accordingly to the Central Government and on receipt of such report, the Central Government shall declare, by notification in the Official Gazette, that the land should be acquired for the purpose or purposes mentioned in sub-section (1) of section 3A.

(2) On the publication of the declaration under sub-section (1), the land shall vest absolutely in the Central Government free from all encumbrances.

(3) Where in respect of any land, a notification has been published under sub-section (1) of section 3A for its acquisition but no declaration under sub-section (1) has been published within a period of one year from the date of publication of that notification, the said notification shall cease to have any effect:

Provided that in computing the said period of one year, the period or periods during which any action or proceedings to be taken in pursuance of the notification issued under sub-section (1) of section 3A is stayed by an order of a court shall be excluded.

(4) A declaration made by the Central Government under sub-section (1) shall not be called in question in any court or by any other authority."

11. A careful perusal of sub-section (2) of Section 3D of the Act of 1956 would show that on the publication of the declaration under sub-section (1), the land shall absolutely vest in the Central Government free from all encumbrances. Further, sub-section (3) of Section 3D provides that where in respect of any land, a notification has been published under sub-section (1) of Section 3A





for its acquisition, but no declaration under sub-section (1) has been published within a period of one year from the date of publication of that notification, the said notification shall cease to have any effect. It is admitted position on record, on own showing of the writ appellant, that in the instant case, notification under Section 3A of the Act of 1956 was published in the Official Gazette on 17-6-2020 and thereafter the subsequent notification under Section 3D(1) was published in the Official Gazette vide SO No.37(E) dated 5-1-2021 (Annexure A/2) and as such, upon publication of notification under Section 3D on 5-1-2021, the subject land has been vested absolutely in the Central Government free from all encumbrances by virtue of Section 3D(2) of the Act of 1956.

12. The word “vest” employed in Section 3D of the Act of 1956 would clearly show that upon acquisition of land, right, title and interest in respect of such land shall vest absolutely in the Central Government. The Supreme Court in the matter of **Competent Authority v. Barangore Jute Factory and others**<sup>3</sup> has clearly held that vesting under Section 3D(2) of the Act of 1956 arises on a declaration by the Central Government under Section 3D(1). The declaration is the result of disposal of objections under Section 3C. Each step is a consequence of earlier step and in that sense all the steps are linked to the initial notification for acquisition under Sections 3A(1) and (2).

13. As such, on 5-1-2021, upon issuance of notification under Section 3D(1) of the Act of 1956, the subject land is absolutely vested in the

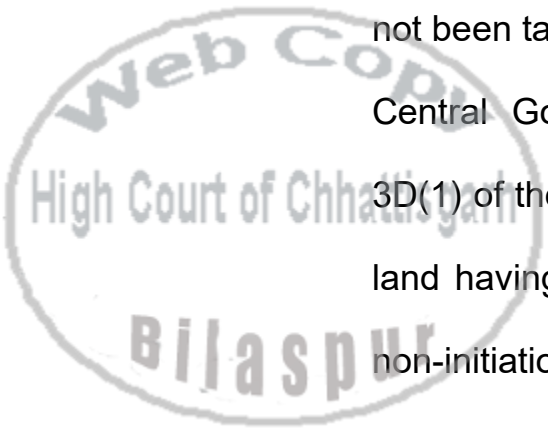
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3 (2005) 13 SCC 477



Central Government free from all encumbrances and non-initiation of proceeding for taking possession under Section 3E of the Act has no adverse impact on the land already vested with the Central Government under Section 3D(2) of the Act of 1956, as there is no similar provision as contained in the old Land Acquisition Act, 1894, now repealed, in which by virtue of Section 16 of the old Act of 1894, land will vest absolutely in the Government free from all encumbrances when the Collector has made award under Section 11 and he has taken possession of that land and similarly, by virtue of Section 48 of the old Act of 1894, the Government is at liberty to withdraw from the acquisition of any land of which possession has not been taken. Therefore, once the land having been vested in the Central Government on issuance of notification under Section 3D(1) of the Act of 1956, by virtue of sub-section (2) of Section 3D, land having been vested absolutely with the Central Government, non-initiation of proceeding for taking possession under Section 3E by the competent authority i.e. Collector of a District, would not render the acquisition under the Act of 1956 bad and would not entitle the NHAI i.e. the appellant herein, to claim that the acquisition is not complete and it is not possible to make payment of compensation and therefore is entitled for a writ de-notifying the subject land already acquired and vested with the Central Government. As such, this argument sans merit and is accordingly rejected.

