CASE NO.:
Appeal (civil) 1084 of 2006

PETITIONER:
PUNE MUNICIPAL CORPORATION

RESPONDENT:
STATE OF MAHARASHTRA & ORS

DATE OF JUDGMENT: 26/02/2007

BENCH:
C.K. THAKKER & LOKESHWAR SINGH PANTA

JUDGMENT:
J U D G M E N T

Hon. C.K. THAKKER, J.

This appeal is filed by the Pune Municipal Corporation ('Corporation' for short) against the judgment and order dated July 8, 2004 passed by the Division Bench of High Court of Judicature at Bombay in Writ Petition No. 643 of 1996. By the said order, the High Court confirmed the order passed by the State of Maharashtra on June 21, 1995 in purported exercise of revisional jurisdiction under Section 34 of the Urban Land (Ceiling & Regulation) Act, 1976 (hereinafter referred to as 'the Act') holding that no sufficient opportunity had been given to the land-owners before declaring their land to be excess and vacant land under the Act.

The case has a checkered history and to appreciate rival contentions raised by the parties in their proper perspective, it would be appropriate to bear in mind the facts.

Pranlal Zaverchand Doshi (since deceased) who has been represented through his heirs and legal representatives and Chandravadan Pranlal Doshi were owners of certain lands situate at village Mouje Parvati, Taluka Haveli, District Pune in the State of Maharashtra. On February 17, 1976, the Act came into force in the State of Maharashtra. The owners of the land filed a statement under sub-section (1) of Section 6 of the Act in the prescribed form on August 14, 1976. The Competent Authority, Pune Urban Agglomeration prepared draft statement under sub-section (1) of Section 8 of the Act. The draft statement was sought to be served in accordance with the provisions of sub-section (3) of Section 8 of the Act. An order was passed by the Competent Authority on April 20, 1977 under sub-section (4) of Section 8 of the Act observing therein that a notice under Section 8(3) of the Act was issued and sent to the declarant by Registered A.D. but it was received back 'undelivered'. It was also observed that the notice was properly sent at the address given by the declarant and hence the owner was treated as 'served'. Since the declarant had not raised any objection nor he remained present on the date fixed for enquiry, the notice was finalized without any change. A direction was issued to pass final order as required by Section 9 of the Act.

Pursuant to the above direction, final order came to be passed on April 25, 1977. After the final statement, a notification under sub-section (1) of Section 10 of the Act was issued on April 28, 1977 intimating the persons having interest in the land to prefer their claims to the Competent Authority either personally or through an agent within a period of 30 days from the date of publication of notification in the Official Gazette. The said notification was published in the Maharashtra Gazette on May 12, 1977. The case was fixed for hearing on June 23, 1977. On June 16, 1978, the Competent Authority issued notification under sub-section (3) of Section 10 of the Act declaring excess land to be acquired by the State. It was notified for the information of general public that the land specified in the Schedule appended thereto would be deemed to have been acquired by the Government of Maharashtra with effect from July 31, 1978 and would be deemed to have been vested in the Government of Maharashtra free from all encumbrances from that date. The said notification was published in the Official Gazette on August 24, 1978.

Since the land stood vested in the State of Maharashtra free from all encumbrances, the appellant-Corporation made an application in August, 1978 for purchase of land declared to be excess land under the Act and stood vested in the State. The Competent Authority vide its letter dated January 8, 1979 offered the land to the appellant-Corporation for occupancy price of Rs.1,45,000/- for Development Plan Reservation, Pune Municipal Corporation. In the said communication, it was stated that the terms and conditions subject to which the land was offered, were enclosed in the form of Agreement. If those terms and conditions were acceptable to the Corporation, the latter was required to execute the Agreement with the Collector of Pune and to pay occupancy price by challan.

On January 9, 1979, the Competent Authority also issued notice under sub-section (5) of Section 10 of the Act directing the land-owners to handover possession of land within 30 days. It was stated in the said notice that the notification under sub-section (3) of Section 10 of the Act was published in the Maharashtra Government Gazette on August 24, 1978 and the land specified in the Schedule had absolutely vested in the Government of Maharashtra. It was further stated that since the owners were in possession of the land, they were required to surrender and deliver possession thereof within 30 days to the Tehsildar, Pune City who was duly authorized by the State Government to take it. It was also stated that in the event of their failure or refusal to surrender the possession by the owners, appropriate steps would be taken to take possession of the land by use of force.

