INTRODUCTION

The acquisition of land for different public purposes has become not only a blood-letting political question in recent weeks but also a legal one. The Supreme Court is currently hearing a large number of appeals from Karnataka, where the land owners have challenged the take-over of vast chunks of urban tracts in Bangalore by the government. They allege, among other things, discrimination in the selection of land for acquisition and the amount of compensation.

There has been an unusually large number of judgements on land acquisitions in recent weeks. In one such, Nelson Fernandes vs Special Land Acquisition Officer, Goa, the Supreme Court held that the state must take into consideration the purpose of acquisition of private land while fixing the quantum of compensation to be awarded to the land owner.

This ruling is bound to have a deep impact on the policy of setting up special economic zones. If the purpose is commercial, the compensation must be proportionate to the size of the project.

The land in this case was acquired for building a new broad gauge line of the Konkan Railways. The acquisition authorities gave Rs 4 per sq metre. The award was challenged in the district court, which fixed the compensation at the rate of Rs 192 per sq metre. The high court reduced the figure to Rs 38.

The Supreme Court fixed the compensation at the rate of Rs 250 after criticising the high court's evaluation. "In our opinion, the compensation awarded by the high court had no basis whatsoever and was not supported by cogent reason and it did not consider the future prospect of the development of the land in question," the judgement said.

According to the Supreme Court, the other parameters for arriving at a just figure for compensation are the market value, location of the land and the loss of income suffered by the land owner and availability of basic amenities such as water and electricity. If these points are taken care of in a fair manner, a lot of bitterness could be avoided.

In another recent case, Viluben Jhalejar Contractor vs State of Gujarat, the lands were acquired because they were submerged under dam water. The owners claimed a compensation of Rs 40 per sq ft.

They were in fact awarded a compensation ranging from Rs 35 to Rs 60 per sq metre. The subordinate court fixed the market value of the land at Rs 200. On appeal, the high court awarded a compensation of Rs 180.

Another judgement delivered last week again raised questions regarding the assessment of the compensation figure. This case, Numaligarh Refinery Ltd vs Green View Tea & Industries Ltd, was an appeal against the decision of the Gauhati high court.

The Supreme Court found that the compensation awarded by the high court was inadequate and it modified the formula, observing that "fixation of compensation under the Land Acquisition Act involves an element of rational guess work."

These cases were decided after more than a decade of litigation over the compensation amounts. The Supreme Court put a stop to another long-standing litigation in HMT Ltd vs Mudappa last week, which might be a sort of record in land acquisition cases. The land was taken over in 1978 for establishing the watch factory of the public sector undertaking.

The Karnataka high court found that the notification for acquisition was issued in violation of the Karnataka Industrial Areas Development Act and it was a mala fide exercise of its power. The Supreme Court set aside the high court judgement and allowed the authorities to take appropriate proceedings.

The question of 'public purpose' in acquiring land is another thorny issue and it has been unsatisfactorily settled by the Supreme Court in recent judgements. The decision in Pratibha Nema vs State of Madhya Pradesh (2003), dealt with the phrase 'public purpose', which has not been defined in the Land Acquisition Act. The issue of the government taking over land for private industries by giving compensation was dealt with in detail.

It then came to a controversial conclusion: "By contributing a trifling sum, the character and pattern of acquisition could be changed by the government. In the ultimate analysis, what is considered to be an acquisition for facilitating the setting up of an industry in the private sector could get imbued with the character of public purpose acquisition if only the government comes forward to sanction the payment of a nominal sum towards compensation."

All these point to a disquieting state of affairs. The parameters for assessing the compensation, complicated procedures, delay in the courts and the meaning read into public purpose are some of the impediments in quickly solving disputes over land acquisition. As a result, infrastructure projects are delayed and political interests step in. The country can hardly afford this when the projects are already delayed by decades.

The archaic Land Acquisition Act 1894 has now come under the scanner of the Supreme Court. The Court has for the first time asked the Centre and all states to furnish their responses on a petition raising question on the clause of "public purpose" besides posing other challenges to provisions of the said Act.

The Bench headed by Chief Justice of India K G Balakrishnan, acting on a public interest petition filed by an association of landless farmers of Karnataka, issued notices to chief secretaries of all states besides seeking response from the Union Ministries of Commerce and Agriculture.

The petition filed under Article 32 of the Constitution has raised a rather crucial question as to what constitutes the "public purpose" citing which the Government is authorised to acquire large pieces of agriculture land, owned and acquired by farmers and cultivators under provisions of the statute under question.

The petitioner has thereby challenged the legality and constitutional validity of the sections including Section 3(f), 4 and 6 of the said Act, which authorises the Government to acquire land under the guise of "public purpose" terming it as unconstitutional and violative of the Articles 14 (Right to Equality), 19 (1) (g), 21 (Right to life and personal liberty) besides others rights enshrined in the

Constitution.

The petitioner asked the Bench, also comprising Justice R V Raveendran and Justice H S Bedi, for a direction to the Government and all states from going ahead with the acquisition proceedings of the agricultural land.

Besides, the petition, citing figures of how much land has been acquired in states like Karnataka and West Bengal, seeks a direction to rehabilitate all displaced farmers.

New policy on land acquisition gets Cabinet nod

CHENNAI: The Union Cabinet today gave its approval for the National Policy on Rehabilitation and Resettlement, 2007 to replace the National Policy on Resettlement and Rehabilitation for Project Affected Families, 2003.

A gazette notification will be issued shortly to bring into effect the new policy.

The Cabinet has also decided to bring a legislation on the lines of the new Rehabilitation and Resettlement Policy and to suitably amend the Land Acquisition Act, 1894. Necessary steps shall be taken in this regard as per the established procedure.

The new policy and the associated legislative measures aim at striking a balance between the need for land for developmental activities and protecting the interests of the land owners, and others such as the tenants, the landless, agricultural and non-ag ricultural labourers, artisans and others whose livelihood depends on the land involved.

The benefits under the new policy shall be available to all affected persons and families whose land, property or livelihood is adversely affected by land acquisition or by involuntary displacement of a permanent nature due to any other reason, such as n atural calamities, etc.

The policy will be applicable to all these cases irrespective of the number of people involved.

A special provision has been made for providing lifetime monthly pension to vulnerable persons, such as the disabled, destitute, orphans, widows, unmarried girls, abandoned women or persons above 50 years of age (who are not provided or cannot immediatel y be provided with alternative livelihood).

A National Rehabilitation Commission shall be set up by the Central Government, which will be duly empowered to exercise independent oversight over the rehabilitation and resettlement of the affected families.

Under the new policy, no project involving displacement of families beyond defined thresholds can be undertaken without a detailed 'Social Impact Assessment,' which among other things shall also take into account the impact that the project will have on public and community properties, assets and infrastructure.

The policy also provides that land acquired for a public purpose cannot be transferred to any other purpose but a public purpose, and that too only with prior approval of the Government.

If land acquired for a public purpose remains unutilized for the purpose for five years from the date of taking over the possession, the same shall revert to the Government concerned.

When land acquired is transferred for a consideration, eighty per cent of any net unearned income so accruing to the transferor shall be shared with the persons from whom the lands were acquired, or their heirs, in proportion to the value of the lands ac quired. - Our Bureau

Acquisition of Lands

Functions of Land & Building Department

Land & Building Department of Govt. of Delhi is responsible for large-scale acquisition of land for Planned Development of Delhi and placing it at the disposal of DDA for development and disposal. It has 4 main branches viz Land Acquisition Branch, Alternative Plot branch, E.P. Cell and Housing Loan branch.

I Functions of Land Acquisition Branch

This branch processes the proposal for acquisition of land received from DDA as well as other Departments of Govt. of Delhi. It also processes the applications for de-notification of land.

(A) Procedure for Acquisition of Land under the provision of Land Acquisition Act 1984

On receipt of the proposal for acquisition of land from the DDA or any other Govt. department, the same is forwarded to the concerned Land Acquisition Collector for furnishing the draft notification under the provisions of the Land Acquisition Act 1894 after conducting the joint survey of the land proposed to be acquired.

The ADM/LAC concerned furnishes the requisite draft notification under section 4 & 6 of the L.A. Act, 1894 either under the normal clause or by invoking urgency clause depending upon the proposal received from the requisitioning department. The draft notification so received from the ADM/LAC concerned are scrutinized by the Revenue officials of this department. If any discrepancies are found in the draft notification, the same is conveyed to the ADM/LAC concerned for rectification. The rectified draft notification is put up to Hon'ble L.G. for approval as per categories below.

i. Notification U/s 4 is an intention of the Government to acquire the land, issued after obtaining approval of L.G.

ii. Objection U/s 5-A is to be filed by the landowners, whose land is notified U/s 4 of the L.A. Act, within 30 days of publication of the notification, with LAC concerned.

iii. On receipt of the report on 5-A objections from the LAC concerned, the report is considered by the Appropriate Government i.e. LG and thereafter, declaration U/s 6 is issued either for the whose land notified u/s 4 or less on the basis of the consideration of the report of the LAC. The declaration u/s 6 has to be issued within one year from issuance of section 4 notification, failing which notification issued u/s 4 will lapse.

iv. LAC concerned has to announce the Award u/s 11 of the L.A. Act within two years of declaration U/s 6. After announcing the Award, possession of the land is taken/handed over as per provision of section 16 of the L.A. Act.

(B) Steps involved in acquisition of land invoking urgency clause

i. In case the land is urgently required, then urgency clause is invoked. Approval of the Competent Authority i.e. LG is obtained for issuance of notification U/s 4 read with 17(4), 6 & 17(1) dispensing with filing of the objections by the land owners U/s 5-A before the LAC.

After obtaining approval of L.G, notification U/s 4 read with 17(4) is issued. Section 17(4) dispenses with objections U/s 5-A.)

ii. Declaration U/s 6 & 17 (i) can be issued after publication of notification U/s 4, within one year of such notification (U/s 17(i) possession of land can be taken before announcement of Award. It is mandatory for the requisitioning department to deposit 80% estimated compensation amount, the demand for which is raised by concerned LAC, with L&B Department before issuance of declaration U/s 6 & 17(i), as LAC has to offer 80% estimated compensation amount, to the land owners at the time of taking over the possession).

iii. ADM/LAC concerned will take possession of land notified U/s 6 & 17(i) giving 15 days notice U/s 9(i) to the interested persons, after offering 80% of the compensation amount.

iv. Further LAC concerned will have to announce the Award within 2 years from date of issuance of declaration U/s 6 & 17(i).

II POLICY GUIDELINES AND PROCEDURE FOR DENOTIFICATION OF LAND ACQUIRED UNDER LAND ACQUISITION ACT

(A) LEGAL PROVISIONS:

Section 48 (i) of the LA Act 1894 provides that except in case provided for U/s 36(i), the Govt. shall be at liberty to withdraw from the acquisition of any land of which possession has not been taken. Thus, the power to withdraw any land from acquisition has been created under the statute, which provides that the land can be de-notified if the possession of which has not been taken over by the government. However, this power has to be exercised in judicious manner and on the basis of guidelines framed by the Govt. the details of which in brief are as under:

(B) Guidelines and procedure for de-notification

A Committee called as 'Denotification Committee' consisting of the following members shall examine all denotification proposals and submit its recommendations to the Lt. Governor as to whether such proposal may be accepted or rejected.

1	Secretary (Land)	Chairman
2	Secretary to Lt. Governor	Member
3	Commissioner (Land Acquisition) DDA	Member
4	Dy. Commissioner (Concerned)	Member

The recommendations of the Committee shall not be binding on the Lt. Governor who may take a decision on each recommendation, at his discretion.

On approval of the Lt. Governor of any proposal, a notification under Section 48 91) of the Land Acquisition Act shall be issued in respect of the land in question.

(C) COMMON CONDITIONS FOR CONSIDERING DENOTIFICATION

1. Possession of the land should not have been taken.

2. The persons interested in the land should not have received any part of the compensation towards acquisition of land.

3. Where the requisitioning department itself request for de-notification of a land, it may be recommended for de-notification.

As per the decision of the Standing Committee in the meeting dated 3.6.93, land 50 meters from village abadi is not acquired. However, in case any such land has been notified for acquisition, it may be recommended for denotification provided its absence will not materially affect the public purpose for which it is being acquired.

(D) PROPERTIES BUILT-UP PRIOR TO ISSUE OF NOTIFICATION U/S 4 OF THE LAND ACQUISITION ACT, 1894

1. Built-up properties existing at the time of notification U/s 4 of the Land Acquisition Act, 1894 may be recommended for denotification provided:

    a. the absence of the land on which the built-up portion exists will not materially affect the public purpose.

    b. the property was built-up after requisite approvals of the Competent authority.

    c. When the public purpose can be satisfied by another viable land, which would cause less financial burden to the Government.

(E) PROPERTIES BUILT-UP AFTER THE ISSUE OF NOTIFICATION U/S 4 OF THE LAND ACQUISITON ACT, 1894.

1. Land on which built-up structures have come up after issue of notification under section 4 of the Land Acquisition Act, shall normally not be considered for denotification. However, if cluster of largely residential structures has come upon a long period of time and demolition of the structures shall cause immense hardship to a large number of inhabitants, the following procedures may be adopted

   a. Where there is a recommendation from the technical department/ committee of the Government that the land is inappropriate/unsuitable.

   b. Where the feasibility studies, if any, conducted show that the land is not suitable for the public purpose for which it is being acquired.

   c. Where the Colony including the area in question has itself been regularized and services handed over to MCD, the land may be recommended for denotification.

2. In all cases, a sub-committee comprising the Land Acquisition Collector, a representative of Land & Building department (not below the rank of a Dy. Secretary) and a Representative of DDA (not below the rank of a Dy. Secretary), shall inspect the land and submit a detailed report outlining the number and nature of structures, the feasibility of taking over the land after demolition of the structures, and the specific recommendation on denotification of the land. The Denotification Committee shall consider the report of the Sub-committee, the comments of the requisitioning department with specific reference to its need for land, and then make a recommendation to the Lt. Governor for considering or rejecting the proposal.

RELIGIOUS STRUCTURES

Any religious structure existing on the land at the time of issue of notification under section 4 of the Land Acquisition Act, 1894 may be considered for denotification. However, the area, which may be recommended for denotification, may include any appurtenant area up to 500 sq.m.

If there is any structure like Hospital, School, Charitable Dispensary existing before issuing the notification U/s 4 of Land acquisition Act, then the case may be considered for denotification.

GOVERNMENT OF KARNATAKA
Karnataka Government Secretariat,
M.S.Building,
Bangalore,

Sl No 776

Circular Number RD 53 AQW 75

Date 06/25/75

Section Land Acquisition

Subject Delegation of powers – Appointment of Officers to perform Functions of the Deputy Commissioner
under Section 5-A of Land Acquisition Act., 1894.

Body **RD 53 AQW 75 DT. 25-6-75 [C]**

Subject : Delegation of powers – Appointment of Officers to perform
Functions of the Deputy Commissioner under Section 5-A
of Land Acquisition Act., 1894.

The Deputy Commissioner of the District were issuing the preliminary notification Under Section 4(1) of Land Acquisition Act in their respective jurisdiction upto 24th November 1965. They used to appoint the Assistant Commissioners of the Sub-divisions or the Special Land Acquisition Officers as the case may be, to perform the functions of the Deputy Commissioner for the purposes of Section 5 (a) of the Act. But this procedure was found to be defective in the sense that the power conferred upon the Deputy Commissioner under Section 4(1) being a statutory power, they were not empowered to delegate these powers to the subordinate officers to function as Deputy Commissioner under the Land Acquisition Act. By virtue of the provision in Section 3 (c), the Government alone is competent to appoint any other officer to the Act. Government, therefore, in their letter No. RD 97 LCI 65, dated 25-11-1965 issued instructions to all Deputy Commissioners, Assistant Commissioners and Special Land Acquisition Officers that the proposals for issue of preliminary notification under Section 4(1) of the Land Acquisition to be issued in future may be submitted to Government.

2. But instance have come to the notice of Government that there has been consideration delay in finalisation of preliminary notification. In order to minimise delay and thereby ensure special action in acquisition proceedings, it is considered necessary to empower the Deputy Commissioners of the District to issue notification under Section 4(1) of Land Acquisition Act. Accordingly Government after careful consideration of all aspects of the matter, have decided to specially appoint the Assistant Commissioners through a notification specifically intended to implement this delegation of power, so as to enable them to perform the function of the Deputy Commissioner for the purposes of Section 5-A of the Land Acquisition Act within their respective jurisdiction. Notification of even number and date has been accordingly issued, separately.

3. In Supercession of instructions issued in letter No. RD 97 LCI 65 dated 25-11-1965, Government hereby authorise the Deputy Commissioners of the Districts (Regular Deputy Commissioners to issue the notification under Section 4 (1) of Land Acquisition Act, whenever it appears to the that the land is needed or likely to be needed for any public purpose. Government also prescribe the forms enclosed herein for adopting while issuing such notification under Section 4(1) of Land Acquisition Act. In respect of such notification the Assistant Commissioners concerned derive power to conducted the enquiry under Section 5-a by issue of the notification above mentioned.

4. Deputy Commissioner will note that they should desist from issuing any notification appointing any Assistant Commissioner to conduct enquiry under Section 5-A. If any orders in the respect are required in any given case, a reference shall be made to Government.

5. Deputy Commissioners of the District are also authorised to issue any notification and fresh notification in respect of defective 4(1) notifications, as well as erratum notifications in respect of preliminary notification which have any printing mistakes other than of material particulars.

6. Government hereby direct all the Deputy Commissioners of the District in future not to send to Government any proposals for issue of preliminary Notifications under Section 4(1) of the Land Acquisition Act. Reference Relating to directions/notifications under other provisions of the land Acquisition Act will however continue to be sent to Government as heretofore.

PROCEEDINGS OF THE DEPUTY COMMISSIONER DISTRICT

Sub :

Rend :

Letter No. Dated from the Assistant Commissioner/

Special Land Acquisition Officer forwarding proposal for the acquisition of lands in Survey Nos.

Etc. in Village Taluk. Required for

Public purpose.

ORDER No. Dated :

In the circumstances stated by the Assistant Commissioner/Special Land Acquisition Officer it appears that the land/s referred to therein is/are likely to be needed for a public purpose namely for and therefore the Dy.commissioner, District is pleased to sanction further action under Section 4(1) of the Land Acquisition Act, 1894 (as amended by the Karnataka Act, 17 of 1961) in respect of the above proposal for acquisition.

2. The annexed Notification in English is forwarded to the Compiler, Karnataka Gazette and this should be published in Karnataka Gazette date positively.

DEPUTY COMMISSIONER,
DISTRICT.

To

The Compiler, Karnataka Gazette for publication of Notification in Part IX A/B/C of the Gazette dated and supply 25 copies of the English Notification of the Special Land Acquisition Officer/ Assistant Commissioner Sub-Division direct from the Government press to the If the notification is not published on the date indicated, it may be returned to the undersigned indicating the date on which it will be published. The last date for filing objections will be suitably altered and notification returned for publication.

Copy to :

The Special Land Acquisition Officer/Assistant Commissioner
with Records.

Specimen Copy of the Notification to be issued under Section 4(1) of Land Acquisition Act.

1. Whereas it appears to the Deputy Commissioner, ………………………District, that the lands specified in the Scheduled hereto are likely to be needed for the public purpose to wit for;

2. Notice to that effect is hereby given to all whom it may concern, in accordance with the provision of sub-section (1) of section 4 of the Land Acquisition Act, 1894)Central Act I of 1894) as amended by the Karnataka Act No. 17 of 1962, and the Deputy Commissioner, …………………... District hereby authorises the Assistant Commissioner/Special Land Acquisition Officer, his staff and workmen to exercise the powers conferred by section 4(2) of the Act.