14. Faced with this situation, Mr. Wankhede, learned counsel for the appellant NHAI, would next contend that by virtue of Section 21 of the General Clauses Act, 1897, power to issue notification also







includes power to add to, amend, vary or rescind notifications, orders, rules or bye-laws and therefore in exercise of power under Section 21 of the said Act, the subject land can be de-notified.

Section 21 of the General Clauses Act, 1897 provides as under: -

**“21. Power to issue, to include power to add to, amend, vary or rescind notifications, orders, rules or bye-laws.—**Where, by any Central Act or Regulations a power to issue notifications, orders, rules or bye-laws is conferred, then that power includes a power, exercisable in the like manner and subject to the like sanction and conditions (if any), to add to, amend, vary or rescind any notifications, orders, rules or bye-laws so issued.”

15. By virtue of Section 21 of the General Clauses Act, 1897, an authority which has the power to issue a notification has the undoubted and definite power to rescind or modify the notification in the like manner. However, the Act of 1956 does not expressly confer any power on the Central Government to cancel or to amend the notification issued under Section 3D(1) of the Act of 1956. Therefore, in our considered opinion, general power under Section 21 of the General Clauses Act, 1897 cannot be exercised to de-notify the land statutorily vested with the Central Government under Section 3D(2) of the Act of 1956 in absence of express provision in the Act of 1956 for de-notification.

16. However, this issue with respect to de-notification of the notification issued under the Land Acquisition Act, 1894, in light of Section 21 of the General Clauses Act, 1897, was considered by the Supreme Court in the matter of **Lt. Governor of Himachal Pradesh and another v. Sri Avinash Sharma**<sup>4</sup> and it has been held qua the provisions of Section 48 of the Land Acquisition Act, 1894 that

<sup>4</sup> 1970(2) SCC 149



power to cancel a notification for compulsory acquisition is, it is true, not affected by Section 48 of the Act; by a notification under Section 21 of the General Clauses Act, the Government may cancel or rescind the notification issued under Sections 4 and 6 of the Land Acquisition Act. It was further held by their Lordships that, but the power under Section 21 of the General Clauses Act cannot be exercised after the land statutorily vests in the State Government. It has been observed by their Lordships in paragraph 8 of the report as under: -

“8. 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 Section 17(1) the land is vested in the Government, and the notification cannot be cancelled under Section 21 of the General Clauses Act, nor can the notification be withdrawn in exercise of the powers under Section 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 Section 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.”

17. The principle of law laid down in **Sri Avinash Sharma's** case (supra) was followed with approval by their Lordships of the Supreme Court firstly in the matter of **Bangalore Development Authority and others v. R. Hanumaiah and others**<sup>5</sup> in which it has been held as under: -

“34. There is no provision in the Act and the Rules framed thereunder enabling BDA to reconvey the land acquired to implement a scheme for forming of sites and their allotment as per Rules. The Rules do not provide for reconveyance. In the absence of any provision in the

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5 (2005) 12 SCC 508



Act or the Rules framed thereunder authorising BDA to reconvey the land direction cannot be issued to BDA to reconvey a part of the land on the ground that it had promised to do so. The rule of promissory estoppel cannot be availed to permit or condone a breach of law. It cannot be invoked to compel the Government to do an act prohibited by law. It would be going against the statute. The principle of promissory estoppel would under the circumstances be not applicable to the case in hand.

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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 Acquisition Officer. Thereafter, the land vested in the Government which was then transferred to CITB, predecessor-in-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 under Section 21 of the General Clauses Act cannot be exercised after vesting of the land statutorily in the State Government.”

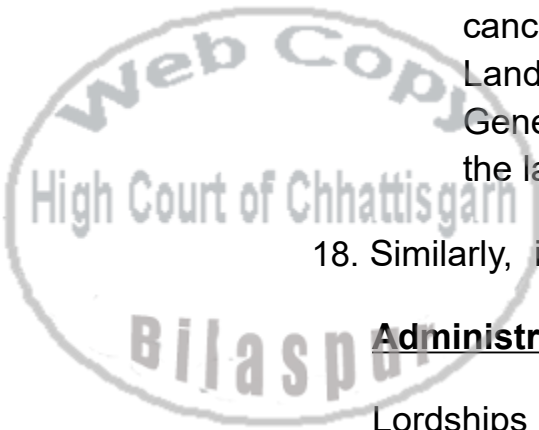
18. Similarly, in the matter of V. Chandrasekaran and another v.