It appears that original owners of the land preferred an appeal under Section 33 of the Act in the Court of Collector and Appellate Authority under the Act at Pune on February 20, 1979. The said appeal was against an order passed under sub-section (3) of Section 10 of the Act. It may be stated that so far as the order declaring the land as excess land under the Act as also issuance of final statement are concerned, no challenge was made to them. In the Memorandum of Appeal, it was stated that the enquiry under sub-section (2) of Section 10 was pending. It was also stated that the property was not being utilized by the Pune Municipal Corporation for public purpose because of shortage of funds. The

appellants\027owners intended to make use of the land for public purpose such as hostel, cinema house, petrol pump, mangal karyalaya, lodge, hospital, godown etc. They had submitted layout plans to the Government of Maharashtra for construction and the matter was under active consideration of the Government. It was further stated that even though the order under sub-section (5) of Section 10 of the Act was passed on January 9, 1979, it was received by the appellants somewhere on 21st January, 1979. The appeal was, therefore, within time, but even if there was some delay, it might be condoned. A prayer was, therefore, made to set aside the order dated January 9, 1979 passed under sub-section (5) of Section 10 of the Act.

It has come on record that the appellant-Corporation had paid the occupancy price of Rs.1,45,000/- for the land admeasuring 37,517 sq. meters from Survey No. 33A/1, 32/A and 34/A/2+1 (part). It is also on record that on February 22, 1979, possession of the land was handed over by the State Government through Tilathi Parvati to the appellant-Corporation. The possession receipt has been duly signed in token of 'possession given' and 'possession taken' by the parties.

An order was passed on August 23, 1979 by the Appellate Authority on the appeal filed by the land-owners under Section 33 of the Act. It was stated that the appeal was against the notification under Section 10(5) of the Act, but such appeal was not maintainable. The Appellate Authority, therefore, summarily dismissed the appeal by inter alia observing as under:

"On perusal of the notification u/s. 10(5) of the Act produced by the appellants it is observed that final notification u/s. 10(3) of the Urban Land (Ceiling and Regulation) Act, 1976 has been published on 24.8.1978 and 26.10.1978 respectively from when the surplus land is deemed to have been acquired and vested in State Government free from any encumbrances. Besides there is no remedy of appeal after final notification u/s. 10(3) of the Act has been published. Considering all these facts the present appeal is not tenable".

It is pertinent to note that nothing was done by the owners of the land for more than a decade after the above order in appeal was passed in August, 1979. On May 21, 1990, one Shaikh Issaqua Saikh Gafoor, Power of Attorney of P.Z. Doshi, one of the owners of the land, preferred an appeal to the Government under Section 34 of the Act. It was stated therein that the land was jointly owned by P.Z. Doshi and G.P. Doshi and it consisted of 'a built-up bungalow of about 500 sq. meters'. The bungalow was existing on the land since long i.e. when the land was purchased. It was further stated that since the land attracted the provisions of the Act, the owners had filed return (statement) under Section 6(1) of the Act. The Competent Authority, Pune Urban Agglomeration, while deciding the case, should have accorded two units i.e. 1,000 sq. meters each to P.Z. Doshi and C.P. Doshi to make total of 2,000 sq. meters. The authority, however, had granted only one unit of 1,000 sq. meters. A copy of the order under sub-section (4) of Section 8 was also enclosed by the appellants for ready reference. A grievance was also made that the