3. Any person interested in the lands may, on or before…………prefer his objections if any, in writing to the Assistant Commissioner/Special Land Acquisition Officer, …………… who has been appointed to perform the functions of the Deputy Commissioner under Section 3 © of the Land Acquisition Act, 1894, as amended by the Karnataka Act 17 of 1961, by the Government of Karnataka vide their Notification No. Rd 53 AQW 75 dated 25th June 1975.

4. All persons interested in the said lands are hereby warned not to obstruct or interfere with any surveyors or other persons employed upon the said lands for the purpose of the said acquisition. Any contracts for the disposal of the said lands by sale, lease, mortgage, assignment, exchange or otherwise or any outlay or improvements made therein notification will under section 24 (Clause seventhly) of the said Act, be disregarded by the Officer assessing compensation for such parts of the said lands as may be finally acquired.

(5) A rough plan of the lands is kept in the Officer of the Assistant Commissioner/Special Land Acquisition Officer, …………………………

SCHEDULE

District: Taluk: Hobli: Village:

Sl. Name of Name of Survey No. Kind Boundaries Approximate Assess-
No. Khatedar Anubhavdar East West North South extent required ment

Deputy Commissioner,
District.

Sl No 1262

Circular Number RD 97 LCI 65

Date 11/25/65

Section Land Acquisition

Subject Acquisition of land – hearing of
objections under Section 5 (A) of
the Land Acquisition Act.

Body GOVERNMENT OF MYSORE

No.RD 97 LCI 65. Mysore Government Secretariat,
Vidhana Soudha,
Bangalore, dated 25th Nov. 1965.
From
The Secretary to the Government of Mysore,
Revenue Department,
Bangalore.

To
The Deputy Commissioners of all Districts.
The Special Deputy Commissioners of Mandya
& South Kanara, Mangalore districts.
The Special Officer for Rehabilitation,
Shimoga.

Sir,
Sub : Acquisition of land – hearing of
objections under Section 5 (A) of
the Land Acquisition Act.

Ref : Letter No. RDH 162 LVP 63, dated 10-11-64.

I am directed to state that under Section 4 of the Land Acquisition Act, notification of the intended acquisition can be issued by the Government or the Deputy Commissioner. On the publication of such notification, it is lawful for any officer, either generally or specially authorised by such Government or Deputy Commissioner in this bhalf and for hisservants and workmen to enter upon and survey and take levels of the land etc. as mentioned in Section 4(3). Under sub-section (4) of Section 4, such officer should complete his investigation and submit his report to the Deputy Commissioner. Such Officer, to carry on the duties as specified in sub-section (2), can be authorised by the Government or the Deputy Commissioners as the case may be, by whom the notification under section 4(1) may be issued.

But as regards 5(A) (2), objections have to be made to the Deputy Commissioner and he is the authority to hear the objections. This function he cannotdelegate to another authority and the Act does not cnfer a power on him to authorise any other person to perform his statutory functions. Only the Government can, by virtue of the provisions in Section 3(c), specially appoint an officer to perform the functions of a Deputy Commissioner under the Act.

Therefore, it is directed that the proposals for issue of preliminary notifications under Section 4(1) of the Land Acquisition Act to be issued in future may be submitted to Government.

Yours fai thfully,

(A.M. Shyamprasad)
Under Secretary to Government,
Revenue Department.

Sl No 302

Circular Number RD 135 AQW 86

Date 04/30/86

Section Land Acquisition

Subject Publication of declaration U/s 6(1) of Land Acquisition Act.

Body **[172]**
RD 135 AQW 86 Dt. 30.4.86 (L)
[Letter from the Revenue Commissioner and Secretary to the govt of Karnataka Revenue Department to all DCS, SPl DCS, ACS & SLAOS]
Sub : Publication of declaration U/s 6(1) of Land Acquisition Act.
I am directed to enclose herewith copy of letter No. ACQ/13012/3/86 DRD dated 27th February/5.3.1986 of the Government of India, New Delhi for guidance and necessary action.
I am also to request you to ensure that all the four actions viz., publication of 4(1) Notification in the Gazette and in two daily newspapers circulating in the locality of which at least one has to be in the regional language and causing public Notice of the substance of such Notifications at convenient places in the locality, are completed as

directed in Government of India letter.
I am directed to request you to follow the instructions scrupulously.

Enclosure
No. ACQ 13012/3/86 – DRD
Government of India
Ministry of Agriculture
Department of Rural Development.

Block No. 11, 6th Floor,
CGO Complex, Lodhi Road,
New Delhi, Dated 27th February, 1986.

To,
Shri, T.P.Issar All Revenue
Commissioner & Secretary Secretaries
Govt. of Karnataka (All States.Uts.)
Revenue Department,
Vidhana Soudha, Bangalore.

Sub : Publication of declaration under Section 6(1) of Land Acquisition Act.

Sir,

I am to say that declaration under Section 6(1) is published after the appropriate Government has taken a decision on the objections under section 5(A). Cases in which urgency provisions are applied, enquiry under Section 5(A) is dispensed with under Section 17(4) of the Act after issue of Notification under Section 4(1). In such cases, the declaration under section 6 is made either on the same date or immediately thereafter. Sub-Section (4) of Section 17 provides that the declaration under Section 6 can be made at any time after the publication of Notificastion under Section 4(1). According to sub-Section (1) of Section 4 as amended by Act gazette and in two daily News papers circulating in the locality of which at least one has to be in the regional language and causing public notice of the substance of such Notifications at convenient places in the said locality. In the circumstances, making of declaration under Section 6(1) before the publication of Notification, under section 4(1) without completion of all the four actions indicated above will not be in accordance with law. This may be kept in vies while making declaration under Section 6(1).

It may further be stated that instances have come to notice in which the land acquisition Collector, of having received the Copy of the Notification under section 4(1), waited for the publications in gazette before getting the notice published in two daily Newspapers and causing public Notice of the substances of the Notification in the locality. The law does not require so. Hence all efforts should be made to ensure that all the four actions are done simultaneously, as for as possible, or there should be least time gap between these actions. Only when all the four actions have been completed, the date of publication of Notification Under Section 4(1) can be determined.

Yours faithfully,
Sd/-

(G.Asvathanarayan)
Joint Secretary to Government of India.

Sl No 314

Circular Number RD 21 AQU 85

Date 11/14/85

Section Land Acquisition

Subject Publishing of Land Acquisition Notifications New Papers intime.

Body **[184]**
RD 21 AQU 85 Dt. 14.11.85 (c)
Sub: Publishing of Land Acquisition Notifications New Papers intime.
Ref: Letter No. A5. LAQ. 13 : 83-84 dt. 21.08.85.
The Deputy Commissioner, Chikkamagalur has pointed out the delay in publishing the land acquisition notification in Kannada Prabha news paper.
In View of the time schedule prescribed under the amended Land Acquisition Act, timely action has to be taken in publishing the notifications apart from other aspects.
In the circumstance stated above, it is hereby directed that if any of the daily news paper does not publish the notifications within the time stipulated by the Deputy Commissioners/land Acquisition Officers, the same may be withdrawn and entrusted to the other recognised papers which can publish it within the prescribed time schedule.

Sl No 326

Circular Number RD 56 AQY 85

Date 04/29/85

Section Land Acquisition

Subject Land Acquisition (Amendment) Act, 1984-Instructions-regarding

Body **[196]**
RD 56 AQY 85 Dt. 29-4-85 (C)
Sub: Land Acquisition (Amendment) Act, 1984-Instructions-regarding
Ref: 1. Government letter No. RD 166 AQW 84, dated 7.1.85
2. Government letter No. RD 166 AQW 84, dated 5.2.85
In Government letters dated 7.1.85 and 5.2.85 instructions have been issued to all the Officers concerned to follow the amendments effected to Land Acquisition Act by Government of India while processing the Land Acquisition cases. As per the amended Act the publication of the 4(1) and 6(1) Notification includes interalia, the publication in two daily news papers circulating in the locality out of which one should be in regional language. The new procedure is to be followed in all cases in respect of which notifications under section 4(1) have been issued on or after 24.8.1984. It is observed that some of the Assistant Commissioners and Special Land Acquisition Officers are submitting the proposals for issue of 6(1-A) directions without following the new procedure. Government have to return such proposals for compliance as per the guidelines issued. This causes unnecessary delay and correspondence.
As the Assistant Commissioners/Special Land Acquisition Officers are therefore impressed once again to submit the proposals for issue of 6(1-A) directions only after following the revised procedure.

Sl No 325

Circular Number RD 166 AQW 84 (P)

Date 05/08/85

Section Land Acquisition

Subject Publication of Notification issued under Sec 4(1) and 6(1) of Land Acquisition Act – Instructions reg.

Body **[195]**
RD 166 AQW 84 (P) Dt. 8-5-85 (C)

Sub: Publication of Notification issued under Sec 4(1) and 6(1) of Land Acquisition Act – Instructions reg.

Among other Sections, Sections 4(1) and 6(1) of the Land Acquisition Act, 1894 have been amended by the Land Acquisition (Amendment) Act, 1984 (Central Act, 68 of 1984) As per the amended provisions the Notifications issued under Sections 4(1) and 6(1) have to be published in two daily newspapers circulating that locality of which at least one shall be in regional language in addition to the publication of the notification in the official Gazette.

The Deputy Commissioners of the Districts have furnished the lists of Newspapers which are in circulation in their respective Districts in which these Notifications can be published.

Government after considering all aspects of the case hereby direct that the Notification U/s 4(1) and 6(1) of the Land Acquisition Act be published in the News Papers as indicated in the list enclosed to this circular in respect of each District. While publishing the said Notification, care should be taken to minimise the space in the publication column to avoid unnecessary expenditure to the acquiring body and to the Government.

LIST OF NEWSPAPERS IN WHICH NOTIFICATION UNDER SECTIONS 4(1) AND 6(1) OF THE LAND ACQUISITION ACT HAVE TO BE PUBLISHED.

Sl. No.	District	News Paper in which notifications have to be Published
		GeneralCirculation in locality
1.	Bangalore (Urban) Bangalore (Rural)	The Times OR Deccan Herald Kannda Prabha Samyukta Karnataka OR Kannada Prabha Samyukta Karnataka
2.	Tumkur	Kannada PrabhaPrajavani
3.	Kolar	Kannada PrabhaPrajavani OR Samyukta Karnataka
4.	Chitradurga	PrajavaniSamyukta Karnataka
5.	Shimoga	Kannada PrabhaPrajavani or Udayavani
6.	Belgaum	Samyukta Karnataka

		OR VishwavaniKannadamma (Kannada) OR Nadoj Marathi OR Tarun Bharathi (Khanpur, Belgaum Nippani Tq)
7.	Bijapur	Samyukta KarnatakaVishwavani OR Kannada Kogile OR Bijapur Wartha
8.	Dharward	Samyukta KarnatakaVishwa vani
9.	Uttara Kannada	Samyukta KarnatakaVishwa Vani OR Lokadhawani
10.	Gulbarga	Samyukta KarnatakaGreenobles OR Satyakama OR Shasana
11.	Bidar	Kannada PrabhaPrajavani
12.	Bellary	Kannada PrabhaSamyukta Karnataka OR Prajavani
13.	Raichuri	Kannada PrabhaSamyukta Karnataka OR Prajavani
14.	Mysore	PrajavaniKannada Karnataka
15.	Mandya	Karnataka PrabhaSamyukta Karnataka OR Nudi Bharthi OR Veekshaka
16.	Kodagu	PrajavaniShakti OR Kodagu Dainika
17.	Hassan	Kannada Prabha OR Samyukta KarantakaJanamitra OR Janatha Madhyma Or Prathinidhi
18.	Chikmagalur	Kannada PrabhaSamyukta Karnataka
19.	Dakshina Kannada	MugaruUdayavani

Sl No 327

Circular Number RD 54 AQW 85

Date 04/20/85

Section Land Acquisition

Subject Authorised Revenue Commissioner and Secretary to Govt. Revenue Dept. To hear all the appeals and revision petitions filed before Govt.

Body **[197]**
RD 54 AQW 85 Dt. 20-4-85 (O)

Sub: Authorised Revenue Commissioner and Secretary to Govt. Revenue Dept. To hear all the appeals and revision petitions filed before Govt.

In exercise of the powers conferred by Sub-rule (1) of rule 6 of the Karnataka Government, (Transaction of Business) Rules 1977, 1, S.R. Bommai, Minister for Revenue and Planning, Government of Karnataka hereby specially authorise the Revenue Commissioner and Secretary to Government Revenue Department, M.S. Buildings, Bangalore to hear all the appeals and revision petitions filed before the Government under the Land Acquisition Act 1894, (Central Act No. 1 of 1894) as amended from time to time, and under any other legislation administered by the Revenue Department and to pass suitable orders on merits.

Foot Notes

Section Land Acquisition

Subject Service of Notice U/s 4(1) of Land Acquisition Act on interested

Persons-clarification of.

Body **RD 69 AQW 81 Dt. 25-4-81**

SUB : Service of Notice U/s 4(1) of Land Acquisition Act on interested

Persons-clarification of.

An instance has come to the notice of Government wherein the land which was acquired without serving notice on all the concerned persons interested in the land notified under Sub Section (1) of Section 4 of the Land Acquisition Act, even when the documents based on which such persons claim title over the land in question were registered in the Sub-Registrar's Office and the intimation of the transaction was sent by the Sub-Registrar to the Tahsildar concerned. Apparently, such a situation arose because the Record of Rights were not updated by mutating the entries of the above transactions. The acquisition was consequently challenged in the court successfully and both the preliminary and final Notifications were struck down on account of the above lapse. This is a high undesirable state of affairs and could have been avoided had the land acquisition officer taken due precaution to ascertain as to who are all the parties interested in the land to be acquired before initiating the acquisition proceedings.
In this connection, attention of all the officers in drawn to Sub Section (1) of Section 4 and Sub Section (3) of Section 5A of the Land Acquisition Act 1984 as amended by the Land Acquisition (Karnataka Extension and Amendment) Act, 1961 which clearly lay down that the copies of the Notification under Section 4(1) should be served on the owner, or where the owner is not the occupier, on the occupier of the land and also

clearly define as to who are all the persons interested in the land indicating that a person shall be deemed to be interested in the land who will be entitled to claim an interest in compensation if the land were acquired under the Act. The expression "Person interested" has also been defined under Section 3(b) of the Act. Therefore, all persons claiming an interest in the compensation to be made on account of the acquisition of land under the Act would have to be notified before finally acquiring the land. In order to achieve this objective, it would not be sufficient if reliance is placed only on the entries made in the RTCs, since it is likely that these entries may not always be uptodate for various administrative and other reasopns. It is the bounden duty of the acquisition officers to satisfy themselves that notice of acquisition is served on all persons who are interested in the land to be acquitted, particularly when they derive or claim any title inpursuance of a document registered in the Sub Registrar's office. It is therefore necessary that before initiating any acquisition proceedings, the records in the Sub Registrar's office are also checked up in respect of all the survey numbers under acquisition and the necessary encumbrance certificate obtained from the Sub Registrar and the same counter-checked with the Tahsildar to see whether the necessary mutations have been effected in the RTCs.

All the officers concerned with acquisition of land are therefore requested to ensure that the above instructions are strictly complied with and adhered to scrupulously in all acquisition cases invariably in future. Failure to do so will be viewed very seriously by Government.

Sl No 713

Circular Number RD 99 AQB 80

Date 11/21/80

Section Land Acquisition

Subject Land Acquisition procedure-Avoidance of lapses-instructions for

Body **RD 99 AQB 80 Dt. 21-11-80 ©**

SUB : Land Acquisition procedure-Avoidance of lapses-instructions for

REF : 1. Circular NO. RD 42 AQP 69, dated 4-12-1972.

2. Circular No. RD 16 AQW 80, dated 7-2-1980.

The Land Acquisition Act (Karnataka Extension and Amendment Act, 1961), the Karnataka Land Acquisition Rules 1965 and the Karnataka Land Acquisition (Companies) Rules 1973 have clearly laid down the procedure to be followed in acquiring the private properties for public purpose. Besides, in the Hand Book on Land Acquisition and the circular cited above, the procedural aspects are made clear so that there may not be any lapses or lacunae in the proceedings.

Inspite of the above, it is seen that some of the Land Acquisition Officers are not careful in observing the instructions properly while building up the records, and in sending their proposals to Government for orders. Some such lapses observed are as follows :-

1. The time schedule fixed for various stages of the Land Acquisition in Circular No. RD 22 AQP 69, dated 17-4-1969 (P. 52 of the Land Acquisition Hand Book) are not abhered to.

2. Gazette copy of 4(1) Notification is not made available in the records and in some cases where it is available, the page number and date of the Gazette is not for the coming.

3. The 4 (1) Notification is not served on the Khatedars/anubhavadars, and even if served, the dated acknowledgements to that effect are not available in the records. They are also not arranged in the order in which they appear in the Notification, which is necessary for verification.

4. The records do not contain Mahazar for having published the substance of the 491) Notification in the village chawadi; but in some cases merely the certificates of the Village Accountants are furnished, which is not enough.

5. The enclosures to 5-A reports are not properly filled up and in cases where the objections are to be over-ruled such proposals are not fully justified.

6. The remarks of the acquiring body are not obtained by sending a copy of the objection petition prior to holding the enquiry. On the other hand, the remarks of the acquiring body are obtained, after the conclusion of the enquiry. In such case, the objectors are deprived or rebutting the remarks of the acquiring body during enquiry, which is against the principles of natural justice. This is highly irregular and it moved be ensured that the remarks of acquiring boby are obtained before holding the 5-A enquiry

and the objectors are given an opportunity to rebut the same.
7. While requesting for condonation of delay in submitting the 5-A report after a period of Six weeks, reasons are not given and where given they are vague and not convincing. Precise and convincing reasons should invariably be given in such cases.
8. Though there are separate forms prescribed for submitting draft declarations under ordinary clause and urgency clause, some of the draft notifications are submitted in the wrong proforma, which should be avoided.
9. The Joint Measurement Certificate and comparative statements which have to be enclosed variably are not sent.
10. A copy of printed erratum or cancellation notification if any, to the 4(1) Notification are not sent with the records unless there are sent with records, final declaration U/S 6 will not be issued in future. A mere mention or a copy of the proposal sent to Deputy Commissioners for issue of such Erratum Cancellation Notification will not do.
11. The errate to the 6(1) Notifications, if any, are not proposed and issued for long periods.
12. The records submitted to Government are not arranged and stitched properly with pherist and page numbers.
13. The check memo is prescribed to avoid lengthy noting and to facilitate proper scrutiny of the proposals. But the entries made therein are vague and incomprehensible, with the result the purpose is not served.
14. Where the land is proposed to be acquired for any company, the procedure laid down in part VII of the Land Acquisition Act read with Rule 4 of Company Rules is not scrupulously followed.
15. All the prescribed checklists and statements are often not properly filled up. For example, in the statements of objections prescribed in Circular No. RD 16 AQW 80, dt. 7-2-80 a mer reference is made to the report made U/s 5-A without filling up the columns as intended. This is not correct and should positively be avoided.
It is therefore impressed upon all the officers dealing with the acquisition work that they should not give room for such lapses. They are requested to adhere strictly to the requirements of law and standing instructions in the interest of expeditious and correct disposal of land acquisition cases at all stages.