Administrative Officer and others<sup>6</sup>, it has been held by their Lordships of the Supreme Court that land, once acquired, cannot be restored to the tenure-holders/persons interested, even if it is not used for the purpose for which it was so acquired, or for any other purpose either. It has further been held that the proceedings cannot be withdrawn/abandoned under the provisions of Section 48 of the Land Acquisition Act, 1894, or under Section 21 of the General Clauses Act, once the possession of the land has been taken and the land vests in the State, free from all encumbrances.

It has been observed in paragraph 26 of the report as under: -

“26. The said land, once acquired, cannot be restored to the tenure-holders/persons interested, even if it is not used for the purpose for which it was so acquired, or for

<sup>6</sup> (2012) 12 SCC 133





any other purpose either. The proceedings cannot be withdrawn/abandoned under the provisions of Section 48 of the Act, or under Section 21 of the General Clauses Act, once the possession of the land has been taken and the land vests in the State, free from all encumbrances. (Vide *State of M.P. v. Vishnu Prasad Sharma*<sup>7</sup>, *Lt. Governor of H.P. v. Avinash Sharma*<sup>4</sup>, *Satendra Prasad Jain v. State of U.P.*<sup>8</sup>, *Rajasthan Housing Board v. Shri Kishan*<sup>9</sup> and *Dedicated Freight Corridor Corpn. of India v. Subodh Singh*<sup>10</sup>.)”

19. Similar proposition has been laid down by the Supreme Court in the matter of **State of Uttar Pradesh v. Hari Ram**<sup>11</sup>.

20. Finally, the Constitution Bench of the Supreme Court in the matter of **Indore Development Authority v. Manoharlal and others**<sup>12</sup> has clearly held that once title vests in the State under Section 17 of the Land Acquisition Act, 1894, divesting of title is not a possibility at all. Their Lordships further held that once vesting takes place, and is with possession, after which a person who remains in possession is only a trespasser, not in rightful possession and vesting contemplates absolute title, possession in the State. Their Lordships also held that Section 24 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, does not intend to take away vested rights. This is because there is no specific provision taking away or divesting title to the land, which had originally vested with the State, or divesting the title or interest of beneficiaries or third-party transferees of such land which they had lawfully acquired, through sales or transfers. There is neither a specific provision made for

7 AIR 1966 SC 1593

8 (1993) 4 SCC 369

9 (1993) 2 SCC 84

10 (2011) 11 SCC 100

11 (2013) 4 SCC 280

12 (2020) 8 SCC 129



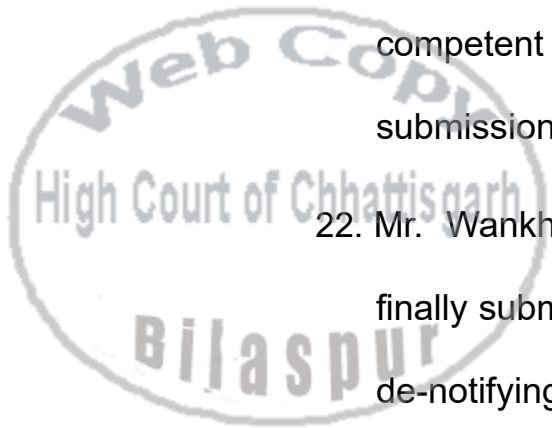


divesting, nor does the Act of 2013 by necessary intendment, imply such a drastic consequence. Divesting cannot be said to have been intended.

21. Thus, it is quite vivid that in the instant case, upon issuance of notification, the land is vested absolutely free from all encumbrances in the Government under Section 3D(2) of the Act of 1956 and therefore, general power under Section 21 of the General Clauses Act, 1897 cannot be exercised in absence of any express provision in the Act of 1956. This clearly shows the *sententia legis* behind the Act of 1956 wherein the provision for de-notifying or withdrawing from acquisition has been expressly excluded by the competent legislature in the Act of 1956. As such, we reject the submission based on Section 21 of the General Clauses Act, 1897.

22. Mr. Wankhede, learned counsel for the appellant NHAI, would finally submit that though there is no provision in the Act of 1956 for de-notifying the unused lands and if Section 21 of the General Clauses Act, 1897 is not applicable, yet this Court under Article 227 of the Constitution of India is vested with supervisory powers and under Article 226 of the Constitution of India, it has the vast reservoir of extraordinary jurisdiction and power to issue prerogative writs and orders to save the public exchequer in the interest of justice for de-notifying the acquired and unused land.