Competent Authority had not considered the build-up property of bungalow required to be excluded from the total holding together with the land appurtenant and additional land appurtenant. Thus, gross injustice had been done to the owners. A prayer was, therefore, made to the Government to redress the grievance and to award 2 units and to exclude built-up property of bungalow.
The Revisional Authority disposed of the Revision on August 7, 1991 observing that there was no provision under Section 34 of the Act to consider the application of the applicants and the application could not be considered.
Even after the disposal of the above application in 1991, nothing was done by the land-owners for quite some time. After more than three years on September 21, 1994, through another Power of Attorney (Mr. Ashok Milapchand Jain), C.P. Doshi and his wife Mrs. Rajnana P. Doshi requested the Minister for Housing & Special Assistance Department to revise the orders passed earlier. In the said application, it was said that the Additional Collector and Competent Authority, Pune Urban Agglomeration was pleased to decide the case of applicants on February 20, 1979 declaring the applicants to be surplus holders of land. (It may be stated that the order declaring surplus land was passed by the Competent Authority in April, 1977) It was stated that the Competent Authority had decided the case 'without considering all the necessary facts'. Then, a grievance was made with regard to units as also exclusion of the land of built up area. It was stated that an appeal was filed but it was rejected on the ground that remedy of appeal was not available after the final notification under Section 10(3) of the Act. It was also stated that the land was proposed to be allotted to Pune Municipal Corporation but applicants had filed Regular Civil Suit No. 1913 of 1979 against the State Government and Pune Municipal Corporation and the learned Civil Judge, Senior Division, Pune had granted status quo thereby restraining Pune Municipal Corporation from taking possession of land or developing it. It was asserted that the applicants had submitted a scheme under Section 20 of the Act to the Competent Authority which was pending. The applicants were ready to construct a maternity home and hospital and for that purpose plans were submitted. A prayer was, therefore, made to decide the matter on merits and to issue direction to Additional Collector and Competent Authority to scrutinize and sanction the scheme under Section 20 of the Act.
The Revisional Authority observed that it was proved that the applicant had not been given sufficient opportunity for showing the ownership documents to the Competent Authority and prima facie, the order of the Competent Authority dated April 28, 1977 was 'wrong'. In exercise of power under Section 34 of the Act, therefore, the said order was set aside and the case was remitted for reconsideration to Additional Collector and Competent Authority, Pune. It was directed that the applicant should be given sufficient opportunity by Additional Collector and Competent Authority, Pune before deciding the matter.
It may be stated that neither the owners joined the appellant\027Pune Municipal Corporation as party respondent, nor notice was issued, nor opportunity of hearing was afforded to the Corporation by the

Revisional Authority though it was stated in the Revision itself that the land was allotted to the Corporation and the Corporation was proceeding with construction thereon.

In view of the fact that the revision was allowed and the order passed by the Competent Authority was set aside without making the Corporation a party and without affording opportunity of being heard, the Corporation filed a writ petition in the High Court of Bombay. The petition came up for hearing before the Division Bench and the Division Bench passed the impugned order holding that since no notice was served upon the owners, the order passed by the Competent Authority was bad in law and was rightly set aside in revision. Regarding right of the Corporation, the Division Bench was of the view that hearing could be afforded only to the 'affected' parties. According to the High Court, the Corporation could not be treated as an 'affected' party as it was 'mere beneficiary of allotment by the State of Maharashtra' which could only be done had there been a valid vesting in the State of Maharashtra. Since the order was passed by the Competent Authority without hearing the owners, it was violative of natural justice. In the circumstances, the Corporation had no right over the land and it was not necessary to hear the Corporation. The High Court also held that since the proceedings were initiated without serving notice to the land-owners, there was no valid vesting of property in the State. Allowing the petition filed by the Corporation would, therefore, result in revival of an illegal order. No Court of law would make an order which would restore illegal or ultra vires order. Accordingly, the High Court dismissed the petition and directed the Appellate Authority to decide the matter pending under Sections 8 and 9 of the Act within a period of three months from the date of judgment of the High Court. It is this order which is challenged in the present appeal.

Notice was issued by this Court on November 5, 2004 and stay against further proceedings was granted. The matter was thereafter heard from time to time. Finally, on February 6, 2006, leave was granted and stay continued. The matter has now been placed for final hearing.