Sl No 1274

Circular Number RD 22 AQP 69

Date 04/17/69

Section Land Acquisition

Subject Land Acquisition --- Delays in disposal --- measures to prevent-
Instructions issued------

Body GOVERNMENT OF MYSORE

REVENUE DEPARTMENT

Circular No. Rd 22 AQP 69, dated 17th April 1969.

Land Acquisition --- Delays in disposal --- measures to prevent-
Instructions issued------

CIRCULAR

No.RD 22 AQP 69, DATED BANGALORE, THE 17TH APRIL 1969.

Delays have become a chronic feature of Land Acquisition Proceedings. Besides public criticism based on the obvious inconvenience caused to parties whose properties are acquired for public purpose, the execution of public projects are sometimes greatly delayed and made more expensive on account of dilatory or understanding of Land Acquisition Law and to the tardiness of the administrative machinery. A clear enunciation of the basic provisions of the Land Acquisition Act and the Rules thereunder is being published separately. This should serve to clear any misapprehensions about the law. Circulars have been issued in the past focussing attention on particular aspects of Land Acquisition work. It is now proposed to issue comprehensive instructions for the guidance of all officers concerned. These instructions will be found in the annexure.

Special attention is invited to the following the responsibility of indenting Departments initiating proposals for acquiring land, (Taras 2.2 and 2.3); joint inspection (Para 2.4); post-award action (para 9.3); submission of statutory reports direct to Government by Land Acquisition Officers (para 12.1) and the time schedule for various stages of acquisition (para 12.3)

All Officers concerned are requested to study these instructions carefully and adhere to them. They will thus be able to avoid the all too common delay now observed and also avoid pitfalls in procedure which sometime vitiate the proceedings and make it necessary for the proceedings to be reinitiated. Another point that may be observed is the lack of prompt reporting of pendencies of Land Acquisition cases. Two progress reports are now prescribed for this purpose, one being a monthly return and the other a quarterly. They should be compiled by the Deputy Commissioners in the enclosed proforma every month or quarter as the case may be and one copy should be sent to the Divisional Commissioner concerned and one to Government. The Divisional Commissioners are requested to review the quarterly progress reports and send copies of their review to Government on or before 20th of January, April, July and October every year. The progress report of the Deputy Commissioners for each month should reach Government on or before the 15th of the succeeding month.

The receipt of this circular and the annexed instructions may be acknowledged and their implementation watched by all inspecting officers.

M.S. SWAMINATHAN
Commissioner for Land Reforms and
Ex-Officio Revenue Secretary.

No.RD22 AQP 69, DATED 17TH APRIL 1969.

ANNEXURE

Instructions for the guidance of officers in the discharge of their duties in relation to Land Acquisition work.

There are 8 distinct stages in Land Acquisition proceedings.

I Preliminary enquiry i.e., the stage up to the submission of the draft Notification under section 4(1) of the Land Acquisition Act.

II Issue of Notification under section 4(1) and its publication in the Gazette And in the locality.

III Enquiry under section 5-A and submission of report of enquiry to Government by the Land Acquisition Officer.

IV Consideration of report of the Land Acquisition Officer under section 5-A by the Government and issue of directions to proceed with action under Section 6(1A).

V Action under Section 6 (1A) and submission of compliance report to Government of action having been taken, together with draft declaration, that is, up to the issue of final declaration by Government.

VI Award enquiry (Enquiry under sections 9,10 and 11).

VII Framing of draft award and its pronouncement after approval by the competent authority.

VIII Post award action including taking possession of Land.

Delays are noticed in almost all the stages of acquisition. The contributory causes are analysed and remedies suggested.

2. First stage: Preliminary enquiry. It is very important that the Notification under section 4(1) of the Act should be published as early as possible as it serves the double purpose of conferring power on the officers to enter upon the land and do all the acts necessary for the purpose acquisition and forestalling any attempt on the part of the owners of land to inflate the price of the land taking advantage of the necessity for the acquisition.

2.2 A frequent source of delay in this stage is the imperfect filing up of the form of requisition for land, prescribed in Government Circular No.RDF 64 LQN 58 dated 9th October 1958 by the department requiring the land. If one or other of the particulars in the form is omitted, much time is taken up in correspondence for supplying the omission. In some districts, delay is counted against the Land Acquisition Officer from the date of receipt of the imperfect form of requisition, thus throwing the responsibility for getting the omissions supplied on the Land Acquisition Officer instead of the requisitioning Department. Government direct that until and unless the requisitioning department furnishes all the information possible on all points mentioned in the requisition form no application should be entertained and that till such a properly filled up requisition is received by the Land Acquisition Officer, correspondence between him and the requisitioning department should be closed at convenient stages. The Deputy Commissioners should give clear instructions to the officials at the village and hobli level to give all assistance to the indenting departments in the collection of particulars required for filling up the requisition.

2.3 It is observed that in many cases, proposals are received at a fairly advanced stage of the proceedings for withdrawal from acquisition, owing to deviation in the site selected for a project. This is probably due to the fact that a final selection at the appropriate level is not made before initiating the proceedings. Each Head of Department should therefor prescribe the level at which selection of lands for departmental purposes by acquisition should be made. Proposals for acquisition should not be initiated unless the site is selected or approved at the prescribed level and the same should not be changed after Land Acquisition proceedings are set afoot, unless for extraordinary reasons. It is also necessary that the requisition for acquisition of land should be sent to the Deputy Commissioner of the District concerned for necessary action. Sending such requisitions to the Tahsildar or other subordinate Officers will not be a proper initiation of land acquisition proceedings and has led in the past to delay and needless correspondence.

2.4 A joint inspection of the site selected for acquisition by the Officers of the Department requiring the land and by officers of the Revenue Department could with greater advantage, be done, before sending requisition for acquisition, so that all particulars required for filling in the requisition form and submission of preliminary Notification may be collected on the spot in advance.

2.5 The most fruitful source of delay in the preliminary stage is the tendency in most Districts to embark on an enquiry in to all sorts of details totally unnecessary for the purpose of submission of the draft Notification under Section 4(1) of the Land Acquisition Act. The enquiry at this stage should be restricted to identification of land proposed for acquisition, by joint inspection if necessary, with a view to ascertaining the correct S.Nos. its boundaries, approximate extent and the names of interested persons to the extent possible. Detailed assessment of interest, valuation, measurement are not required at this stage.

3. Second Stage: Issue of Notification under section 4(1): Government takes a decision whether the land is to be acquired and issues the Notification under section 4(1) of the Act allowing generally 45 days time from the date of publication of the Notification in the Gazette for preferring the objections by the parties interested. Timely publication of Notifications issued under section 4(1) of the Land Acquisition Act will have to be ensured by the Land Acquisition Branch of the Secretariat which should keep in constant touch with the Compiler, Mysore Gazette. It should be possible to see that all Notifications are published in the Gazette within 15 days at the latest from the date on which they are transmitted to the Compiler.

3.2 The Compiler, Mysore Gazette should send to the Land Acquisition Officer concerned spare copies of the Notification so as to reach the latter within a week from the date of publication of these Notifications in the Gazette. The Land Acquisition Officer should get these notices published in the locality and on the interested persons as prescribed in Rule 3 of the Mysore Land Acquisition Rules, 1965 without any delay. The non-receipt of spare copies of the Notifications from the press should not be an excuse for not getting the notices published in the locality in time. It is observed that the Land Acquisition Officers do not watch the publication of the Notifications in the Gazette and consequently the issue of public notice as contemplated in Rule 3 of the Mysore Land Acquisition Rules is being inordinately delayed. It should be possible for the L.A.Os to get the substance of the Notification issued under section 4(1) of the Act published in the locality and the persons concerned within 15 days from the date of publication of the Notification in the Gazette so that the persons interested may have clear 30 days time for preferring their objections to the acquisition. Section 4(1) of the Act requires three things to be done viz.

(a) publication of the Notification in the Gazette,

(b) publication of the substance of the Notification in the locality, and

(c) service of the notice to persons in whose names the land stands in Revenue Records and other interested persons.

It has been observed that in the matter of publication of the Notification in the locality and services of notices on the interested persons mistakes are committed by not fully conforming to the requirements of the Rules.

Simultaneously with the publication of notices as stated above references may also be made to the P.W.D., Forest Department and Land Records Department, etc., for valuation of structures, trees and measurement respectively.

4. Third stage: Enquiry under Section 5(A):- On the date fixed for enquiry or any other date to which the enquiry may be adjourned, the Land Acquisition Officer should hear the objector or his Advocate and the representatives if any of the Department, Company or other public body concerned and record evidence that may be produced. He may inspect the Land proposed to be acquired and make any further enquiry that he may deem necessary at this stage. On completion of the enquiry, the L.A.O. should submit the case with records of proceedings held by him and a report containing his recommendations on the objections for the decision of the Government under Section 5-A before the expiry of 6 weeks from the last date for filing objection or before the expiry of 2 weeks from the date on which he receives report under Section 4(4) of the Act whichever is later. Generally, this time limit is not adhered to either because the parties go on asking for adjournment or because the Land Acquisition Officer does not take a decision on the objections raised by indulging in protracted enquiry. It should be noted that even the Government does not have the power to condone the delay in the submission of report under Section 5-A beyond one year from the last date fixed for filing objection. The Land Acquisition Officers should not therefore grant unnecessary adjournment in L.A. cases and should not delay submission of the report on the objections that may be receive for the acquisition to Government. The time limit fixed for the submission of the report under Section 5-A that is 6 weeks from the last date for filing objection should be scrupulously followed and should there be any delay in this regard, detailed explanation should be furnished so that Government may consider the question of condoning the delay. Another important point which is often overlooked while submitting the report under Section 5-A is to communicate the fact of having submitted the 5-A report to Government to the objector. This is a mandatory requirements the omission of which will vitiate the proceedings. An acknowledgement should be obtained from the objectors for having received the intimation about submission of report to Government under Section 5-A.

No.RD 22 AQP 69, DATED 17TH APRIL 1969

5. Fourth Stage: Consideration of report under section 5-A and issue of directions by Government:-

On considerations of the objections and the report of the Land Acquisition Officer thereon, if the Government decides that land should be acquired for a public purposes or for a Company, Government directs the Land Acquisition Officer to proceed under section 6(1A). In issuing these directions the inter-departmental consultations laid down in Government Order No.GAD 50 OOM 59, dated 18th November 1959 should be minimised as they are sometimes highly time consuming. The Department, to which objections raised to the acquisition are referred for remarks, is expected to return such papers to the Revenue Department with their remarks within 4 days. Government also desire that such papers should receive the personal attention of the Secretary

concerned.
6. Fifth Stage: Action under Section 6-1A and submission of draft declaration:-
The Land Acquisition Officer is required to cause the land to be measured, marked and mapped within a period of two months from the date of receipt of directions from Government to proceed with the action under section 6-1A and to send a compliance report with a draft declaration in the appropriate form for approval of Government. It is noticed that this time limit is not adhered to in many cases and delays of as much as 4 years to send the compliance report of action taken under section 6-1A are observed. The records are passed on to the Tahsildar and even to the Surveyor for measurement of land and mapping and they in turn, take their own time. This tendency should be curbed. The Land Acquisition Officer should make it a point to retain records with him and fix up a date for measurement and mapping getting the Surveyor and such other local officers as are needed and get the work completed within a fixed time. This can be done immediately after the publication of Notification under section 4(1) so that a compliance report can be sent to Government promptly on receipt of directions under section 6-1A. This will save a lot of time in transmitting the records to the several offices officials and the consequent delay. On receipt of the compliance report from the Deputy Commissioner the Government issues the declaration under section 6-1 of the Act which will be published in the Gazette. Prompt publication of these declarations in the Gazette will have to be ensured as in the case of preliminary Notification under Section 4(1) by the Land Acquisition Section of the Secretariat. The Land Acquisition Officer concerned should also watch for the publication of the Notification and remind those concerned, if there is delay.
7. Sixth Stage: Award Enquiry:- Once the final Notification is published in the Gazette the next stage should be promptly followed up by the Land Acquisition Officer by service of notices under Section 9 as prescribed in Rules 9 and 10 of the Mysore Land Acquisition Rules 1965. It has been observed that in several cases, the Land Acquisition Officers have not observed the publication of the final Notification in the Gazette at all and no further action has been taken on final Notifications published, for months together. This serious lapes should be guarded against. If the connected records are held in any other office, the Land Acquisition Officer should arrange to get them and proceed to working on the draft award as required under section 12. The valuation statement of buildings and structures should be obtained from the Public Works Department and that of land from the Tahsildar concerned. It is made clear that excepting in the case of buildings and reserved timber there is no compulsion to refer the valuation of property to any other Department. But, the Land Acquisition Officer feels any doubt, he may consult the Taluk level officer of the Department concerned for the criteria for valuation.
8. Seventh Stage. Award:- Unnecessary adjournments during the award enquiry under section 11 should be avoided and the award enquiry completed as early as possible. The award should be drawn up with the utmost care and it should be specific about the lands covered by the proceedings and the persons interested therein. The draft award to be submitted by the Land Acquisition Officers for approval to the Deputy Commissioner, the Divisional Commissioner or the Government as the case may be, should be in complete form with all the particulars about the lands dealt with, basis for compensation awarded and apportionment compensation etc. It is not essential that all the properties notified in one Notification should be covered by one award but the award should deal with specific identifiable properties.
8.2 As the law stands at present, all Awards, irrespective of value, have to be submitted

to Deputy Commissioner for prior approval. The Officers entrusted with the responsibility of approving the award, should always give their reasons why they differ from the Land Acquisition Officer in the matter of valuation suggested in the draft award. Once the award is approved by the prescribed officer, the Land Acquisition Officer has to pronounce the same in open court and give immediate notice of the award to the persons interested. There should be no delay in sending this intimation to the parties.

9. Eighth Stage: Post Award action:- Immediately the award is passed the Tahsildar concerned should fix the date for taking possession of the land which should not be later than 15 days from the date of the receipt of the Award by him. The requisitioning Department should be requested to depute an officer to take possession of the land on a specified date and if he fails to depute an officer a notice may be sent to them intimating that the lands acquired have been taken possession of and that if no arrangements are made by them to receive possession within a week, the indenting Department will be deemed to have taken possession of the same and necessary entries made accordingly in the relevant records.

9.2 The post-award stage of Land Acquisition cases is generally neglected and action is not taken to incorporate the requisite changes in the Village records and other records of the Survey Department.

9.3 The following procedure is laid down.-Usually abatement of land revenue is ordered by the L.A.Os do not send copies of the Award and the sketches for 'durusthi' work by the Survey Department. At the time of preparation of sketches after measurement, four copies of the same should be got prepared. When directions are issued by the Land Acquisition Officer to the Tahsildar to take possession of the acquired land, there copies of the surveyed sketch with three spare copies of the Award should be enclosed. One set should be handed over by the Tahsildar to the acquiring Department. On another sketch the acknowledgement of the acquiring Department for having received the land should be obtained, the Award being retained by the Tahsildar. The third set should be forwarded by the Tahsildar to the Assistant Superintendent of Land Records to carry out 'durusthi' work, and the connected file in the Taluk Office should not be closed till 'durusthi' work, and the connected file in the taluk Office should not be closed till 'durusthi' work is completed. Special instructions should be issued to the Survey Department that all land acquisition 'durusthi' work should be completed within 60 days.

10 Procedure in case of acquisition for a company, or Society or Trust:-

In the case of acquisition for a company, Society or a Trust, the application for acquisition of land shall be made by the Company, Society or Trust to the Government in the first instance. On receipt of such application they are referred to the concerned Deputy Commissioner of the District for report as the necessity for acquisition and the suitability of the land proposed. After obtaining the report from the Deputy Commissioner the matter is placed before the Land Acquisition Committee. If the Committee approves the proposal, directions are issued by Government to the Deputy Commissioner for report along with draft Notification in Triplicate for issue of a Notification under Section 4(1) by Government.

11. The procedure in case of acquisition under Section 17-1:-

If the acquisition is proposed under Section 17-1, the formalities necessary

Under Section 5-A shall be dispensed with. The rest of the provisions and procedures apply *mutatis mutandis* in this case also. In such cases whenever Government so directs

the Deputy Commissioner may take possession of the land though no Award has been made subject to the following conditions, namely:-
(i) The land must be waste or arable.
(ii) Specific order of Government may be obtained.
(iii) The declaration under Section 6 must have been published.
(iv) A notice under Section 9(1) must have been issued.
(v) Fifteen days must have expired after the publication of the notice in accordance with Section 9(1) except in the case specified under Section 17(2).
(vi) Before taking possession the Deputy Commissioner must have offered to the person interested, compensation for standing crops and trees on the land and for any other damage sustained by them because of such sudden dispossession and not excepted under section 24. Care should be taken that the money is not paid to a wrong person.
(vii) In the case of a building at least forty-eight hours notice of the Deputy Commissioner's intention to take possession must have been given to the occupier by the Deputy Commissioner.

In such cases the payment of interest is inevitable and it should be included in the award passed under Section 11.

12. General:-The role of the Deputy Commissioner under the Land Acquisition Act, when once the Assistant Commissioner or Special Land Acquisition Officer is appointed as Deputy Commissioner under Section 3© of the Land Acquisition Act by Government being nominal, it is considered unnecessary that the statutory reports of Land Acquisition Officers should be routed through the Deputy Commissioner of the District concerned. It is hereby directed that all Land Acquisition Officer may send their statutory reports (i.e., those under Section 5-A and 6-1(A)), to Government direct instead of through the Deputy Commissioners of Districts to avoid delays. Copies of such reports may be sent to the Deputy Commissioners for information.

The Land Acquisition Officers should maintain regular order sheets for Land Acquisition cases as in Judicial proceedings commencing from the date of publication of the preliminary Notification under Section 4(1) of the Land Acquisition Act. It should be endorsed by the Land Acquisition Officer at each stage.

12.2 All Land Acquisition correspondence should be treated as urgent at all stages of the proceedings. The inspecting Officers should review all the Land Acquisition cases during their inspections, locate delays and issue clear instructions. Cases of wanton or inordinate delays should be taken serious notice of and dealt with under the Mysore Civil Services (C.C.A.) Rules 1957.

12.3 A time-schedule for various stages of Land Acquisition proceedings is appended. This should receive careful attention. All the Officers connected with Land Acquisition work should see that this time schedule is kept up and that the entire Land Acquisition proceedings up to the stage of taking possession of Land is completed within a period of 9 months. It is hoped that this schedule will alert subordinate Officers about their responsibilities to finish their share of work within the time allotted. It will also help the inspecting Officers to locate undue delay at any particular stage. Government expect that these instructions will be carefully implemented by the Land Acquisition Officers and others and that as a consequence delays in Land Acquisition cases will be greatly reduced, if not eliminated altogether in future.

M.S. SWAMINATHAN,
Commissioner for Land Reforms
And Ex-Officio Revenue Secretary.

Sl No 721

Circular Number RD 16 AQW 80

Date 02/07/80

Section Land Acquisition

Subject Conducting enquiry under section 5-A of the Land Acquisition Act
And Rule 5 (2) of the Land Acquisition Rules-Submission of report
U/s 5-A of the Land Acquisition Act.