23. We are not impressed. Undoubtedly, under Article 226 of the Constitution of India, this Court possesses extraordinary jurisdiction to issue prerogative writs for enforcement of fundamental rights or for any other purpose. It is wide and expansive. The jurisdiction of the High Court under Article 226 of the Constitution is discretionary





and equitable. Under Article 226, the High Court is empowered to exercise its extraordinary jurisdiction to meet unprecedented extraordinary situations having no parallel. However, these powers are required to be sparingly used. (See **T.K. Rangarajan v. Govt. of Tamil Nadu**<sup>13</sup>.) The wide powers under Article 226 are not intended to be used for the purpose of perpetuating illegalities, irregularities or improprieties or for scuttling the whole constitutional scheme {see **Secretary, State of Karnataka v. Umadevi (3)**<sup>14</sup>}. This Court under Article 226 is required to enforce the rule of law and cannot pass an order or direction which is contrary to law (see **Karnataka State Road Transport Corporation v. Ashrafulla Khan**<sup>15</sup>, **Asstt. Collector of Central Excises v. Kashyap Engg. & Metallurgicals Private Ltd.**<sup>16</sup> and **Notified Area Council v. Bishnu C. Bhoi**<sup>17</sup>).

24. Furthermore, in the matter of **Directorate of Enforcement v. Deepak Mahajan**<sup>18</sup>, it has been held that the function of the courts is only to expound the law and not to legislate, and it has been observed by their Lordships of the Supreme Court as under: (SCC pp. 453-54, paras 24-25)

“24. ... Though the function of the courts is only to expound the law and not to legislate, nonetheless the legislature cannot be asked to sit to resolve the difficulties in the implementation of its intention and the spirit of the law. *In such circumstances, it is the duty of the court to mould or creatively interpret the legislation by liberally interpreting the statute.*”

13 (2003) 6 SCC 581, 586 (para 5)

14 (2006) 4 SCC 1, 17-18 (para 4)

15 (2002) 2 SCC 560, 572-73 (para 27)

16 (2002) 10 SCC 443, 444 (para 2)

17 (2001) 10 SCC 636, 637 (para 3)

18 (1994) 3 SCC 440



25. In *Maxwell on Interpretation of Statutes*, Tenth Edn. at p. 229, the following passage is found:

*'Where the language of a statute, in its ordinary meaning and grammatical construction, leads to a manifest contradiction of the apparent purpose of the enactment, or to some inconvenience or absurdity, hardship or injustice, presumably not intended, a construction may be put upon it which modifies the meaning of the words, and even the structure of the sentence. ... Where the main object and intention of a statute are clear, it must not be reduced to a nullity by the draftsman's unskilfulness or ignorance of the law, except in a case of necessity, or the absolute intractability of the language used.'* "

(emphasis supplied)

25. In view of the aforesaid legal position, we are unable to persuade ourselves to hold that extraordinary jurisdiction under Article 226 of the Constitution of India can be exercised to de-notify the subject land vested with the Central Government in absence of express provision in the Act of 1956, as power under Article 226 of the Constitution of India is fundamentally a repository and reservoir of justice based on equity and good conscience, but it cannot be exercised contrary to law.

26. Concludingly, non-initiation of proceeding for taking possession under Section 3E of the Act of 1956 would have no impact on the acquisition of the subject land already concluded and in absence of any provision in the Act of 1956 for de-notification of the vested land to the Government by virtue of Section 3D(2) and furthermore, Section 21 of the General Clauses Act, 1897 is not applicable in absence of express provision in the Act of 1956, the learned writ court is absolutely justified in not invoking the jurisdiction of this Court under Article 226 of the Constitution of India for de-notifying





the acquired land for public purpose. In that view of the matter, we are unable to interdict the order passed by the learned Single Judge dismissing the writ petition and the same being unexceptionable, we hereby decline to interfere in our appellate jurisdiction and accordingly, the instant writ appeal is dismissed leaving the parties to bear their own cost(s).

Sd/-  
(Sanjay K. Agrawal)  
Judge

Sd/-  
(Ramesh Sinha)  
Chief Justice

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### Head Note

Under the National Highways Act, 1956, there is no provision for de-notification of the acquired land, therefore, under Article 226 of the Constitution of India, writ cannot be issued for de-notification of the acquired land.

राष्ट्रीय राजमार्ग अधिनियम, 1956, के अंतर्गत अर्जित भूमि से संबंधित अधिसूचना के रद्दकरण का कोई प्रावधान नहीं है, अतः अर्जित भूमि से संबंधित अधिसूचना के रद्दकरण हेतु भारतीय संविधान के अनुच्छेद 226 के अधीन रिट जारी नहीं किया जा सकता है।