We have heard learned counsel for the parties. Learned counsel for the appellant-Corporation contended that the Revisional Authority had committed grave error of law in entertaining revision and in setting aside the order passed by the Competent Authority under the Act. It was submitted that the order was passed by the Competent Authority as early as in 1977 and several consequential actions had been taken thereafter. Notifications under Section 10 were issued and the land stood vested 'free from all encumbrances' in the State Government. Pursuant to the demand made by the appellant-Corporation, a part of land was granted to the Corporation. An appeal filed by the owners under Section 33 was dismissed in August, 1979. The said order was never challenged by the owners by approaching the High Court. Revisional jurisdiction was invoked thereafter in 1990 i.e. after more than ten years of disposal of the appeal. (Though it was described as an appeal under Section 34 of the Act) Even that petition was dismissed. Surprisingly after more than three years, second revision petition was filed which was allowed by the Revisional Authority and the order of the Competent

Authority was set aside. The counsel also submitted that though the land declared to be excess under the Act and vested in the Government was granted to appellant-Corporation and the owners were aware of the fact and had also filed a suit in the Court of Civil Judge, Senior Division, Pune in 1979 and had obtained 'status quo' order, they did not think it proper to join Corporation as party opponent, nor the Revisional Authority thought it appropriate to issue notice and to afford hearing to the Corporation. The order passed by the Revisional Authority, therefore, was violative of principles of natural justice and fair play. The Corporation, therefore, approached the High Court. Unfortunately, however, the High Court committed the same mistake and went on to observe that Corporation was not 'affected' party. The order passed by the Revisional Authority and confirmed by the High Court, therefore, deserves to be quashed and set aside.

The learned counsel for the land-owners supported the order passed by the Government and confirmed by the High Court. He submitted that from the record, it was clear that notice under Section 8 of the Act was never served upon the owners. Declaration of surplus land was, therefore, violative of principles of natural justice. Such an order cannot be said to be an order in the eye of law and it was rightly set aside by the Government. Regarding appeal as also revision filed earlier, it was submitted that they were dismissed on the ground of 'maintainability' and not on merits. In the circumstances, second revision was rightly allowed setting aside the order passed by the Competent Authority. The High Court correctly observed that since the initial order passed by the Competent Authority was in contravention of principles of natural justice, allowing the petition of the Corporation would result in revival of an order which was illegal and unlawful. It, therefore, cannot be said that the High Court committed an error. The present appeals, hence, deserve to be dismissed.

On behalf of the State Government, the learned counsel submitted that it was the duty of the State to do justice to the parties and when the record revealed that notice had never been served upon the owners of the land, the order of the Competent Authority was rightly set aside by the Revisional Authority and the action does not require interference.

Having given anxious consideration to the facts and circumstances of the case in the light of statutory provisions, in our opinion, the appeal deserves to be allowed.

It is not in dispute by and between the parties that the land-owners filed a statement under sub-section (1) of Section 6 of the Act in August, 1976. Final order was passed declaring certain land to be excess land under the Act in 1977. Notification under Section 10(3) was issued and the land stood vested in the State 'free from all encumbrances'. A notice was issued to the land owners to handover possession of the excess land and the possession was taken over by the authorities. Pune Municipal Corporation applied for land and the State Government asked the Corporation to pay occupancy price of Rs.1,45,000/- which was paid by the Corporation in February, 1979. So far as the order passed under Section 8 of the Act is concerned, it was never challenged by the land owners in the appeal. An appeal which was filed by the land owners in 1979 was

an appeal against an order passed under Section 10(3) of the Act. The Appellate Authority, therefore, rightly held such appeal to be not maintainable. If the land owners were aggrieved by the order passed under Section 8 of the Act, either they should have challenged the order before the Appellate Authority or before the Revisional Authority. The Land owners did neither. The order, therefore, became final. More than a decade had passed thereafter. In 1990, land owners, through one Power of Attorney (Shaikh Issaqua Shaikh Gafoor) approached Revisional Authority under Section 34 of the Act by filing an appeal (revision) which was dismissed on the ground of maintainability. Again, the said order had not been challenged. After more than three years, through another Power of Attorney, (Ashok Milapchand Jain) second revision was filed without arraying appellant-Corporation as party respondent. It is indeed surprising as to how the Revisional Authority did not think it proper to issue notice and to afford hearing to Corporation, though the record clearly revealed development from 1979 and allotment of land to Corporation and payment of price by it. Moreover, the order of the Revisional Authority is conspicuously silent as to filing of appeal as well as first revision by the land-owners. In our opinion, therefore, the learned counsel for the appellant-Corporation is right in submitting that the order passed by the Revisional Authority deserves to be set aside.