Body **RD 16 AQW 80 Dt. 7-2-80 ©**

SUB : Conducting enquiry under section 5-A of the Land Acquisition Act
And Rule 5 (2) of the Land Acquisition Rules-Submission of report
U/s 5-A of the Land Acquisition Act.
Ref : i) Govt. circular No. RD 107 AQP 69 dated 20-2-1970.
ii) Govt. circular No. RD 42 AQP 69 dated 4-12-1972.
iii) Govt. circular No. RD 423 AQM 73 dated 29-11-1973.

iv) Govt. Order No. RD 400 AQM dated 1-3-1975.
1. Government have issued detailed instructions from time to time as to how the Land Acquisition Act, in the circulars and the Government Order cited under reference. Specific forms & Check Memos have also been prescribed for the submission of the 5-A Enquiry reports. Despite these instructions, it is observed that the 5-A enquiry reports are not being submitted in the proper form. This results in unnecessary correspondence and abnormal delays. Besides, different procedures are being followed in different parts of the State. It is also observed that defective notification u/s (1) of the L.A. Act are being issued in certain Districts. With a view of avoiding unnecessary correspondence and delay and also to achieving uniformity throughout the State, Government feel it necessary to issue further instructions in this behalf for the guidance of the field officers.
2. First of all, Preliminary Notifications u/s 4 (1) of L.A. Act should be issued in proper form. The number and date of the Notification should be clearly mentioned in the Notification which will be cited in the final notification. The public purpose for which the lands are acquired and the last date cited in the final notification. The public purpose for which the lands are acquired and the last date fixed for filling objections should also be clearly indicated in the notification, as otherwise the L.A. Proceedings will get vitiated. It should be noted that no Erratum or Corrigendum can be issued in respect of public purpose or the last date fixed for filing objections. In this connection attention of all Land Acquisition Officers is also invited to instructions contained in Government Cirular No. RD 107 AQW 74 dated 29-9-1975 on this issue.
3. As soon as the Notification u/s 4 (1) is published in the Gazette, the substance of the 4(1) Notifications should be published in the village under a proper Mahazar or Panchanamma. These Mahazars or Panchanamas should be sent along with records while sending proposals for 6-1A directions. This is a mandatory provision in the Land Acquisition Act. The certifications furnished by the Village Accountant or the Tahsildar for having published the substance of the 4(1) Notification in the village chawadi is no substitute for the Mahazar. A Mahazar should therefore, necessarily be drawn up as proof of publication. It should be ensured that there are clear 30 days between the date of publication of the 4 (1) Notification in the Village and the last date fixed for filling objections. The individual notices should also be served on the persons known or believed to be interested in the lands proposed for acquisition simultaneously, and it should be ensured that such persons are given telecast clear 15 days time for putting in their objections in pursuance of the 4 (1) Notification.
4. If there are any objections in response to the 4(1) Notification, the enquiry u/s 5-A of the Land Acquisition Act should be held as per rule 5(2) of the L.a. Rules 1965. This is also mandatory in nature. The copies of the objections petit on should be sent to the Acquiring body and their specific remarks obtained on each objection on or before the date fixed for enquiry. The objections should be allowed to go through the remarks of the Acquiring body, so that they will have an opportunity to rebut the same, if they so desire. A representative of the Acquiring body should also be called upon to attend the enquiry. On the day fixed for the enquiry the Land Acquisition Officer should hear the objections in the presence of both the parties. After that, the spot inspection should be done, if found necessary, by the Land Acquisition Officer An order sheet should be maintained invariably, which should reflect each stage from the date of publication of the 4 (1) Notification in the Official Gazette to the date of submission of the 5-A enquiry report to the Government. This order sheet should also be sent along with records for reference, while seeking 6-1 A directions from Government. The order sheet should also

indicate that the objectors have been intimated of the fact of submission of 5-A enquiry report to Government. It should also be noted that a copy of the 5-A enquiry report must be furnished to the objectors, if they so desire.

5. The 5-A inquiry report should be submitted to Government in complete form after the enquiry is held as above. It is observed that the check-memo prescribed in the Government order cited at (iv) under reference is not properly filled up. The remarks of the acquiring body and the specific opinion of the Land Acquisition Officer on each objection are not furnished properly. With a view to enabling Land Acquisition Officers to furnish full information, the check-memo and the enclosure to the 5-A enquiry report are hereby revised. The revised check-memo and the enclosure are appended to this circular for reference. In the enclosure to the 5-A report, each objection raised by the objector should be mentioned individually in the appropriate column. The remarks of the Acquiring body and the specific opinion of the Land Acquisition Officer, should be furnished against each objection separately. After that the 5-A enquiry report should be submitted to the government along with the enquiry records of the Land Acquisition Officer's office pertaining to the case.

6. The 5-A Enquiry report should be submitted to Government within the time prescribed in the L.A. Act. If there is any delay in the submission of 5-A enquiry report, full justification with specific reasons must be furnished for the same to enable Government to consider on merits the question of condoning the delay. It should be noted that even the Government have no power to condone the delay beyond one year from the last date fixed for filling objections.

7. All the Assistant Commissioners and Land Acquisition Officers, are requested to study these instructions carefully and adhere to them strictly. Any slackness in this behalf by the Assistant Commissioners and Land Acquisition Officers will be viewed seriously by the Government. It is hereby made clear that Government will not accept the 5-A reports, if they are sent to Government in any manner other than the one stated above and if any proceedings are allowed to be vitiated due to delays etc., caused on account of back reference for non-compliance with these instructions in the submissions of such reports, the Land Acquisition Officer, will be held personally responsible. This should be borne in mind by all the concerned while sending 5-A enquiry report.

8. All the Deputy Commissioner and special Deputy Commissioners are hereby requested to ensure that the Assistant Commissioners, and Land Acquisition Officers under their control comply with the above instructions fully.

CHECK MEMO TO BE SENT ALONG WITH THE 5-A ENQUIRY REPORT.

Note : 1) Please furnish full particulars to the questions.

2) Please indicate the page number of the connected record

Wherever possible.

I L.A. No. Villages Taluk District

(1)

(2) Purpose of Acquisition

(3) Name of the Acquiring body

II. Particulars of 4 (1) Notification Date Refer to page

No. of the records

1. (a) Mention the No. and Date of Issue of 4(1)

Notification by the Deputy Commissioner.

(b) The date of publication of 4(1) Notification

In the Gazette.
(c) Last date for filling objection as fixed in the
Gazette Notification.

(d) The date of publication of the substance of 4(1)
Notification in the
(i) Village Chavadi etc.,
(ii) Office of the Tahsildar,
(iii) Office of the Deputy Commissioner,
2. Mention whether interested persons have been
Served with individual notices or not?

3. The date on which the last of such notice was served

4. Have 30 clear days been allowed to file objections
From the date of publication of the notifications?

(vide Sec.4 (1) of the L.A. Act, 1961 read with Rule 3
of the L.A. Rules, 1965).
III. Particulars of 5-A Report :
4. (a) Date of 5-A Reports to Government.

(b) The date on which the interested persons were
Intimated the fact of submission of 5-A report to
Government (in the cases in which there are objec-
tions to the proposed acquisition).
(c) The last date fixed for filing objections.
(d) The interval between (a) and (c).

(e) In case the interval is more than six weeks,
Mention whether the delay caused is within one
Year from the last day of the six weeks.
(f) Give in brief the reasons for the delay in submitting
the report to Government.
(Vide Sec. 5-A (2) of the L.A. Act)

5. Have you enclosed a detailed sketch showing the
Lands proposed to be acquired?
6. What is the object of the proposed acquisition?
(a) For a public purpose.
(b) For a company.
IV. Particulars to be given if the land acquisition
Is for a company.
7. (a) Mention whether you have inspected the spot?
(If so, enclose your spot inspection note to the
records)

(b) Is the Company a public or Private one.

(c) Whether the Company is a registered one?

(d) Whether the company has made its best endeavor
To find out lands in the locality suitable for its
Purpose?
(e) Whether there are any Government lands available
Which are suitable for the purpose for which the Company
Seeking to acquire land?

(f) Whether the Company has made all reasonable efforts to
Purchase lands through private negotiations and has not
Succeeded inspite of the same?

(g) Compared with the Company's requirements whether the
Lands proposed to be acquired are in excess, or just equal
Or in deficit.

(h) Whether the Company is in a position to utilise the lands
Expeditiously, if acquired?

(i) Is the land owner, whose lands are proposed to be acquired
An insufficient holder?

(j) If so, Is it possible or not to acquire some other lands for
The Company even though it may be less advantageous?

(k) Whether the agreement entered into by the Special
Land Acquisition Officer/Assistant Commissioner
And the Company is enclosed to the records for pub-
Lication of the same in the Gazette ?
(Answers to questions D to K may be given in the
narrative form).

(Vide Sections 39 to 42 of the L.A. Act read with
Rule 4 of the Company Rules, 1973).

V. Whether the entire records of this case together with the
Order sheet are enclosed.
Land Acquisition Officer.

ENCLOSURE TO REPORT UNDER SECTION 5-A OF THE LAND
ACQUISITION ACT

No. LAQ.SR. Village Taluka District
Name of the Sy. Nos. under Interest of the Type of land Total extent
objector (With acquisition to objector in the (dry, wet etc. of the survey
reference to which the land i.e. whether or non-agri- number
Sl.No. page No. of objections that of landlord cultural) and
the records relates tenant, occupant nature of occu-

where obje- inamdar, or pancy(i.e. inam,
tion petition anubhavadar ryatwari etc.)
is filed.)
1 2 3 4 5 6

Extent of land Nature of objection raised Remarks of the Land Acquisition
Under Acquis- by the person (each point Acquiring body Officer's recom-
Ition to be specified under a in respect of mendation on
Separate Sl. Number) each objection. each objection.

7 8 9 10

Sl No 841

Circular Number RD 42 AQP 69

Date 12/04/72

Section Land Acquisition

Subject LAND ACQUISITION – Enquiry u/s 5 of the Mysore Land Acquisition Rules 1965 – instruction
issued –

Body **RD 42 AQP 69 Dt. 4-12-72[C]**

Subject :- LAND ACQUISITION – Enquiry u/s 5 of the Mysore Land
Acquisition Rules 1965 – instruction issued –

It is generally observed that the Land Acquisition Officers are not following the rules prescribed in conducting the enquiry under Section 5-A of the Land Acquisition Act. After giving a hearing to the objection petitioner or his legal representative, the objection petition is sent to the acquiring body and their remarks are obtained. Based on these remarks, the enquiry report, as contemplated under Section 5-A of the Land Acquisition Act is submitted to Government. This is an incorrect procedure. If the remarks of the acquiring body are taken into consideration after the public inquiry, it may vitiate the enquiry altogether since such a procedure would violate the principles of natural justice. The objection petitioner should known the remarks of the acquiring body and should have an opportunity to rebut the same if he so desire. In Writ Petition No 1247 of 1969, the High Court of Mysore and held that the Department, at whose instance the land is said to be acquired, has to file its answer to the objections on or before the date fixed for enquiry and the representatives of the Department can be heard only at the said enquiry and not after. The hearing contemplated is a public hearing in the presence of both the parties. The Land Acquisition Officer is not entitled to hear or receive any representation from the Department behind the back of the objector to his prejudice.

It is therefore impressed on all the Land Acquisition Officers that they should follow to the above decision of the High Court of Mysore strictly in the disposal of the Land Acquisition cases. The final enquiry should be conducted only after getting all the information necessary from the Government Departments, which are the acquiring bodies, and the objector should be informed of the remarks of the acquiring body at the time of the final hearing. In the case of acquisition of the lands in favour of local bodies, other than Government Departments, the procedure laid down in Rule 5 of the Land Acquisition Rules, 1965, should be strictly followed and no correspondence should be entertained with the acquiring bodies subsequent to the hearing.

Sl No 723

Circular Number RD 10 AQH 78

Date 01/21/80

Section Land Acquisition

Subject Determination of the quantum of compensation-valuation of Buildings and structures by the P.W.D.-Instructions reg:

Body **RD 10 AQH 78 Dt. 21-1-80 ©**

SUB : Determination of the quantum of compensation-valuation of Buildings and structures by the P.W.D.-Instructions reg:

Ref: 1) Govt. Circular No. RDH 184 LQM 63 dt: 12-7-63.
2) Govt. Circular No. RD 139 AQW 73 dt: 10-5-74.
3) Govt. Circular No. RD 20 AQW 79 dt: 20-6-79.

Detailed instructions have been issued earlier in Government Circulars stated above as to how the Land Acquisition Officers should determine the quantum of compensation payable for the lands acquired under the Land Acquisition Act. Inspite of these instructions, Govt. have observed that the awards are still made in an arbitrary fashion. They are often based on insufficient data. Hence, Government feel it necessary to issue further instructions for the guidance of the Field Officers.

It has been made clear in the Government in the Government Circular cited at (3) above that the valuation report of the Public works Department and the basis on which they value the buildings and structures should from part of the award. This implies that the Land Acquisition Officers should not blindly accept the valuation reports of the Public Works Department's Officers on the ground that it is technical in nature. The Land Acquisition Officers should carefully go through the valuation reports furnished by the technical Department and satisfy themselves that the valuation made is reasonable and is acceptable with reference to the details furnished in the valuation statement. For instance, in the case of buildings and structures, the particulars such as the site area, the plinth area of the building, the nature of foundation and superstructure, type of roofing, the approximate age of the building will have to be looked into. As far the superstructure, all the necessary particulars such as the nature of construction, the number and measurements of Doors & Windows, the type of the Timber used should be verified. Regarding roofing also, the particulars whether it is modern R.C.C. roofing old terraced roof or tiled roof should be stated. In case of tiled roof, it should be stated whether it is country-tiled roofing or Mangalore-tiled roofing. The type of Timber used for the tiled-roofing should also be stated. The valuation of the buildings or structures as on the date of the issue of the Preliminary Notification should have been arrived at on the basis of the above. The depreciation value depending upon the age of the building and its total expected life should also be deducted out of the total value of the building. If there are any omissions or the required details are not forthcoming in the valuation reports furnished by the Public Works Department's Officers, the same should be obtained or got clarified from the concerned officers before they accepted.

The Land Acquisition Officers should be careful in handling the public funds. They should see that well-reasoned awards which should be fair to all parties, based on full and proper data are drafted. They should follow strictly and scrupulously the norms laid down in the Land Acquisition Act and the rules framed thereunder. The award-approving authorities should see that the Land Acquisition Officers pass the awards on the basis of such full data after proper verification and personal satisfaction about the reasonableness of the same.

Sl No 728

Circular Number RD 20 AQW 79

Date 06/20/79

Section Land Acquisition

Subject Land Acquisition Act – Determination of the quantum of compensation under – Revised Instructions – regarding.

Body **RD 20 AQW 79 Dt. 20-6-79 ©**

SUBJECT :- Land Acquisition Act – Determination of the quantum of compensation under – Revised Instructions – regarding.

REFERENCE :- Circular No. RDH 184 LQM 63, Dt. 12-7-1963.

Detailed instructions have been issued earlier in Government Circular cited above as to how the Land Acquisition Officers should determine the quantum of compensation payable for the lands acquired under the Land Acquisition Act. Despite these specific instructions, it has come to the notice of the Government that a good number of cases are referred to the Courts under Section 18 of the Land Acquisition Act and that the Court decisions in a number of award cases are going against the Government. This is mainly due to the defective awards drawn up by the land Acquisition Officers. Government feel it necessary to issue further instructions for the guidance of the Field Officers in Partial modification of the earlier instructions.

1. The principles to determine the quantum of compensation are contained in Sections 23 and 24 of the Land Acquisition Act. The Land Acquisition Officer in fixing the amount has to take into consideration the prevailing market value of the land as on the date of Section 4(1) notification and this market value has to be determined by reference to the price which a willing seller might have reasonably expected for similar property from a willing purchaser. The purpose behind determine the market value with reference to the comparable sales is to reduce the element of speculation. In a comparable sale the main features are that :-

(i) it must be within a reasonable time of the date of Notification under Section 4(1).

(ii) It should be a bona-fide transaction;

(iii) It should be the sale of a land acquired or of the land adjacent to the land acquired; and

(iv) It should possess similar advantages.

2. The highest value shown in the sale deeds relied on by the Land Acquisition Officer will normally have to be taken into consideration unless there are strong circumstances justifying a different course. Generally, the value of small bits of lands will be very high for various reasons. While taking the highest value, the value of such small bits of lands should not be taken into account. Before such instances of sales can be considered, it is necessary to obtain material evidence either by production of sale deeds or by examining the parties to the deeds or persons having knowledge of the sales to prove that the transactions are genuine.

3. Upon a compulsory acquisition of a property, the owner is entitled to the value of the property in its actual condition, at the time of expropriation, with all its possibilities, excluding any advantage due to the carrying out of the claims for the purpose for which the property is acquired.

4. The land is not to be value merely by reference to the use to which it is being put at the time at which its value has to be determined but also by a reference to the uses to which it is reasonably capable of being put in the future. The possibilities of the land and not its realised possibilities that must be taken into consideration. The value of the acquired property with all its possibilities has to be adjudged on the material on record.

5. In the context of building potentiality many questions will have to be asked and answered. Whether there is pressured on the land for building activity in the area in which the land to be acquired is situated, whether the land suitable for building purposes, what is the pace of progress of the building activity, whether buildings have been put up on adjoining lands purchased for building purposes what is the distance between such lands and the land proposed to be acquired and similar other questions will have to be answered. It is the overall picture drawn with reference to all these relevant circumstances that gives the indication for determining the just compensation.

6. The market value of the lands could also be fixed by capitalisation of net income method shortly called as Net Income Method of valuation. This method should be

resorted to only when the Land Acquisition Officer is not able to secure bonafide transactions of sales of the acquired land or of the land adjacent to the land acquired possessing similar advantages. The sale transactions must relate to the period within a reasonable time of the date of notification under Section 4(1). The following procedure may be adopted for determining the market value by capitalisation of net income method:-

(i) The gross yield may be determining initially with reference to the results of the crop-cutting experiments conducted in that village. If no such experiments are conducted in that village, in the nearby villages; reliance may be placed on the yield notifications issued by the Revenue Authorities under relevant statute.

(ii) The cost of cultivation may be determined by making a reference to the Agriculture Department. The net yield is determined with reference to the gross yield and the cost of cultivation (in the case of buildings, net income means gross income less all legitimate outgoings in the form of taxes; reasonable amount for repairs and replacements, insurance and bad debts).

(iii) The value of such net yield may be determined by adopting the prices in the nearest regulated or other well established market. After the value of the net yield is so determined, it may be capitalised by applying a suitable multiple. What is the proper multiple to be applied for arriving at a market value of any land depends upon the nature of the agricultural land and the kind of crop/crops raised on it and also the evidence as to the rate of return a purchaser of a and generally expects on his investment. The Land Acquisition Officer must consider the general situation of the land; the lie of the land; the climate and rainfall; the size of the farm; the nature and texture of the soil; water supply land roads and approaches.

7. The multiple of 20 is applied where the rate of return expected is 5% on the capital investment. The capitalisation of net income by 15 times may be considered proper and reasonable in the case of lands where dry crops are grown. Grant of approximately 10 years purchase value on the basis of income from Area plantation can be considered as fair and reasonable. Similarly, grant of 8 to 10 years purchase value on the basis of income from sugarcane can be considered as fair and reasonable. Discretion is, however, vested in the Land Acquisition Officer to determine the multiple with reference to the circumstances of each case.

8. For the determination of the yield, the Land Acquisition Officer should take at least three years yields into consideration and then arrive at the average. Similarly, the average of three years rates of crops may be taken into consideration for determining the price of the net yield.