Section 34 of the Act confers on Government revisional jurisdiction. It reads thus;

34. Revision by State Government.\027The State Government may, on its own motion, call for and examine the records of any order passed or proceeding taken under the provisions of this Act and against which no appeal has been preferred under Sec. 12 or Sec. 30 or Sec. 33 for the purpose of satisfying itself as to the legality or propriety of such order or as to the regularity of such procedure and pass such order with respect thereto as it may think fit;

Provided that no such order shall be made except after giving the person affected a reasonable opportunity of being heard in the matter.

The learned counsel for the appellant-Corporation submitted that the Act does not confer right to file revision upon a person aggrieved. The State alone is empowered to exercise revisional power. The counsel submitted that such power can be exercised by the State Government on its own motion (suo motu) calling for and examining the records of any order passed under the Act for the purpose of satisfying itself of the legality and propriety of such order. It is, therefore, implicit that a party cannot invoke revisional jurisdiction under Section 34 of the Act.

We are, however, unable to uphold the said contention. It is true that Section 34 enables the State Government to exercise revisional powers suo motu. That, however, does not mean that a party cannot invoke such jurisdiction. A revision can also be filed by party aggrieved and it can invite the attention of the Revisional Authority as to illegality or impropriety of any order passed under the Act. The revision filed by the land-

owners, therefore, could not be held to be not maintainable.

But reading of the above provision makes it clear that revision is not an additional remedy over and above remedy of appeal under Section 33 of the Act. Section 34 of the Act authorizes the State Government to exercise revisional jurisdiction in those cases in which "no appeal has been preferred". Thus, the remedy of revision is alternative to appeal and not additional or supplementary.

The learned counsel for the appellant-Corporation is also right in contending that the Revisional Authority ought to have considered the fact that such jurisdiction was invoked by the petitioner after several years. It may be recalled that the first appeal filed by the land-owners was not against an order under Section 8 of the Act but against the notification under Section 10 of the Act, which was dismissed on the ground of maintainability. Likewise, the first revision filed in the year 1990 was dismissed as not maintainable in 1991.

Now it is true that no period for revision is provided in the Act. It was, therefore, submitted on behalf of the land-owners that when the Legislature did not think it fit to prescribe period of limitation, such power can be exercised 'at any time' and no Court by a 'judicial fiat', usurp legislative power and prescribe period of limitation. It is no doubt true that the statute does not fix period of limitation within which revisional power should be exercised under Section 34 of the Act. The Legislature, in its wisdom, has not fixed period of limitation as it had empowered the State Government to exercise revisional power suo motu. In our judgment, however, only in such cases i.e. where the period of limitation is not prescribed that the concept of 'reasonable time' can be invoked and power must be exercised within such period.

In this connection, it would be profitable to refer to a leading decision of this Court in State of Gujarat v. Patel Raghav Natha & Ors., (1969) 2 SCC 187. In that case, an application was filed by the land-owner under Section 65 of the Bombay Land Revenue Code, 1879 for converting agricultural land to non-agricultural use. The permission was granted. The Municipal Committee, however, objected to such permission and the Commissioner, in purported exercise of revisional power under Section 211 of the Code, set aside the order passed earlier. When the matter reached this Court, it was contended by the owners, that though Section 211 did not prescribe period of limitation, revisional powers ought to be exercised within a reasonable time. Upholding the contention and considering the scheme of Sections 65 and 211 of the Code, this Court stated:

"The question arises whether the Commissioner can revise an order made under s. 65 at any time. It is true that there is no period of limitation prescribed under s. 211, but it seems to us plain that this power must be exercised in reasonable time and the length of the reasonable time must be determined by the facts of the case and the nature of the order which is being revised.