9. The practice of getting the property valued by the villagers or Mahazardars or Revenue Inspectors should not be resorted to at all. The practice of counter-checking the sales statistics by adopting capitalisation method should also not be resorted to. As indicated above the latter method should be adopted only when bonafide sales transactions are not available.

10. The buildings and structures should be got valued through the officers of the Public Works Department. Their valuation report and the basis on which they value the buildings and structures should necessarily form part of the award.

11. It is necessary that these instructions are followed strictly so that the compensation payable for lands acquired becomes reasonable and the award stands the tests in the Civil court when it is questioned. The Deputy Commissioners are requested to ensure that these instructions are followed by the Land Acquisition Officers scrupulously.

Sl No 797

Circular Number RD 139 AQW 73

Date 05/10/74

Section Land Acquisition

Subject Determination of compensation – proper appreciation of issues.

Body **RD 139 AQW 73 Dt. 10-5-74 [C]**

SUB: Determination of compensation – proper appreciation of issues.

Government has observed that the number of references is very much on the increase. To ensue that compensation is determined after proper appreciation of the issues involved and also to ensure that exhorbitant compensation is not awarded by the Land Acquisition Officer, a new provision has been introduced in Section 11 of the Land Acquisition Act to provide for the prior scrutiny and approval of the draft award by a higher authority such as Deputy Commissioner, Divisional Commissioner or Government. The present tendency among land owners is to ask that almost every award passed by the Land Acquisition Officer be referred to the Court under Section 18. The parties are influenced by the fact that in almost every case, the civil courts are enhancing the compensation, mainly because the officers concerned are callously indifferent to the defence of the cases and the courts have to rely on the uncontroverted evidence adduced by the claimants.

2. In all land acquisition cases, compensation based on the 'market value' of the land as on the day of the publication of the preliminary notification will have to be paid. Though market value has not been defined yet conventionally, it is assessed by ascertaining the sales statistics from the Sub-Registrar'' office or by capitalising the net income derived from the land. The claimants will try to substantiate their claim by citing one or two sale transactions wherein the price paid for will be much more than the Market Value that has been assessed by the Land Acquisition Officer. If a detailed examination of the transaction is made, it may come to light that the vendee has paid higher value for other considerations, such as existence of well, or buildings or standing trees, etc. So to say, such transactions may not reflect a reasonable price, which a willing seller is prepared

to accept and a willing purchaser is prepared to pay. Such information can be elucidated by proper cross-examination of the claimant's witnesses or by independent evidence for defence.

3. Whenever Government takes up big projects like the satelite town near Yelahanka, Bangalore or irrigation or power projects, there will be considerable timelag between the administrative sanction and the institution of acquisition proceedings. People, who are affected by acquisition in such projects, execute fictitious sales transactions to boost up figures and subsequently before the Land Acquisition Officer, they rely on such documents for compensation. If proper scrutiny & verification of such documents are made, it will reveal that they are benami transactions which do not deserve any consideration whatsoever and which will not reflect the true value of the land as on the date of acquisition. Scrutiny of such sale transactions is very essential and they have to be contested properly in defence.

4. In case where the claimant seeks enhancement on the basis of net income of the land, he adduces evidence to say that the land is very fertile and is yielding more than average crop. The investment and expenditure incurred on the cultivation of the crop is shown at the barest minimum. Such evidence can be countered b elucidating proper information in cross examination of the witnesses by producing results of crop cutting experiments conducted during the year or in the near proximity and by producing average market rates of the crops secured from the Agricultural produce Marketing Committee. In one case, a portion of a coffee estate was acquired. The party claimed compensation on the basis of net income and adduced evidence to say that the land was yielding about one tonne of coffee per acre. Since this evidence remained uncontroverted, the court enhanced the compensation. In this case, the proper defence would have been to elucidate information as to the quantity of coffee surrendered to the Coffee Board by the claimant for his whole estate supported by information, from the Board. Similarly, when parties claim that they have grown sugarcane, a certificate from the Sugar factory as to the quantity surrendered should be insisted or produced before the court in all Land Acquisition cases. It will be the responsibility of the Land Acquisition Officers to obtain and make available copies of all such yield notifications to the Government Pleaders concerned for being produced in court.

5. Enhanced compensation is also claimed on he basis of potential value of the land. An agricultural land in close proximity to an urban area is always claimed to possess potential of being used for non-agricultural purposes. In all such cases, the restrictions imposed by legislation on such conversion are conveniently forgotten. In and around Bangalore and Mysore Cities, individuals are prohibited from forming a lay out under the provisions of the City Improvement Acts. In another words, there are certain restrictions and limitations on the utilisation of land for non-agricultural purposes. This aspect is not at all taken into account. Secondly, even if presuming that a land can be converted and formed into a layout, the portions left out as roads, cross roads and lung space provided, are not accounted for. The value realised by way of sale of sites is inclusive of the price of the land left out for these purposes. Added to this, the cost of providing civic amenities and forming the lay out will have to be deducted from the amount realised. It is the net value realised by the owner after the above expenditure is deducted that has to be considered and not the value paid by the purchaser of single site. These aspects are not properly presented before the court for appreciation in the correct perspective.

6. With regard to horticultural plants like grapes, guava, sapota, etc., the parties prefer to have expert opinion. Experience shows that expert opinion is based more on the

theory and is far from the practical economics of the cultivation of the garden crop. The expert generally deducts a merge sum towards the cost of cultivation, but omits to account the several other aspects, which add to the cost of cultivation. Salary of the watchman appointed to watch the garden, the annual expenditure incurred by way of mending the fence, the losses sustained due to birds and squirrels and stealing of fruits by urchins, losses sustained due to storage when the prices flucture and are on the low ebb, the expenditure incurred on picking, packing and transport to the nearest market and above all, the labour put forth by the owner and his family members is not accounted properly. The Land Acquisition Officer or the civil courts are not bound to accept the expert opinion if it omits to take the practical aspects of the cultivation and its income. In all such claims, if proper cross examination of the witnesses produced by the claimants is done and suitable counter evidence is produced, it will not be difficult to substantiate the Land Acquisition Officers' awards.

7. The authorities approving draft awards under section 11 should ensure that the Land Acquisition Officer discusses the valuation in detail and records adequate reasons to justify the valuation adopted by him. The Land Acquisition Officer should invariably be examined in defence of the award and given an opportunity to justify his valuation.

8. It is not the intention of the Government to acquire lands by paying inadequate compensation or harass the parties by forcing them to seek redress in the civil courts. But it will certainly view with concern if exorbitant compenstion is paid on asking without any rationale. Some of the Government Pleaders are practically indifferent to the defence of the cases and do not bestow the consideration and attention which the trial of these cases deserve. Government therefore desires that the Deputy Commissioners, Special Deputy Commissioners and the Divisional Commissioners should have effective control and supervision over the conduct of these cases as it involves heavy financial burden to the Government and the acquiring bodies. In all cases refereed to civil courts under section 18 of the Land Acquisition Act, the Deputy Commissioner should discuss the cases with the Government Pleaders periodically and issue written instructions about the defence of each of the cases in the light of the above observations. Arrangements should also be made to adduce counter evidence, oral and documentary, and necessary assistance should be given to the Government Pleaders for proper conduct of the cases. With regard to cases relating to big projects, Government desires that the Divisional Commissioners should personally evince interest and issue written instructions to the Government Pleaders at least in the initial stages till such time the civil court awards take a definite shape.

9. Where acquisition is made on behalf of a local body, society, corporation or company, such acquiring bodies should be informed in writing by the Land Acquisition Officer of the fact that a reference to the court under section 18 of the Land Acquisition Act is made. If that body desires to brief the Government Pleader, they may be permitted to do so. Also, if they desire to engage their own counsel in such proceedings, under section 50(2) of the Land Acquisition Act, they may be given facility to do so, provided it is understood that the Government Pleader will be in-charge of the case and so engaged will only be to assist the Government Pleader in the conducting of the cases.

10. When the court awards enhanced compensation, the Government Pleader should immediately forward a copy of the judgment to the Deputy Commissioner or the Land Acquisition Officer concerned with a clear intimation of the amount which has to be deposited in satisfaction of the decree and his opinion about preferring an appeal. On receipt of the communication from the Government Pleader, the Deputy Commissioner should consider whether the enhancement is reasonable and should or should not be

accepted. If the acquisition is for a local body, society, corporation or company, such local body, society, corporation or company should be consulted immediately on receipt of the intimation from the Government Pleader. If the institution accepts the enhancement and the Deputy Commissioner agrees, there will be no difficulty in making immediate payment. The institution should be called upon to pay the enhanced amount if the amount already deposited is not sufficient to meet the claim under the order as also the court costs. If the order passed by the court is not however acceptable to the Deputy Commissioner or to the local body for whom the land is acquired, and the Deputy Commissioner agrees with it, then a report should be made to Government in the Law Department by the Deputy Commissioner for taking steps to prefer an appeal to the High Court or District Judge. In such an eventuality, the amount to the extent Government accepts the enhanced award should forthwith be deposited in the court. When an appeal is filed before the High Court or District Judge, the Government Pleader or the Advocate General should immediately move the Court on filing an appeal to issue an order of stay in respect of the enhanced amount. If no stay is granted by the Court of appeal, or payment is ordered to be made pending the appeal, the Advocate General should apply to the court for an order to take security from the party receiving the amount undertaking to refund such part of the amount as might be found to have been receive in excess as a result of the appellate Court's Order.

11. In respect of major projects where large extents are acquired and where consequent t enhancement of compensation by the Civil Court heavy burden is cast on the finances of the Government the Deputy Commissioners and Divisional Commissioners may convene periodical meetings of the Government Pleader and Land Acquisition Officer and other concerned officers to find out whether adequate attention is being paid to the conduct of the cases and appeals relating to land Acquisition matters. Further the Deputy Commissioner or Divisional Commissioner are requested to send reports in respect of such periodical meetings to Government with a copy to Law Department for information.

12. Government in the Law Department will be issuing separate instructions to the Government Pleaders and Advocates. The Divisional Commissioners, Deputy Commissioners and Land Acquisition Officers are requested to bear the above instructions in mind the ensure that cases, referred to civil courts, are properly contested and defended.

Sl No 1238

Circular Number RDH 184 LQM 63

Date 07/12/63

Section Land Acquisition

Subject CIRCULAR

Body GOVERNMENT OF MYSORE
No. RDH 184 LQM 63. Mysore Government Secretariat,
Vidhana Soudha,
Bangalore, dated 12th July 1963.
Ashada Saka, 1885.

C I R C U L A R

According to the Land Acquisition Act (Central Act No.1 of 1894) as amended by the Land Acquisition (Mysore Extension and Amendments) Act 1961 (Mysore Act 17 of 1961) possession of the properties proposed to be acquired for a public purpose can be taken only after all the formalities prescribed under the Land Acquisition Act are followed and the award is made under Section 11. Repeated representations are being received by Government that in making the valuation of such properties the Land Acquisition Officers are not appreciating the several factors to be taken into consideration in fixing the quantum of compensation.

Even though the Land Acquisition Act lays down that the possession of the properties under acquisition can be taken only after the award is made as indicated above, there are several cases in which on account of the urgency of the matter the possession of the properties is taken long before the necessary formalities are observed with the concurrence of the owners of such properties. It has been represented to Government that in such cases there is inordinate delay in the payment of compensation causing great hardship to the possession of their properties being taken for public purposes in anticipation of the completion of the acquisition proceedings.
In order to ensure that compensation is determined on reasonable basis and with reference to the provisions contained in the Land Acquisition Act and also in order to see that where possession of the land or buildings is taken in anticipation of the completion of the acquisition proceedings the parties are not put to any hardship it is hereby directed that the principles indicated in the appended not may be taken into consideration while dealing with the cases of acquisition of lands for public purposes. It is trusted that once these principles are followed strictly the compensation payable under the awards would be reasonable, and that in cases in which possession of the land has been taken in anticipation of the completion of the acquisition proceedings prompt periodical payments would be made to the owners of such properties until such time as the acquisition proceedings are completed and that the relief which is being sought by the owners of such properties would have been afforded.
It is also trusted that there will be no practical difficulties in implementing these instructions. But if there are any, the Divisional Commissioners and the Deputy Commissioners are requested to bring such difficulties to the notice of Government so as to ensure that such difficulties are removed.
Nothing in these instructions shall be construe to override any of the provisions of Sec.23 of Act of 1894(Central Act) read with the Mysore Act 17 of 1961 and the Rules and Standing orders issued from time to time. Should there by any conflict between the provisions of the Act, Rules and the standing orders on the one hand and the instructions now issued on the other, the former (i.e. the provisions of the Act, Rules and Standing orders) shall prevail.

(N. NARASIMHA RAU)
SECRETARY TO GOVERNMENT,
REVENUE DEPARTMENT.

DETERMINATION OF COMPENSATON:

In determining the quantum of compensation to be paid for properties under acquisition for public purposes, the Sub-Registry Statistics pertaining to the Sales of similar properties in the vicinity of the properties to be acquired, as on the date of issue of the preliminary notification may be taken into consideration. Extreme cases where either particularly high or particularly low rates had been adopted in the sales may be ignored and the average in respect of the remaining sales should be arrived at. Necessary corrections may be applied wherever necessary, so as to make the valuation of the specific property under acquisition more realistic. In the case of agricultural lands, the value of individual lands should be determined after taking into consideration the distance from the main road, the distance from the village proper, the availability of water facilities etc.

2. When small extents of garden lands are acquired for the formation of roads, it would be sufficient if the lands are classified as dry lands for purposes of determining the compensation and the value of the trees standing on the land acquired is determined separately. If large extents of garden lands are acquired for projects, ports, etc. this principle cannot be naturally applied. The lands will then have to be valued as garden lands.

3. In the case of non-agricultural lands the Land Acquisition Officers will have to proceed on the general basis that only those lands which were actually put to non-agricultural use viz. Constructions of buildings are treated as building sites and their value is determined accordingly. The land used for agricultural purposes should be valued as such and no allowance should be made towards the prospective value of the land as being suitable for non-agricultural purposes. In the case of small plots of land adjoining main roads and amidst already built up areas, the lands will, however, have to be valued as building sites.

4. The lands may be valued with reference to the use to which they are put at the time of issue of the preliminary notification, irrespective of the classification made in the survey records.

5. The value of the lands could also be fixed by capitalising the value of the annual return from the land. This capitalisation method is more suitable for determining the value of buildings. The determination of the value of the land solely on the basis of sales statistics may not give a realistic picture in many cases. It would be desirable to have the value counterchecked in as many practicable ways as possible. The principle of capitalising the value of the annual return may be adopted and the value of the land determining on this basis so as to countercheck the valuation made on the basis of sales statistics.

6. The following procedure may be adopted for determining the value by capitalisation method:

1. The gross yield may be determined initially with reference to the results of the crop cutting experiments conducted in that village or if no such experiments is conducted in the village, in the nearby villages.

2. The cost of cultivation may be determined by making a reference to the Agricultural Department and the net yield determined with reference to the gross yield and the cost of cultivation.

3. The value of such net yield may be determined by adopting the prices in the nearest regulated or well established market or by adopting the rates specified by the Civil Courts; after the value of the net yield is so determined it might be capitalised by taking a suitable multiple for the purposes of capitalisation. The Land Acquisition Manual of

Madras specifies 20 as the multiple by which the net return should be multiplied for arriving at the total value of the land. Discretion is, however, vested in the Land Acquisition Officer to determine the multiple with reference to circumstances of each case.

7. The valuation made in a previous case by the Deputy Commissioner in respect of any lands in the locality need not have to be taken into consideration. If any case the Civil Court has allowed a higher rate of compensation and if the party produces a copy of the of the Civil Court, the Land Acquisition Officer may take into consideration the value as fixed by the Civil Court in determining the value of lands.

8. In the case of buildings and other structures which are acquired the authorities of the Public Works Department should be consulted invariably, in determining the value.

9. It is not intention of Government that arbitrarily low values are to be paid for the lands under acquisition. But at the same time it would have to be ensured that exorbitant rates are not paid for such lands. The compensation awarded should be reasonable and realistic.

Apportionment of Compensation between the land-lord and the tenant:

The total amount of compensation payable has to be determined first. Then the compensation has to be apportioned between the landlord and the tenant on any reasonable basis considered appropriate taking into consideration the nature of the tenure and the value of crops raised etc. If the parties do not agree on the apportionment proposed by the Land Acquisition Officer the case may be referred to the Civil Court.

While fixing the amount of compensation the Land Acquisition Officer will have to take into consideration the several factors enumerated in Sec.23 of the Land Acquisition Act. When severance charges are paid they normally cover most of the other items specified in Sec.23 of the Land Acquisition Act and the Land Acquisition Officer's should exercise their discretion in each case in determining as to which of the items are to be compensated for separately in addition to the compensation payable for the land.

When a portion of a structure like "Agalu" is acquired, compensation for the portion acquired has to be paid. Compensation amount cannot be paid for the reconstruction of the structure due to acquisition of a portion of it.

Taking possession of land:

Normally, the possession of the land under acquisition has to be taken only after the acquisition proceedings are completed and the award is declared. This principle cannot, however, be applied in the case of lands to be acquired for the Port, the Railways, Roads, etc. Proceedings under Sec.17 of the Land Acquisition Act can be taken only in emergency cases. The formalities under the Land Acquisition Act will take some time and there will be inevitable delay in taking possession of the land. As the works have to be executed expeditiously, the Land Acquisition Officers will have to persuade the parties to hand over possession of the land to the acquiring bodies. When such possession is handed over the acquiring Department it amounts to such possession being handed over under a direct contract between the acquiring Department and the owners of the properties under acquisition. The acquiring body will have to pay on the advice of the authorities of the Revenue Department reasonable compensation for any standings crop on the land, at the time of taking possession of the land and rental compensation every year till the formal possession is taken under the Land Acquisition Act. It has to be noted that the responsibility for the payment of these amounts vests in the authorities of the acquiring Department and the authorities of the Revenue Department will be responsible only for giving their advice on what the fair crop and rental compensation would be. These payments will however be with reference to the agreement to be entered into directly between the acquiring Department and the owners of the properties under acquisition. It has to be noted in this connection, that even when the possession of the properties is obtained in this manner, the total cost of acquisition gets increased if there is any delay in the completion of the acquisition proceedings and in the final award being made. It is, therefore, very essential that the acquiring Department should prepare a land statement giving all the particulars required for initiating the acquisition proceedings and to see that the proceedings are initiated with the least possible delay. The acquiring Department should give any assistance that might be required by the Land Acquisition Officer and ensure the prompt disposal of the case.

The principles indicated about the payment of crop/rental compensation cannot be made applicable to cases in which buildings are acquired for public purposes and the possession of such buildings is taken before the acquisition proceedings are completed. In these cases, it would have to be noted that it will be hard for the former owners of such buildings to secure alternate accommodation on payment of rent in the rural areas. It would be necessary, therefore, for them to build new houses and to shift to them before they can hand over possession of the buildings in which they were formerly living and which are proposed for acquisition. The full compensation cannot be given until the award is made. Likewise even 75% of the compensation cannot be given until the notification under Section 6 is published. In order, therefore to see that the owners of such properties are enable to construct alternate houses, the rules under the Non-agricultural Loans Act are being so framed as to permit of the payment of about 75% of the probable amount of compensation being given as a loan under that Act to persons whose properties are acquired but the possession of which is taken before the acquisition proceedings are completed. While this is all that has to be done when stray buildings are acquired something more would have to be done when a large number of buildings in any particular locality are acquired for public purposes. It is directed that in such cases, the acquiring Department and the Land Acquisition Officer should arrange for the rehabilitation of the persons so displaces.