It seems to us that s. 65 itself indicates

the length of the reasonable time within which the Commissioner must act under s. 211. Under s. 65 of the Code if the Collector does not inform the applicant of his decision on the application within a period of three months the permission applied for shall be deemed to have been granted. This section shows that a period of three months is considered ample for the Collector to make up his mind and beyond that the legislature thinks that the matter is so urgent that permission shall be deemed to have been granted. Reading Sections 211 and 65 together it seems to us that the Commissioner must exercise his revisional powers within a few months of the order of the Collector. This is reasonable time because after the grant of the permission for building purposes the occupant is likely to spend money on starting building operations at least within a few months from the date of the permission. In this case the Commissioner set aside the order of the 'Collector on October 12, 1961, i.e. more than a year after the order, and it seems to us that this order was passed too late". (emphasis supplied)

The law laid down in Patel Raghav Natha has been reiterated by this Court in several cases. We do not intend to burden our judgment with all those cases. We may only state that broad contention of the land owners that when no period of limitation is prescribed, revisional jurisdiction can be exercised at any time cannot but be rejected. If the law prescribes period of limitation, the action must be taken within such period. But where the law does not prescribe limitation, the Court would import the concept of 'reasonable time'. We may, however, hasten to add that what is the length of the reasonable time would depend upon the facts and circumstances of each case and no rule of universal application can be laid down. [See also Shailesh Jadavji Varia v. Sub-Registrar, Vadodara & Ors. (1996) 3 Guj LR 783 (FB)].

In the facts and circumstances of the case, in our opinion, the Revisional Authority was duty bound to take into account the length of delay, intervening circumstances and subsequent events from 1977 to 1995 and to consider whether the powers should have been exercised or not. Since no such exercise has been undertaken, the order suffers from legal infirmity and must be quashed.

We have also gone through the grievance of the land-owners when they had filed an appeal in 1979 against an order under Section 10(3) of the Act as also appeal (Revision) in 1990 (first revision). There was no whisper about non-service of notice and non-observance of principles of natural justice. Reading of Memorandum of Appeal, grounds and prayers makes it clear that contentions were raised as to legality of decision on merits. It was urged, inter alia, that certain land was sold prior to the commencement of the Act which could not have been taken into account for the purpose of declaring the land to be surplus; that constructed portion and built up area (bungalow) ought to have been excluded and that two units ought to have been granted.

Even in the second revision filed in 1994, there is nothing about non service of notice or absence of hearing by the Competent Authority. The Revisional Authority, in our view, ought to have considered that aspect as well.

Again, the Revisional Authority was bound to apply its mind to the effect of vesting of land 'free from all encumbrances' in the State and grant of land by the State in favour of appellant-Corporation. It was only after the land vested in the State that it was disposed of in accordance with the provisions of the Act. After the notification under Section 10(3) was issued, a prayer was made by the Corporation to allot the land. The prayer was granted and payment of Rs.1,45,000/- was made by the Corporation and it started construction. They were indeed relevant and material facts and circumstances. The Revisional Authority, however, has not even referred to those facts and circumstances. The impugned order thus suffers from serious infirmity.

To us, the High Court was wholly wrong in holding that Corporation was not 'affected' party. When the land was assigned to Corporation and Corporation made the payment of price, by no stretch of imagination, it can be said that the Corporation was not 'affected' party. From the record, it was clear that possession was handed over by the State and was taken over by the Corporation. The Corporation was proceeding to put up construction on the land which compelled the land-owners to institute a suit and to obtain order of status quo. The High Court in the circumstances, ought to have allowed the petition by setting aside the order of the Revisional Authority, by directing it to issue notice to the Corporation, to afford hearing and to pass appropriate order on merits. By not doing so, the High Court has committed the same error which had been committed by the Government and the order of the High Court also cannot be sustained.