The amounts paid as loan will have to be adjusted out of the compensations for land/house to be determined finally under the award and only the net amount paid to the parties concerned. In so far as the crop compensation and rental compensation are concerned, they may be adjusted out of the crop compensation or interest on the amount of compensation if any such amounts are awarded. It is trusted that there would be no difficulty in securing possession of lands belonging to private parties even pending the completion of acquisition proceedings when these rules are brought into force. If the Divisional Commissioners and the Deputy Commissioners consider that there are any difficulties in implementing the instructions they may kindly bring to the notice of Government such difficulties and suggest the manner in which they could be got over.

Sl No 766
Circular Number RD 143 AQI 72
Date 10/11/75

Section Land Acquisition

Subject Incomplete requisitions while initiating Land Acquisition proceedings Cause delay in finalisation –
Instructions issued.

Body **RD 143 AQI 72Dt. 11/10/75 [C]**

SUB : Incomplete requisitions while initiating Land Acquisition proceedings
Cause delay in finalisation – Instructions issued.

In one case, Public Works Department took possession of certain lands during the year 1962. The Public Works Departments sent the requisition to Revenue Department during the same year but with incorrect and incomplete particulars of the lands required. After protracted correspondence over period of 10 years between Public Works Department and Revenue Department, the acquisition proceedings were initiated during the year 1973.
Government fear that there may be similar, but unreported, instances in other District. The inordinate delay of the type mentioned above could have been avoided or atleast minimised, had the officers of the PWD and Revenue discussed the case and settled the discrepancies, instead of merely exchanging letters. If necessary, they could have raised this question in the monthly meeting of District Co-ordination Committee where all the problems relating to development activities are expected to be resolved.
The Local Officers should realise how much hardship the land-owners have to face, consequent on dispossession of lands (often with building thereon). The concerned persons are denied immediate relief by way of compensation, while Government in turn is made to incur heavy expenditure by way of interest on the amount of compensation. Instructions issued from time to time by Government impressing upon the officers of the Revenue Department and P.W.D. the need for expeditious disposal of land acquisition cases, have not had the desired result.
Government, therefore, wish to advise all officers particularly P.W.D. officers to alter their approach so as to avoid delay in finalising the land acquisition cases. The Deputy Commissioners of the District are requested to bring up difficult cases for discussion in regular District Co-ordination Committee meetings. Should the officers continue to be negligent of their duties and allow such delays to occur in future, Government will be obliged to take serious notice. The Public Works Department has also been requested to issue suitable instructions in the matter to all the officers in charge of execution of Public Works.

Sl No 797
Circular Number RD 139 AQW 73
Date 05/10/74
Section Land Acquisition
Subject Determination of compensation – proper appreciation of issues.

Body **RD 139 AQW 73 Dt. 10-5-74 [C]**

SUB: Determination of compensation – proper appreciation of issues.

Government has observed that the number of references is very much on the increase. To ensue that compensation is determined after proper appreciation of the issues involved and also to ensure that exhorbitant compensation is not awarded by the Land Acquisition Officer, a new provision has been introduced in Section 11 of the Land Acquisition Act to provide for the prior scrutiny and approval of the draft award by a higher authority such as Deputy Commissioner, Divisional Commissioner or Government. The present tendency among land owners is to ask that almost every award passed by the Land Acquisition Officer be referred to the Court under Section 18. The parties are influenced by the fact that in almost every case, the civil courts are enhancing the compensation, mainly because the officers concerned are callously indifferent to the defence of the cases and the courts have to rely on the uncontroverted evidence adduced by the claimants.
2. In all land acquisition cases, compensation based on the 'market value' of the land as on the day of the publication of the preliminary notification will have to be paid. Though market value has not been defined yet conventionally, it is assessed by ascertaining the sales statistics from the Sub-Registrar'' office or by capitalising the net income derived from the land. The claimants will try to substantiate their claim by citing one or two sale transactions wherein the price paid for will be much more than the Market Value that has been assessed by the Land Acquisition Officer. If a detailed examination of the transaction is made, it may come to light that the vendee has paid higher value for other considerations, such as existence of well, or buildings or standing trees, etc. So to say, such transactions may not reflect a reasonable price, which a willing seller is prepared to accept and a willing purchaser is prepared to pay. Such information can be elucidated by proper cross-examination of the claimant's witnesses or by independent evidence for defence.
3. Whenever Government takes up big projects like the satelite town near Yelahanka, Bangalore or irrigation or power projects, there will be considerable timelag between the administrative sanction and the institution of acquisition proceedings. People, who are affected by acquisition in such projects, execute fictitious sales transactions to boost up figures and subsequently before the Land Acquisition Officer, they rely on such documents for compensation. If proper scrutiny & verification of such documents are made, it will reveal that they are benami transactions which do not deserve any consideration whatsoever and which will not reflect the true value of the land as on the date of acquisition. Scrutiny of such sale transactions is very essential and they have to be contested properly in defence.
4. In case where the claimant seeks enhancement on the basis of net income of the land, he adduces evidence to say that the land is very fertile and is yielding more than

average crop. The investment and expenditure incurred on the cultivation of the crop is shown at the barest minimum. Such evidence can be countered b elucidating proper information in cross examination of the witnesses by producing results of crop cutting experiments conducted during the year or in the near proximity and by producing average market rates of the crops secured from the Agricultural produce Marketing Committee. In one case, a portion of a coffee estate was acquired. The party claimed compensation on the basis of net income and adduced evidence to say that the land was yielding about one tonne of coffee per acre. Since this evidence remained uncontroverted, the court enhanced the compensation. In this case, the proper defence would have been to elucidate information as to the quantity of coffee surrendered to the Coffee Board by the claimant for his whole estate supported by information, from the Board. Similarly, when parties claim that they have grown sugarcane, a certificate from the Sugar factory as to the quantity surrendered should be insisted or produced before the court in all Land Acquisition cases. It will be the responsibility of the Land Acquisition Officers to obtain and make available copies of all such yield notifications to the Government Pleaders concerned for being produced in court.

5. Enhanced compensation is also claimed on he basis of potential value of the land. An agricultural land in close proximity to an urban area is always claimed to possess potential of being used for non-agricultural purposes. In all such cases, the restrictions imposed by legislation on such conversion are conveniently forgotten. In and around Bangalore and Mysore Cities, individuals are prohibited from forming a lay out under the provisions of the City Improvement Acts. In another words, there are certain restrictions and limitations on the utilisation of land for non-agricultural purposes. This aspect is not at all taken into account. Secondly, even if presuming that a land can be converted and formed into a layout, the portions left out as roads, cross roads and lung space provided, are not accounted for. The value realised by way of sale of sites is inclusive of the price of the land left out for these purposes. Added to this, the cost of providing civic amenities and forming the lay out will have to be deducted from the amount realised. It is the net value realised by the owner after the above expenditure is deducted that has to be considered and not the value paid by the purchaser of single site. These aspects are not properly presented before the court for appreciation in the correct perspective.

6. With regard to horticultural plants like grapes, guava, sapota, etc., the parties prefer to have expert opinion. Experience shows that expert opinion is based more on the theory and is far from the practical economics of the cultivation of the garden crop. The expert generally deducts a merge sum towards the cost of cultivation, but omits to account the several other aspects, which add to the cost of cultivation. Salary of the watchman appointed to watch the garden, the annual expenditure incurred by way of mending the fence, the losses sustained due to birds and squirrels and stealing of fruits by urchins, losses sustained due to storage when the prices flucture and are on the low ebb, the expenditure incurred on picking, packing and transport to the nearest market and above all, the labour put forth by the owner and his family members is not accounted properly. The Land Acquisition Officer or the civil courts are not bound to accept the expert opinion if it omits to take the practical aspects of the cultivation and its income. In all such claims, if proper cross examination of the witnesses produced by the claimants is done and suitable counter evidence is produced, it will not be difficult to substantiate the Land Acquisition Officers' awards.

7. The authorities approving draft awards under section 11 should ensure that the Land Acquisition Officer discusses the valuation in detail and records adequate reasons to

justify the valuation adopted by him. The Land Acquisition Officer should invariably be examined in defence of the award and given an opportunity to justify his valuation.

8. It is not the intention of the Government to acquire lands by paying inadequate compensation or harass the parties by forcing them to seek redress in the civil courts. But it will certainly view with concern if exorbitant compenstion is paid on asking without any rationale. Some of the Government Pleaders are practically indifferent to the defence of the cases and do not bestow the consideration and attention which the trial of these cases deserve. Government therefore desires that the Deputy Commissioners, Special Deputy Commissioners and the Divisional Commissioners should have effective control and supervision over the conduct of these cases as it involves heavy financial burden to the Government and the acquiring bodies. In all cases refereed to civil courts under section 18 of the Land Acquisition Act, the Deputy Commissioner should discuss the cases with the Government Pleaders periodically and issue written instructions about the defence of each of the cases in the light of the above observations. Arrangements should also be made to adduce counter evidence, oral and documentary, and necessary assistance should be given to the Government Pleaders for proper conduct of the cases. With regard to cases relating to big projects, Government desires that the Divisional Commissioners should personally evince interest and issue written instructions to the Government Pleaders at least in the initial stages till such time the civil court awards take a definite shape.

9. Where acquisition is made on behalf of a local body, society, corporation or company, such acquiring bodies should be informed in writing by the Land Acquisition Officer of the fact that a reference to the court under section 18 of the Land Acquisition Act is made. If that body desires to brief the Government Pleader, they may be permitted to do so. Also, if they desire to engage their own counsel in such proceedings, under section 50(2) of the Land Acquisition Act, they may be given facility to do so, provided it is understood that the Government Pleader will be in-charge of the case and so engaged will only be to assist the Government Pleader in the conducting of the cases.

10. When the court awards enhanced compensation, the Government Pleader should immediately forward a copy of the judgment to the Deputy Commissioner or the Land Acquisition Officer concerned with a clear intimation of the amount which has to be deposited in satisfaction of the decree and his opinion about preferring an appeal. On receipt of the communication from the Government Pleader, the Deputy Commissioner should consider whether the enhancement is reasonable and should or should not be accepted. If the acquisition is for a local body, society, corporation or company, such local body, society, corporation or company should be consulted immediately on receipt of the intimation from the Government Pleader. If the institution accepts the enhancement and the Deputy Commissioner agrees, there will be no difficulty in making immediate payment. The institution should be called upon to pay the enhanced amount if the amount already deposited is not sufficient to meet the claim under the order as also the court costs. If the order passed by the court is not however acceptable to the Deputy Commissioner or to the local body for whom the land is acquired, and the Deputy Commissioner agrees with it, then a report should be made to Government in the Law Department by the Deputy Commissioner for taking steps to prefer an appeal to the High Court or District Judge. In such an eventuality, the amount to the extent Government accepts the enhanced award should forthwith be deposited in the court. When an appeal is filed before the High Court or District Judge, the Government Pleader or the Advocate General should immediately move the Court on filing an appeal to issue an order of stay in respect of the enhanced amount. If no stay is granted by the Court of

appeal, or payment is ordered to be made pending the appeal, the Advocate General should apply to the court for an order to take security from the party receiving the amount undertaking to refund such part of the amount as might be found to have been receive in excess as a result of the appellate Court's Order.

11. In respect of major projects where large extents are acquired and where consequent t enhancement of compensation by the Civil Court heavy burden is cast on the finances of the Government the Deputy Commissioners and Divisional Commissioners may convene periodical meetings of the Government Pleader and Land Acquisition Officer and other concerned officers to find out whether adequate attention is being paid to the conduct of the cases and appeals relating to land Acquisition matters. Further the Deputy Commissioner or Divisional Commissioner are requested to send reports in respect of such periodical meetings to Government with a copy to Law Department for information.

12. Government in the Law Department will be issuing separate instructions to the Government Pleaders and Advocates. The Divisional Commissioners, Deputy Commissioners and Land Acquisition Officers are requested to bear the above instructions in mind the ensure that cases, referred to civil courts, are properly contested and defended.

Sl No 813

Circular Number RD 764 AQL 73

Date 10/03/73

Section Land Acquisition

Subject Erratum in respect of material particulars of a preliminary Notification published under Sec. 4(1) of
L.A. Act – Instructions issued—

Body **RD 764 AQL 73 DT. 3-10-73[C]**

Subject :- Erratum in respect of material particulars of a preliminary Notification published under Sec. 4(1) of L.A. Act – Instructions issued—

It has been observed that the Land Acquisition officers are sending proposals for issue erratums for the printing errors occurred in preliminary notification published under Sec. 4(1) of L.A. Act for correcting the survey numbers, the dates for filing objections and the areas to be acquired. But, there is a High Court ruling that an erratum cannot be issued in respect of material particulars notification published under Sec. 4 (1) of L.A. Act such as survey number. Date for filing object and the area to be acquired. All the Land Acquisition Officers are, therefore, directed not to proposed erratums in respect of such material particulars of a notification u/s 4 (1) of L.A. Act. If there are any errors in respect of such material particulars, they should initiate fresh acquisition proceedings after issue of cancellation notification in respect of such particulars.

They are further requested to send Gazette copy of 4 (1) notification invariably along with erratum proposals, whenever erratums are to be issued.

Sl No 1198

Circular Number RDF-156-LQU-58

Date 01/13/59

Section Land Acquisition

Subject Instructions regarding expeditious satisfaction of
Claims relating to land acquisition cases.

Body

GOVERNMENT OF MYSORE

No. RDF-156-LQU-58 Mysore Government Secretariat,
Revenue Department,
VIDHANA SOUDHA,
Bangalore Dated 13-01-1959
Pushya 23 Saka Era 1880.

C I R C U L A R

SUBJECT:- Instructions regarding expeditious satisfaction of
Claims relating to land acquisition cases.

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Government has observed that in a number of land acquisition cases where the courts have awarded enhanced compensation on a reference under Section 18 of the

Land Acquisition Act, (Section 14 of Hyderabad Land Acquisition Act), the claims have not been satisfied for long periods. In order to ensure that the claims relating to land acquisition cases are satisfied without any delay whatsoever, Government is pleased to issue the following instructions for the guidance of the Deputy Commissioners Land Acquisition Officers and other officers and Departments who deal with such cases.

2. Where lands are sought to be acquired on behalf of a company, society, Corporation of local body, such institution should be called upon to deposit in the Government Treasury, the cost of acquisition based on the market value of the land estimated as fairly as possible. The preliminary notification under section 4 (Section 3 of the Hyderabad Land Acquisition Act) should be issued only after such deposit is made by the local body, company, society or corporation on whose behalf is proposed to acquire the lands. If such a precautionary measure is taken, there will be neither cases of withdrawal after issuing final notifications under Section 6 of the Land Acquisition Act (Section 5 of Hyderabad Land Acquisition Act) nor any cases delay in making payment even after award is passed.

3. As soon as award is passed by a Land Acquisition Officer, the Land Acquisition Officer, the Land Acquisition Officer should issue notices to the several claimants intimating the amount of compensation awarded, its apportionment and the date fixed for payment. A party feeling aggrieved by the quantum of compensation awarded retains his right to apply for a reference under Section 18 (Section 14 of Hyderabad L.A.Act) if he receives compensation under protest. Where the party does not accept the compensation or payment cannot be made on account of the apportionment also being in dispute the compensation awarded by the Land Acquisition Officer should be sent to the Court along with the reference under Section 18 and 30 (Sections 14 and 25 of Hyderabad L.A.Act) In cases where a reference is made to Court under Section 18 of the Act, (Section 14 of the Hyderabad L.A. Act), the Government Pleader will no doubt appear to support the award, irrespective of whether the acquisition is for Government or for a local body, society, corporation or company, such local body, society, corporation or company should be informed in writing by the Land Acquisition Officer of the fact that a reference to the Court under Section 18 of the Land Acquisition Act (Section 14 of Hyderabad L.A.Act). If that party desires to brief the Government Pleader they may be permitted to do so. Also if they desire or to engage Their own counsel in such proceedings under Section 50(2) of the Land Acquisition Act (Section 40-A(2) of Hyderabad Land Acquisition Act), they may be given facility to do so, provided is understood that the Government Pleader will be in charge of the case and the counsel so engaged will only be to assist the Government Pleader in the conduction of the case.

4. When the Court awards enhanced compensation, the Government Plead should immediately obtain a copy of the judgement and forward it to the Deputy Commissioner/Land Acquisition Officer concerned with a clear intimation of the amount which has to be deposited in satisfaction of the decree. On receipt of the communication from the Government Pleader, the Deputy Commissioner should consider whether the enhancement is reasonable and should or should not be accepted. If the acquisition if for a local body, society, corporation or company should be consulted immediately on receipt of the intimation from the Government Pleader. The institution should be called upon to pay the amount if the amount already deposited is not sufficient to meet the claim under the order as also the Court costs. If the order passed by the Court is not however acceptable to the Deputy Commissioner or to the

local body for whom the land is acquired, and the Deputy Commissioner agrees with it, then a report should be made to Government by the Deputy Commissioner for taking steps to prefer an appeal to the High Court. In such an eventuality, the amount to the extent Government accepts the enhanced award should forth with be deposited in the Court. Where an appeal is filed before the High Court, the Government Pleader or the Advocate General should immediately move the High Court on filing an appeal to issue an Order of stay in aspect of the enhanced amount.

5. Immediately an award is granted or the Court decrees a claim and a decision is taken not to file an appeal, the liability should be treated on the basis of a Court-decree. In cases where sanction of Government is required for payment of the amount, the administrative department concerned, should immediately approach the Finance Department for funds, making it clear to the Finance Department will then make immediate arrangements for financing funds.

6. Where the liability is in respect of a local body, having regard to the close Association of local bodies with Government and the ultimate liability of Government to see that local bodies do not pay interest unduly, the administrative Departments concerned namely, the Local Self Government Department, will examine such cases on merits and decide whether in any particular case, Government should advance the funds required to discharge the ward. This should not be recommended merely on the ground that the local body pleads that it has no funds. The L.S.G. Department, will have full information regarding the current balance of the local body and will decide in consultation with Finance Department, whether action to compel the local body to pay the amount should be taken or whether Government should advance the money and recover the same from the local body. Such examination should be quick and the L.S.G. Department should ensure that interest does not necessarily accumulate.

7. Even when land is acquired for a company, society, corporation or local body, the liability for enhanced compensation will be that of Government though Government can recover the amount from such company, society, corporation or local body. Where a company is practically a Government Company, i.e. with heavy Government investmental the same policy as in the case of local bodies should keep an eye on the solvency of the company and enforce recoveries promptly.

8. The Deputy Commissioner/Land Acquisition Officers and other officers and Departments who deal with land acquisition cases are requested to bear the above instructions in mind and ensure expeditious satisfaction of claims in all Land Acquisition Cases.

(B.T. NAYAK)
UNDER SECRETARY TO GOVERNMENT,
REVENUE DEPARTMENT.

Sl No 869

Circular Number RD 125 AQW 70

Date 04/01/71

Section Land Acquisition

Subject Legislation to ban allotment of Fertile Land for Industrial purposes -

Body **RD. 125 AQW 70 Dt. – 4-71 [L]**

[Letter from The Secretary to the Government of Mysore, Revenue Department to All Divisional Commissioner/Deputy Commissioner]

Subject:- Legislation to ban allotment of Fertile Land for Industrial purposes -

I am directed to forward herewith for information a copy of the letter No. F 4-1/70 - Lands dated 11-6-70, from the Government of India, Ministry of Food, Agriculture, Community Development and Co-operation (Department of Agriculture) New Delhi, along with its enclosures, in regard to the steps to be taken for preventing acquisition of good Agricultural land.

Further, I am to request you to forward your considered views to Government immediately, so as to enable Government to send their views to the Government of India, urgently.

COPY

of the letter No. F-4-3/70, Lands, dated 11th June 1970 from the Secretary to the Government of India, Ministry of Food Agriculture, Community Development and Co-operation, (Department of Agriculture), New Delhi addressed to the Chief Secretaries of all States and Union Territories.

Subject:- Acquisition of land - steps to be taken for preventing acquisition of
good agricultural land.

I am directed to refer to the enclosed copy of this Ministry's letter No. 4-5/65-General II, dated the 30th March, 1965 (Annexure I) regarding the prevention of diversion of agricultural land to non-agricultural purposes. The Land Acquisition Review Committee, which went into all aspects of land acquisition, has made the following observations and recommendations on this subject in Chapter 12 of its Report:-

(i) The Land Acquisition Committee constituted under the Land Acquisition (companies) Rules, 1963 plays an important role in advising the Government against excessive acquisition of land and taking of good agricultural land for companies. However, there is no provision either in the Land Acquisition Act, 1894 or Rules made thereunder for preventing excessive acquisition of land or acquisition of good

agricultural land where acquisition is sought to be made by the Government for public purpose under Part II of the Act.
(ii) It would not be practicable to impose a total ban on the acquisition of good agricultural land. Acquisition of Good Agricultural Land might become necessary in certain cases because of its strategic importance and also for the development of agriculture itself. However, there can be no two opinions on the question that good agricultural land should not be acquired unless it is absolutely necessary. It is thus essential to provide for a statutory device for preventing the acquisition of good agricultural land and acquisition if excessive land agricultural or non-agricultural.

(iii) A Land Acquisition Committee should be set up under the Act for advising Government in respect of Land use Policy in the matter of large scale acquisition for public purpose including implementation of projects. The function of the Committee would be to ensure that:-

a) the land which is already in the possession of the acquiring body is put to optimum use before permitting the proposed acquisition.

b) An excessive acquisition does not take place;

c) the acquisition of good agricultural land does not take place where it can be avoided; and

d) the proposed acquisition is justified on the basis of high density norms.

The committee should tender advice to the Government before issue of the notification under section 4(1) of the Land Acquisition Act. While the composition of the committee has been left to be decided by the appropriate Government, it has been recommended in the Report that its members should include experts on the subject and representatives of the people. In this connection it may be mentioned that a copy of the Report in full has already been forwarded to your Government (Revenue Department) under this Ministry's letter No. 2.7/70 – lands dated the 5th May 1970.

2. I am to request that the relevant portion of the Report may be examined by the State Government at the earliest and guidelines issued to the authorities concerned with land acquisition, in case this has not been already done, emphasising the need for preventing as far as possible good agricultural land from being acquired. It is requested that action or proposed to be taken on this matter may please be intimated to this Ministry.

A N N E X U R E I

Copy of the letter No. F4-5/65-Generl-II dated 30th March 1965, from the Under Secretary to the Government of India, Ministry of Food and Agriculture, (Department of Agriculture) New Delhi, addressed to the Revenue Secretaries of all State Government and Union Territories -

Subject:- Diversion of agricultural land to non-agricultural uses-

I am directed to say that as the State Governments are aware, the Land Acquisition (Companies) Rules, 1963 framed by the Central Government contain provisions to ensure that good agricultural land not acquired for a company except where it is unavoidable. In D.O. letter No. 4-16/62-C (G), dated 12th July, 1963 from the Union Minister for Food and Agriculture to the Chief Ministers of all States and Administrators of the Union territories. The Union Minister had specifically drawn attention to the need to ensure that even in other cases i. E, where land is acquired for Government good agricultural land is not acquired except in unavoidable circumstances. Earlier, in 1958 also this Ministry has written to the State Government or avoiding as far as possible acquisition of good agricultural land for non-agricultural purposes (copy of letter No. 3-7/58-LRU, dated 22nd March, 1958 enclosed for ready reference.)

However, the point remains that the owner of land may himself, or when he transfers land, the transferee, may divert good agricultural land to non-agricultural use and the question for consideration is whether some safeguard are necessary to prevent good agricultural land being converted to non-agricultural use except where it is essential or unavoidable. In this connection a suggestion received from on Shri, L.M. Bhattacharjee, LL.B., is also attached. It will be highly appreciated if the State Governments could kindly supply information about the existing position in this regard and the action, if any proposed to be taken.

ANNEXURE – I

Copy of letter No. 4-16/62-C(G) dated the 12th July 1963, from the Minister of Food and Agriculture (Shri S. K. Patil) to the Chief Ministers of all States and Administrators of Union Territories.

Land Acquisition Act, 1894 :-

During the debate on the Land Acquisition (Amendment) Bill, 1962 in the Parliament, several members were highly critical of the administration of the Land Acquisition Act. The main points which received the attention of the critics were the acquisition of good agricultural land for non-agricultural purposes, the acquired lands lying unused over long period, inadequacy of compensation and delays in the payment of compensation. It was also emphasised during the debate that the Government should actively assist in the rehabilitation of the person whose lands was acquired. These suggestions have been kept inview in framing the Rules under Part VII of the Land Acquisition Act. I enclose a copy or these in forwarding these rules to the State Governments, several suggestions have been made about the administration of the Act.

I should like to draw your attention to rule 9 which required that acquisition of lands for a company, other than a company owned or controlled Government, or a State Government shall ordinarily be made in accordance with the provisions of Part VII of the Act so that the procedures which have been set out in the Rules may be made applicable to all such acquisitions. Although this Rule has been left flexible it is the intention that the acquisition of land for the use of a privately owned company left flexible it is the intention that the acquisition of land for the use of a privately owned company should be made only under Part VII of the Act, except where you are satisfied that it would be in public interest to depart from this general practice in any particular case. Ordinary processes of land acquisition Act for acquiring land for "Public Purposes" should not be used in such cases, save in exceptional circumstances.

These Rules are applicable only to the acquisition of lands for companies under part VII of the Act and not to acquisitions made under the general provisions of the Act for the purpose of the State or for companies owned or controlled by the Central Government or any State Government. The main points which attracted the criticism is the Parliament apply equally to the acquisition of land for the purpose of the State or for companies owned or controlled by the State Government. Even in these cases, it is important to ensure that good agricultural land is not acquired except in unavoidable circumstances, that acquired land is not kept unused over unduly long period, that compensation paid is both prompt and adequate and that necessary arrangements are made to rehabilitate persons seriously affected by the acquisition proceedings.

Several members of the Parliament asked that the entire Land Acquisition Act 1894, be amended. While this question is under separate consideration, I shall be grateful if the procedures and practices prevailing in your State are reviewed, taking into consideration the criticisms made in the parliament and revised to the extent necessary.

I shall be glad to know in due course the action by your Government.

COPY

of the letter No.3-7/58-LRU, dated 22nd March, 1958, from the Under Secretary to the Government of India, Ministry of Food, Agricultural (Department of Agricultural), New Delhi, addressed to All the States and Union Territories.

Sub : URBAN EXPANSION - ACQUISITION OF AGRICULTURAL LANDS FOR NON-AGRICULTURAL PURPOSES.

I am directed to say that acquisition of good agricultural land for a non-agricultural purpose affects our objective of increased food production. In some cases there may be no alternative land suitable for the specific purpose for which agricultural land is being acquired. However, there may be other cases where the acquisition of fertile agricultural land for a non-agricultural purpose could be avoided and alternative land which is not so valuable for agricultural purpose could be acquired. It will be highly appreciated if the State Government would kindly intimate whether any precautions are taken to minimise the acquisition of good agricultural lands for urban purposes.

It is also suggested that a representative of the State Agricultural Department may be associated with the selection of sites for non-agricultural purposes so that agricultural needs may also be kept in view and wherever possible the acquisition of good agricultural lands and their conversion to a non-agricultural use is avoided.
An early reply will be appreciated.

Copy of suggestion from Shri.L.M. Bhattacharjee, LL.B., 7, Earle street, Calcutta - 25.

"The permission to transform cultivated agricultural lands for residential purpose or for excavating tanks should be taken from Government to prevent hoarders to invest their unaccounted money in lands speculation thereby reducing the area of cultivated land".

Foot Notes

Sl No 933

Circular Number RD 17 AQP 70

Date 05/21/70

Section Land Acquisition

Subject Acquisition of land by Private Negotiations - Initiation of proceedings Under the Land Acquisition
Act simultaneously -

Body **RD 17 AQP 70 Dt 21-5-70 [C]**

Sub :- Acquisition of land by Private Negotiations - Initiation of proceedings
Under the Land Acquisition Act simultaneously -

Whenever land is required by a Government Department or Public Sector Undertaking for a public purpose, recourse is generally had to proceedings under the Land Acquisition Act to require the land. This is done, in order to ensure that Government has an indefeasible title to the land acquired. There may, however, be cases, where the Department/Public Sector Undertakings concerned may deem it advisable to acquire the land required by private negotiations and go in for proceedings under the Land Acquisition Act only if the negotiations fail. In such cases, the delay in initiating the acquisition proceedings would result in the Department/Public Sector Undertaking concerned having to incur more expenditure and meanwhile, the market value of the land will have increased appreciably.

All Departments of Government and the Public Sector Undertakings are therefore, requested that whenever private negotiations are proposed to be undertaken for acquiring land, they should simultaneously, move Govt, for publication of a Notification under Section 4(1) of the Land Acquisition Act, so that, in the event of failure of negotiations, the interest of Government are not adversely affected by way of having to pay increase price for the land.

It may be noted that after publication of the Notification under Section 4(1) of the L.A. Act, the report of Enquiry under Section 5(A) has to be submitted to Government within a period of 1 year from the date fixed in the preliminary Notification for filling objections to the proposed acquisition. It is therefore, imperative that the Government Department / Public Sector Undertaking concerned should ensure that the negotiations are carried on expeditiously and concluded well before the expiry of the time-limit for the report under Section 5(A), so that, in the event of the failure of negotiations the proceedings under the Land Acquisition Act can be continued.

The Land Acquisition Officers concerned should also take care to see that in such cases, the enquiry under Section 5(A) of the Land Acquisition Act is proceeded with expeditiously and that report regarding the enquiry is submitted to Government well within the prescribed time-limit notwithstanding the fact that the acquiring body is trying to purchase the land by private negotiations.

It is finally clarified that the foregoing instructions will apply only to cases where the land is to be acquired for Government Departments and Public Sector Undertakings and not for Local Bodies or any private Parties.

Sl No 998

Circular Number RD 49 AQK 68

Date 12/17/68

Section Land Acquisition

Subject Payment of compensation on phut kharab included in the acquisition area.

Body
RD 49 AQK 68 Dt 17-12-68[C]

[Letter from the Secretary to Government, Revenue Department, Bangalore addressed to the Deputy Commissioner, Kolar District, Kolar with a copy to the Divisional Commissioner, Bangalore in the continuation of Government. Letter of even number date 20-5-68]

Subject:- Payment of compensation on phut kharab included in the acquisition area.

With reference to your letter No.LAQ-C-16/68-69 date 1-5-1968 on the subject above, I am directed to state that the phut kharab which is included in an assessed S. No. belongs to the owner of the S. No. and when the phut kharab is acquired, the owner of the S. No. in which it is included is entitled to compensation for such phut kharab of the land.

Foot Notes

Sl No 1000

Circular Number RD 61 AQP 68

Date 07/02/68

Section Land Acquisition

Subject Clarification regarding furnishing of Certified copies of report under Section 5A to objectors.

Body
RD 61 AQP 68 Dt. 2-7-68[C]

Subject:- Clarification regarding furnishing of Certified copies of report under Section 5A to objectors.

In circular No. RD 1 AQP 68, dated 17th January, 1968, instructions were issued to the effect that the objectors are entitled to a copy of the report under Section 5(A) (2) of the Land Acquisition Act sent to Government by a Land Acquisition Officer.

The Divisional Commissioner, Mysore Division, Mysore has raised a doubt as to whether a copy of the report under Section 5A may be granted to the objectors on requisition from them or whether a copy of such report should necessarily be furnished to all the objectors/interested parties as a matter of course.

It is hereby clarified that the Deputy Commissioner, concerned should intimate the objectors of the fact of submission of 5A report to Government and that a certified copy of the report should be given to the objectors only if they so desire and apply for the same and not otherwise. It may please be noted that the fact of submission of 5A report to Government should invariably be intimated to the objectors and that certified copies of the 5A report should be made available to them only if they apply for it.

Sl No 1005

Circular Number RD 1324 LPW 66

Date 02/01/68

Section Land Acquisition

Subject Factors to be taken into consideration before initiation of Acquisition Proceedings - Issue of
instructions.

Body **RD 1324 LPW 66 dt. 1-2-68 [C]**

Subject:- Factors to be taken into consideration before initiation
of Acquisition Proceedings - Issue of instructions.

Several instances have come to the notice of Government in which the omission to observe important rules of procedure relating to Land acquisition and appreciation of several factors to be taken into consideration in determining the suitability or otherwise of a particular land for acquisition, has often led to the necessity of either cancelling the preliminary notification or withdrawing the final notification. The following are some of the reasons generally adduced for cancelling/withdrawing the Land acquisition notifications already published:-

1. Among the applicant who has requested for sites in the village, none is there who does not own a site or a house. Therefore the preliminary notification be cancelled.

2. There are plenty of vacant sites in the village which can be disposed of to the persons who are really in need of sites for the construction of houses. Hence the acquisition proceedings be dropped.

3. The land already notified for the purpose of manure pits is not suitable, as the dirty water would flow into the village close by and the sanitary condition would worsen.

4. The Acquisition of land for burial ground, already notified, is close to building sites and Industrial Training Centre and Estate, and therefore unsuitable.

5. The land notified is not fit for the extension of village site, since it is a garden land and the land is hypothecated to Government in connection with Taccavi loan.

6. That the present land bearing certain S. Nos. plus land available in a particular S. No. is sufficient and therefore the present acquisition of notified land may be cancelled or dropped.

7. The notified land is being cultivated with ragi crops with mulberry and cocoanut trees standing on the lands.

8. The land notified is not liked by the party/village Panchayat for the purpose of village extension.

9. The occupants are not actually in possession or living on the lands notified for acquisition but are in possession of some other lands. Therefore the lands in actual possession will have to be notified.

10. That the lands selected is low lying and likely to become marshy during the rainy season, as the water rushes to the village which is just adjacent to the stream.

11. That the land is owned on behalf of a limited company and that conversion fine has already been paid and the acquisition would cause great hardship to the company if the lands are acquired.

12. That the portions to be acquired are found to vest already with the Municipality.

13. That the notification was not immediately followed by a public notice in the village.

14. That the persons to be provided with sites are few and they could be provided with sites out of the land available with the Panchayat.

15. That the lands are very fertile.

16. That Government would have to pay heavy compensation if acquired.

17. That the concerned Village Panchayat has not credited or failed to credit the balance of cost despite sufficient opportunity given to the Village Panchayat.

18. That the proposed lands are at a distance of about a furlong from the existing colony and not continuous and therefore unsuitable for acquisition.

19. That there are khanas with valuable tamarind trees of over 2- to 25 years standing.

20. Only one person is in need of site and that such a person will be provided with a site out of the gramtana and therefore acquisition be dropped.

21. That the lands have already been acquired by private schools and buildings have also come up and in the circumstances the notification already published be withdrawn.

22. The Land Acquisition Officer has not published the substance of the notification immediately following its publication in the Gazette as required under the provisions of the Land Acquisition Act.

23. Owing to change in the alignment of the road, the acquisition may be dropped.

24. That a transmission line of the Electricity Board runs in the land already notified for acquisition and therefore the acquisition proceedings may be dropped.

25. The Acquiring Body has not provided the funs. Therefore the acquisition proceedings may be dropped.

It is needless to point out that if only the Acquisition Officers had examined and appreciated the state of affairs before initiating the acquisition proposals properly, the need for cancellation/withdrawal of a notification already published would not have arisen at all. In this context, it should be noted by all concerned that re-issue of land acquisition notification would entail the liability of the State, while passing the award, as the value of property on the date of preliminary notification is significant, apart from causing avoidable waste of time and labour at all levels. Government would therefore desire that the Land Acquisition Offices should thoroughly examine the position obtaining at the time of initiating the acquisition proposals in the light of 25 points cited above and scrupulously avoid such situations enumerated at para 1 above. If instances of lapse on the part of the Land Acquisition Officers to examine the acquisition cases as above are observed, or are brought to the notice of Government, Government will be constrained to take disciplinary action against such defaulting officers under rules in force.

Sl No 1006

Circular Number RD 1 AQP 68

Date 01/17/68

Section Land Acquisition

Subject To furnish a copy of the Enquiry Report under Section 5-A of the L.A. Act.

Body **RD 1 AQP 68 dt. 17-1-68 [C]**

Subject:- To furnish a copy of the Enquiry Report under Section 5-A of the L.A. Act.

In the Writ Petition No. 1653/65, the Hon'ble High Court of Mysore have held that the purpose of the requirement under Sec. 5-A[2] of the L.A. Act is that the objectors should have an opportunity to make suitable representation to the Government, if the recommendation of the Deputy Commissioner is adverse to them. No useful purpose is served by merely intimating the objectors that the Deputy Commissioner has sent his report to Government. The reason why the objector is informed about the sending of the report is to enable him to effectively make a representation to the Government under Section 15-A of the Act, if the report is adverse to him. It is obvious that the objector cannot canvass the correctness of the report unless a copy of the same is given to him. The ruling of the High Court is based on the observations of the Supreme Court reported in AIR 1967 - Supreme Court 1269, that it is one of the fundamental rules of our constitutional set up that every citizen is protected against exercise of arbitrary authority by the State or its officers. If there is power to decide and determine to the prejudice of a person, duty to act judicially is implicit in the exercise of such power. If the essentials of justice be ignored and the orders to the prejudice of a person is made, the order is a nullity. That is a basic concept of the rule of law and importance thereof transcends he significance of a decision in many a particular case.

Consequently, the objectors are entitled to a copy of the enquiry report. Suitable instructions may be issued immediately to all the officers concerned to adhere to this procedure strictly.

Sl No 1008

Circular Number RD 57 AQW 67

Date 08/16/67

Section Land Acquisition

Subject Publication of public notice under Section 4(1) of the Land Acquisition Act.

Body **RD 57 AQW 67 Dt. 16-8-67 [L]**

[Letter from the Secretary to the Government of Mysore, Revenue Department to the Deputy Commissioner, Tumkur District, Tumkur.]

Subject:- Publication of public notice under Section 4(1) of the Land Acquisition Act.

With reference to your D.O. Letter No. LAQ. S R. 333/62-3, dated 18th July 1967, I am directed to state that the question, whether a separate public notice of the substance of preliminary notification, published in the Gazette as contemplated in Section 4(1) and Rule 3 apart from the gazette notification published under Section 4(1) of the L.A. Act containing already a notice has to be issued and got published in the locality, was examined in detail.

It is hereby clarified that a public notice should issue under the signature of the Deputy Commissioner drawing the attention of the public to the fact that a notification under Section 4(1) of the Land Acquisition Act had issued under which it was intended to acquire certain lands in that village. The detailed section 4(1) notification should also be annexed to this public notice for information of the public. If such a notice were to issue under the signature of the Deputy Commissioner and as an enclosure to that notice a copy of the printed gazette notification under Section 4(1) of the Land Acquisition Act were to be attached, then it would conform to the requirements of the Land Acquisition Act.