The High Court was also wrong in referring to and relying upon Gadde Venkateswara Rao v. Government of Andhra Pradesh & Ors., AIR 1966 SC 828 and also Maharaja Chintamani Saran Nath Shahdeo v. State of Bihar & Ors., 1999 (8) SCC 16 for the proposition that allowing a petition of the Corporation would result in reviving and restoring of illegal order. In our view, the High Court has ignored an important fact that setting aside of order by the Revisional Authority would not have resulted in restoring illegal order inasmuch as the original order passed under Section 8 of the Act was not challenged by the land-owners in an appeal filed in 1979. The order passed by the Competent Authority, therefore, cannot be held void, still-born or purported order. On the contrary, in the said order, it was stated that the notice was properly sent at the address supplied by the declarant and the owner would have to be treated as served. In the appeal also, it was never contended by the land-owners that they were not served and on that ground the order was bad. Hence, unless the said order was set aside, it could not be termed as illegal or void order.

It is well settled that no order can be ignored altogether unless a finding is recorded that it was illegal, void or not in consonance with law. As Prof. Wade states: "The principle must be equally true even where the 'brand of invalidity' is plainly visible; for there also the order can effectively be resisted in law only by obtaining

the decision of the Court".

He further states:

"The truth of the matter is that the court will invalidate an order only if the right remedy is sought by the right person in the right proceedings and circumstances. The order may be hypothetically a nullity, but the Court may refuse to quash it because of the plaintiff's lack of standing, because he does not deserve a discretionary remedy, because he has waived his rights, or for some other legal reason. In any such case the 'void' order remains effective and is, in reality, valid. It follows that an order may be void for one purpose and valid for another, and that it may be void against one person but valid against another".

In Smith v. East Elloe Rural District Council, 1956 AC 736 at 769 : (1956) 1 All ER 855, Lord Redeliffe had an occasion to consider a similar argument (that the order was null and void). Negativing the contention, the Law Lord made the following off-quoted observations:

"(T)his argument is in reality a play on the meaning of the word 'nullity'. An order even if not made in good faith, is still an act capable of legal consequences. It bears no brand of invalidity upon its forehead. Unless the necessary proceedings are taken at law to establish the cause of invalidity and to get it quashed or otherwise upset, it will remain as effective for its ostensible purpose as the most impeccable of orders". (emphasis supplied)

A similar question came up for consideration before this Court in State of Punjab & Ors.. v. Gurdev Singh, (1991) 4 SCC 1. In Gurdev Singh, a suit for declaration was instituted by the plaintiff contending that the order dismissing him from service was ultra vires, unconstitutional, violative of principles of natural justice and void ab initio and he continued to be in service. Such suit, in accordance with the provisions of Article 113 of the Limitation Act, 1963, must be filed within three years from the date of passing of order or where departmental appeal or revision is filed from the date of dismissal of such appeal/revision. The suit was, however, filed beyond the period of three years. The High Court held that since the order was void, the provisions of Limitation Act would not apply to such order. The aggrieved State approached this Court.

Setting aside the decree passed by all the Courts and referring to several cases, this Court held that if the party aggrieved by invalidity of the order intends to approach the Court for declaration that the order against him was inoperative, he must come before the Court within the period prescribed by limitation. "If the statutory time of limitation expires, the Court cannot give the declaration sought for".

The Court then stated;

"If an Act is void or ultra vires it is enough for the Court to declare it so and it collapses automatically. It need not be set aside. The aggrieved party can simply seek a declaration that it is void and not binding upon him. A declaration merely declares the

existing state of affairs and does not 'quash' so as to produce a new state of affairs".

In the present case, no period of limitation is prescribed for preferring Revision under Section 34 of the Act. The principle laid down in Patel Raghav Natha, hence, applies. If, therefore, the Revisional Authority was inclined to exercise jurisdiction, it ought to have been satisfied that such power was invoked by the petitioner within reasonable time. Merely on the ground that the order passed in 1977 was unlawful was not sufficient to ignore length of delay and other attenuating circumstances.

It was also contended that the order passed by the Appellate Authority dismissing appeal as 'not maintainable' and order passed in first revision refusing relief on the same ground i.e. non-maintainability of revision would not operate as res judicata. In this connection, our attention has been invited by the counsel for the land-owners to several decisions of this Court. It is not necessary to refer to those decisions since in our opinion, the respondents are right that the doctrine of res judicata has no application. That does not, however, mean that Revisional Authority would not consider the extent of delay, grounds/reasons for not approaching Revisional Authority and intervening circumstances. It is only thereafter on satisfaction of the Government that it could consider the merits of the matter and pass an appropriate order in accordance with law.

The learned counsel for the State of Maharashtra strongly urged that the State authorities must act fairly and reasonably. When it found that an order was passed under Section 8 of the Act but the requisite notice was not served upon the land-owners, it must fairly state that the order was illegal and an opportunity should be given to the land-owners as to why appropriate order should not be passed under the Act after hearing them.

There can be no two opinions about it. The State has to act fairly. But the State or a public authority must be fair not to one party but to all the parties to the litigation. In the present case, an order was passed by the Competent Authority in 1977, and in 1979, the land vested in the State, possession was taken over from land-owners, application was made by the Pune Municipal Corporation, land was allotted to it, an amount of Rs.1,45,000/- was paid by the Corporation, possession was handed over to the Corporation and Corporation was undertaking construction activities. An appeal by the land-owners was dismissed in 1979 and revision, which was filed after more than ten years met with the same fate. The State Government was, therefore, expected to issue a notice and afford hearing to the Corporation when second revision petition was filed by the land-owners. The Government was aware of all the above facts which were on record. It was also alive of the fact that a Civil Suit was filed before more than ten years in 1979 and status quo order was obtained by the land-owners. Therefore, when it was submitted that the State ought to have acted fairly towards land owners, it ought to have acted fairly towards Municipal Corporation also. But Pune Municipal Corporation was never issued any notice, nor given opportunity for hearing. Even when the Corporation challenged the order passed by the Revisional Authority in a writ petition in the High Court, it was not conceded

by the State that the order in revision was liable to be set aside as it was not made by the Revisional Authority in observance of principles of natural justice and the matter must be sent back to the Government to decide it afresh after extending opportunity of hearing to all the parties. The matter did not end there. Even in this Court, the State counsel submitted that the Revisional Authority rightly set aside the order passed against the land-owners as they could not be served before the impugned order was passed under Section 8 of the Act. The State counsel also supported the order passed by the High Court, but the counsel did not state that the same reasoning would apply to an order passed by the Revisional Authority and by the High Court without hearing Pune Municipal Corporation. The State has its own concept of 'fairness'. We, however, express our inability to put seal of approval on the stand taken by the State and on its concept of 'fairness'.

It may be recalled that neither in the Memorandum of Appeal filed by the land owners in 1979, nor in the first revision nor in the second revision, which are part of the record, it was even alleged by the land-owners that they were not served with the notice under Section 8 of the Act and they had no opportunity to put forward their case and the order was, therefore, liable to be set aside. In fact, no appeal was filed against an order passed under Section 8 of the Act. Be that as it may, had such contention been taken by the land-owners and had the appellant-Corporation been joined as party respondent before the Revisional Authority in the second revision, it could have pointed out that the land-owners were aware of the proceedings and because of such knowledge, they had not raised such contention. Ultimately, in such matters, the Court would apply 'prejudice test'. If the circumstances had proved that the land-owners were in know of proceedings, it is possible that the Revisional Authority might have refrained from exercising discretionary jurisdiction. Moreover, the appellant-Corporation could have contended that there was gross, unreasonable and unexplained delay on the part of the land-owners and it was not a fit case to exercise revisional power after such period.

For the foregoing reasons, in our opinion, the order passed by the Revisional Authority and confirmed by the High Court is liable to be set aside and is hereby set aside. The matter is now remitted to the Revisional Authority for taking fresh decision in accordance with law after hearing the parties, including the Corporation. It is open to all the parties to raise all contentions available to them. It goes without saying that all proceedings taken in pursuance of the order passed in revision are of no consequence and no effect can be given to them. We may clarify that we have not entered into correctness or otherwise of the allegations and counter-allegations and we may not be understood to have expressed any opinion on the merits of the matter. As and when the Revisional Authority will take up the matter for consideration, it will decide the same without being influenced by the observations made by the High Court as also by us. The appeal is accordingly allowed with costs.