The procedure should be strictly followed and the public notice alongwith a copy of the printed copy of the gazette notification under Section 4(1) of the L.A. Act should be published in the concerned villages within a period of 14 days from the date of 4(1) notification published in the Gazette as already instructed in Government letter No. RD 137 LQM 66, dated 3rd May, 1967.

Sl No 1011

Circular Number RD 137 LQM 66

Date 05/03/67

Section Land Acquisition

Subject Preliminary notification fixing the date for objections-Period prescribed starting point.

Body **RD 137 LQM 66 dt. 3-5-67 [L]**

[Letter from the Secretary to the Government of Mysore, Revenue Department to the Deputy Commissioner, Tumkur District TUMKUR.]

Subject:- Preliminary notification fixing the date for objections-

Period prescribed starting point.

With reference to your letter No. LAQ. SR. 305/62-63, dated 1-9-1966 on the subject mentioned above, I am directed to state that Circular No. RD 207 LQM 65, dated 20-11-1965 was issued inconformity with the ruing give by the Hon'ble High Court of Mysore in Writ Petitions Nos. 1200/61 and 533/61 reported in AIR 1963/MYS 255. Further in order to satisfy the requirements of Sections 4 (1A) and 5A (1) of the L.A. Act and Rule 3 of the L.A. Rules, Government direct that a clear period of 45 days (as envisaged in Circular No. RD 87 LQM 61 dated 29-12-61) should be given from the date of publication of the 4(1) Notification in the gazette for inviting objections, provided the substance of such notification is published in the village within a period of 14 days from the date of Notification in the Gazette. Such a procedure ensures affording a clear period of 31 days for preferring objections to the intended acquisition in question.

It may therefore be seen from the above paragraph that prompt action has to be taken by the concerned Land Acquisition Officers to arrange for publication of the substance of the Notification in the village Chavadi soon after the receipt of copies of Gazette Notification from the Compiler, Mysore Gazette is being requested to ensure prompt despatch of printed copies of the Notifications immediately after their publication in the Gazette.

Necessary instructions may be issued to all the Land Acquisition Officers of your District to strictly adher to the procedure envisaged in para 1 of this letter and any laches on the part of the defaulting officers may be brought to the notice of Government.

Sl No 1010

Circular Number RD 1324 LPW 66

Date 05/05/67

Section Land Acquisition

Subject Acquisition of lands under the urgency clause of the Land Acquisition Act - Instructions regarding.

Body **RD 1324 LPW 66 Dt. 5-5-67 [C]**

Subject: Acquisition of lands under the urgency clause of the
Land Acquisition Act - Instructions regarding.

Government have observed that, of late, there is a steady increase in the number of proposals that are being received from the Deputy Commissioners recommending for invoking the urgency clause for land acquisition, on the ground that a particular irrigation project, formation of a road, construction of tank etc., has to be executed according to the time schedule fixed.

In this connection, it may be stressed that the power of dispensing with the provisions of Section 5A of the L.A. Act cannot be arbitrarily exercised. The Hon'ble High Court of Mysore in the case of Sri. K. Shivappa Vs. Chief Secretary (reported in 1965 Mysore LAW J. 275) have observed that "normally compliance with Section 5A which enjoius a hearing to a person who is entitled to oppose the acquisition is indispensible, and a direction dispensing with adherence to the provision of Section 5A can be issued only in exceptional cases in which the case is so urgent that the time that is likely to be spent for the hearing directed by Section 5A would produce such harm or public mischief, that a direction dispensing that hearing is imperative."

In view of the above ruling, the Deputy Commissioners and the Land Acquisition Officers are requested to examine each case and recommend the use of the urgency clause only if there is adequate justification. The reasons for invoking the urgency clause should be setforth in full.

It is always safe to issue preliminary notifications under normal clause except in exceptional cases.

Foot Notes

P.RAM REDDY V. LAND ACQUISITION OFFICER HYDERABAD [1995] INSC 92 (27 January 1995)

VENKATACHALA N. (J) VENKATACHALA N. (J) RAMASWAMY, K.

CITATION: 1995 SCC (2) 305 JT 1995 (1) 593 1995 SCALE (1)332

ACT:

HEADNOTE:

VENKATACHALA, J.:

1. Having granted leave to appeal sought for in the above Special Leave Petitions directed against the common judgment and decree dated 19.4.1993 rendered in Appeal Nos. 1565 and 2087/91 by the High Court of Andhra Pradesh at Hyderabad and heard arguments of learned counsel appearing for the contesting parties in the appeals, we propose to dispose of all these appeals by this common judgment.

2. Sri P. Ram Reddy, the appellant in appeals arising out of S.L.P's. Nos. 1336263/93 and respondent in appeal arising out of S.L.P. No. 18202/93, to be referred to hereinafter as

'the claimant', was the owner in possession of dry land of, as large an extent as, IO acres 17 guntas comprised in Survey Nos. 48/24 and 48/26 of Katedhan Village lying in the outskirts of Hyderabad. One acre 25 guntas of land out of 5 acres 22 guntas of land in Survey No. 48/24 and 2 acres 15 guntas of land out of 4 acres 35 guntas of land in Survey No. 48/26 were the lands included in the total extent of 14 acres and 35 guntas of land proposed to be acquired by Hyderabad Urban Development Authority -"HUDA" for formation of inner ring road required to connect Old Karnool Road with Hyderabad-Bangalore National Highway No.7, under Land Acquisition Act, 1894 as amended by Act 68 of 1994 -- 'the L.A. Act', by a Notification under Section 4(1) thereof, published in the modes prescribed thereunder, by issuance of public notice in the locality on 2.9.1985. The acquisition of the said lands having been completed 597 by a declaration made and published under Section 6 of the LA Act, notice under section 9 was issued to the claimant calling upon him to make his claim for compensation of the acquired land before the Land Acquisition Officer of the HUDA -hereinafter to be referred to as "the LAO". In response to the said notice, the claimant claimed award of compensation by the LAO for his acquired lands at the rate of Rs. 1 50/- per square yard apart from the statutory benefits which he was entitled to get under the LA Act. The LAO, by his award made under Section II of the LA Act, determined the market value of the claimant's acquired land at Rs. 12 per square yard and awarded to him the amount of compensation together with statutory benefits. Since that award of the LAO was unacceptable to the claimant, he made an application to the LAO under Section 18 of the LA Act and got the application referred to the Court of the Subordinate Judge, Ranga Reddy District -- "Civil Court", for determination of the just compensation payable to him. On that reference registered as A.S. 129/88, the Civil Court held the inquiry as required by the LA Act and on the basis of the inquiry so held, determined the market value of the claimant's lands at Rs.80 per square yard and accordingly made an award and decree dated 18.4.1991 together with the statutory benefits. That award and decree being appealed against in the High Court by the claimant and the LAO respectively in A.S. No. 1565/91 and A.S. No.2087/ 91, the former seeking grant of further enhanced compensation and the latter seeking reduction in the granted compensation.

Both the appeals being clubbed together and heard by the Division Bench of the High Court, the market value of the claimant's land was reduced to Rs. 32 per square yard with proportionate reduction in the statutory benefits, by its common judgment and decree rendered on 19.4.1993. While the claimant questioned the correctness of the said judgment and decree of the High Court by filing appeals arising out of S.L.P's. Nos. 13362-13363/ 93, the LAO challenged the correctness of the same judgment and decree by filing appeal arising out of S.L.P. No. 18202/93, as stated at the outset.

The above stated facts make it clear that the LAO, by his award (Ex.B-1) fixed the value of the acquired land at Rs.20 per square yard on the basis of the value fetched by sale of residential building plots at Rs. 20 per square yard under Sale Deed dated 14.10.1982whereunder 200 square yards of plot in Survey No.48/13 of Katedhan Village was sold at Rs.

20 per square yard (Ex. B-3); sale deed dated 16.10.1982 whereunder 200 square yards plot in Survey No. 48/14 was sold at Rs. 20 per square yard (Ex.B-4), and Sale Deed dated 1.2.1983 whereunder 200 square yards plot in Survey No.

48/12 had been sold at Rs.20 per square yard, Ex.B-5.

However, he fixed the market value of the acquired land at Rs. 12 per square yard by deducting 40% area towards lay-out losses. He granted statutory benefits also payable for the acquired land. It also becomes clear from that award that the sale deeds were seen and the local inspection had been held by the LAO before making that award.

3. The Civil Court by its judgment and decree, which is referred to by us earlier, enhanced the market value of the acquired land to Rs. 80 per square yard relying upon the amounts of consideration mentioned under sale deeds and gift deeds (Exs. A-1 to A-5) and also the probable value of building plots in the locality of the 598 acquired lands mentioned in Ex. A6 - the extract of Basic Valuation Register, after making certain percentage of deduction out of such amount or value towards what is called as "lay-out losses".

4. When that award and decree of the Civil Court was challenged in the High Court,it was found by the High Court that Exs. A-1 to A-5, the Sale Deeds and Gift Deeds were unreliable and could not be acted upon by it for the reasons it gave in that regard. It also refused to place any reliance on Ex.A-6, the Basic Valuation Register extract, on its view that it was not safe to determine the market value of lands acquired under the LA Act on the value found in Basic Valuation Register. However, it found that the value of Rs.20 per square yard, on which the LAO had determined the market value of the acquired lands, was on the lower side for determining the market value of that land.

Consequently, it increased the value of Rs.20 per square yard relied upon by the LAO by another Rs.20 per square yard. Thereafter, the High Court deducted 20% towards lay-out losses out of Rs.40 per square yard and determined the market value of the acquired lands at Rs.32 per square yard.

Therefore, it rendered its judgment and decree in the appeals by reducing the market value of the acquired lands from Rs.80 per square yard awarded by the Civil Court to Rs.32 per square yard of the claimant's acquired land of 4 acres and 3 guntas and granted in addition 30% solatium on the market value, 12% additional amount on such market value from the date of the notification i.e. 24.7.1985 till the date of the award i.e. 14.7.1988 and interest on the enhanced amount of compensation under Section 28 of the LA Act.

5. Shri P.P. Rao, learned Senior Counsel, who appeared before us for the claimant, raised several contentions against the correctness of the judgment and decree of the High Court. He contended, firstly, that the High Court had failed to take into consideration the very statement of the LAO made in his award that the acquired land had high potentiality for developing into a Housing Colony, in determining its market value of the acquired land and that non-consideration had resulted in reducing the market value of the acquired lands instead of enhancing their market value; secondly, when the Civil Court had determined the market value of the acquired land of the claimant at Rs.80 per square yard on the basis of amounts of consideration of building plots mentioned under Exs. A-1 to A-3 (Sale Deeds) and Exs. A2, A-4 and A-5 (Gift Deeds) and Ex. A-6, Basic Valuation Register extract, it should not have rejected Exs.

A-1 to A-6 themselves as unreliable documentary evidence for fixing the market value of the acquired land; thirdly, when the Civil Court had determined the market value of the acquired land of the claimant at Rs.80 per square yard on the basis of the amounts of consideration mentioned in Exs.

A-1 and A-3 (Sale Deeds) and Exs. A-2, A-4 and A-5 (Gift Deeds), and Ex. A-6 (Basic Valuation Register extract), the High Court should not have rejected Exs. A-1 to A-6 themselves as unreliable documentary evidence for fixing the market value of the acquired land, particularly, when nothing damaging was elicited in the cross-examination of the witnesses who had spoken about those documents;

fourthly, when the High Court had held that the Sale Deeds, Exs. B-3 to B-5, the Certified copies of the Sale Deeds produced in evidence on behalf of the LAO had not been proved 599 by examination of the witnesses connected with them, it could not have determined the market value of the acquired land on the basis of the value of land fixed by the LAO at the rate of Rs.20 per square yard particularly when that rate was referable to value of the plots of land sold under Ex. B-3 to B-5, marked in evidence under section 51 of the LA Act; fifthly, when the High Court had doubled the value of plots fetched under Ex. B-3 to B-5 for arriving at the correct market value of the acquired land, it could not have determined the market value of the acquired land at Rs.32 per square yard, by deducting 20% out of it towards lay-out losses; and lastly, that the High Court had committed an error in not granting the amount calculated at the rate of 12% per annum payable under section 23(1A) of the LA Act on the market value of the acquired land from the date of the preliminary Notification till the date of taking possession of the lands.

6. Shri G. Prabhakar, the learned counsel, who appeared before us for the LAO, while refuting the contentions raised for the claimant, submitted that although the High Court had held that the Sale Deeds, Ex. B-3 to B-5 had not been proved by examination of witnesses connected with them, the High Court could not be found fault with, for fixing the market value of the acquired land on the basis of the award of the LAO based on Exs. B-3 to B-5 when the claimant's evidence adduced in disproof of that award had not been accepted by it (the High Court). It was further submitted by him that the High Court could not have doubled the rate of Rs. 20 per square yard fixed as the value of the acquired land by the LAO when it had not adverted to the basis on which the value was so doubled. The High Court, it was also submitted by him, was not right in granting the amount in addition to the market value under Section 23 (IA) of the LA Act, in the manner in which it had done. It was lastly submitted by him that the market value of the acquired land determined by the High Court calls to be reduced to the level of the market value of such land determined by the LAO and such market value should form the basis for grant of statutory benefits under the L.A. Act.

7. In view of the aforesaid contentions and submissions of learned counsel for the contesting parties, the questions which require to be considered and answered in deciding the appeals, could be formulated thus :

(1) Whether the building potentiality of a land acquired under the LA Act requires to be taken into consideration in determining its market value, and if so, how has that to be done ? (2) Whether the value of building plots as found in the Basic Valuation Register

maintained under the Stamp Act or its Rules, could form the basis for determination of the market value of lands acquired under the LA Act ? (3) Whether the value of land mentioned in an instance of sale or an instance of gift claimed to compare with the acquired land warrants acceptance as the correct value of such land merely because the witnesses who will have given evidence as regards them, on behalf of the claimants had not been cross- examined or effectively crossexamined on behalf of the L.A.O.? (4) Whether the value fetched by sale of a small extent of land can be made the basis for determination of the 600 market value of a large extent of the acquired land ? (5) Will it not be open to a Court which rejects the evidence adduced by the claimant in support of his claim for enhanced compensation for his acquired land made in a reference under section 18 of the LA Act, to rely upon the contents of the award of the LAO made under section 11 thereof to enhance the compensation awardable for such land ? If the LAO's award is based on value fetched under sale deeds on their perusal as contained in the registers maintained under the Registration Act, has he to prove those sale deeds in Court for sustaining his award ? (6) What is the amount which could be awarded under section 23 (1-A) of the LA Act, in addition to the market value of the acquired land ? (7) Does the market value in respect of which solatium is awardable under section 23(2) of the LA Act include the amount payable under section 23 (1-A) of the LA Act ? (8) What is the amount of compensation awardable for the lands of the claimant acquired under the LA Act which could be regarded as just and reasonable?

8. We shall now proceed to consider and answer the said questions seriatum.

Re: Question (1)

9. Building Potentiality of acquired land Market value of land acquired under the LA Act is the main component of the amount of compensation awardable for such land under section 23(1) of the LA Act. The market value of such land must relate to the last of the dates of publication of Notification or giving of public notice of substance of such Notification according to section 4(1) of the LA Act. Such market value of the acquired land cannot only be its value with reference to the actual use to which it was put on the relevant date envisaged under section 4(1) of the LA Act, but ought to be its value with reference to the better use to which it is reasonably capable of being put in the immediate or near future. Possibility of the acquired land put to certain use on the date envisaged under section 4(1) of the LA Act, of becoming available for better use in the immediate or near future, is regarded as its potentiality.

It is for this reason that the market value of the acquired land when has to be determined with reference to the date envisaged under section 4(1) of the LA Act, the same has to be done not merely with reference to the use to which it was put on such date, but also on the possibility of it becoming available in the immediate or near future for better use, i.e., on its potentiality. When the acquired land has the potentiality of being used for building purposes in the immediate or near future it is such potentiality which is regarded as building potentiality of the acquired land.

Therefore, if the acquired land has the building po- tentiality, its value, like the value of any other potentiality of the land should necessarily be taken into account for determining the market value of such land.

Therefore, when a land with building potentiality is acquired, the price which its willing seller could reasonably expect to obtain from its willing purchaser with reference to the date envisaged under section 4(1) of the LA Act, ought to necessarily include, that portion of the price of the land attributable to its building potentiality. Such price of the acquired land then 601 becomes its market value envisaged under section 23(1) of the LA Act. If that be the market value of the acquired land with building potentiality, which acquired land could be regarded to have a building potentiality and how the market value of such acquired land with such building potentiality requires to be measured or determined are matters which remain for our consideration now.

10. An acquired land could be regarded as that which has a building potentiality, if such land although was used on the relevant date envisaged under section 4(1) of the LA Act for agricultural or horticultural or other like purposes or was on that date even barren or waste, had the possibility of being used immediately or in the near future as land for putting up residential, commercial, industrial or other buildings. However, the fact that the acquired land had been acquired for building purposes, cannot be sufficient circumstance to regard it as a land with building poten- tiality, in that, under clause (4) of section 24 of the LA Act that any increase to the value of land likely to accrue from the use to which it will be put when acquired, is required to be excluded. Therefore, wherever, there is a possibility of the acquired land not used for building purposes on the relevant date envisaged under Section 4(1) of the LA Act, of being used for putting up buildings either immediately or in the near future but not in the distant future, then such acquired land would be regarded as that which has a building potentiality. Even so, when can it be said that there is the possibility of the acquired land being used in the immediate or near future for putting up buildings, would be the real question. Such possibility of user of the acquired land for building purposes can never be wholly a matter of conjecture or surmise or guess. On the other hand, it should be a matter of inference to be drawn based on appreciation of material placed on record to establish such possibility. Material so placed on record or made available must necessarily relate to the matters such as :

(i) the situation of the acquired land vis-a-vis, the city of the town or village which had been growing in size because of its commercial, industrial, educational, religious or any other kind of importance or because of its explosive population;

(ii) the suitability of the acquired land for putting up the buildings, be they residential, commercial or industrial, as the case may be;

(iii) possibility of obtaining water and elec- tric supply for occupants of buildings to be put up on that land;

(iv) absence of statutory impediments or the like for using the acquired land for building purposes;

(v) existence of highways, public roads, layouts of building plots or developed resi- dential extensions in the vicinity or close proximity of the acquired land;

(vi) benefits or advantages of educational institutions, health care centres, or the like in the surrounding areas of the acquired land which may become available to the occupiers of buildings, if built on the acquired land; and (vii) lands around the acquired land or the acquired land itself being in demand for building purposes, to specify a few.

11. The material to be so placed on record or made available in respect of the 602 said matters and the like, cannot have the needed evidentiary value for concluding that the acquired land being used for building purposes in the immediate or near future unless the same is supported by reliable documentary evidence, as far as the circumstances permit. When once a conclusion is reached that there was the possibility of the acquired land being used for putting up buildings in the immediate or near future, such conclusion would be suf- ficient to hold that the acquired land had a building potentiality and proceed to determine its market value taking into account the increase in price attributable to such building potentiality.

12. Then, comes the question of determining the market value of the acquired land with building potentiality. Undoubt- edly such market value of the acquired land with building potentiality comprises of the market value of the land having regard to the use to which it was put on the relevant date envisaged under Section 4(1) of the LA Act plus the increase in that market value because of the possibility of the acquired land being used for putting up buildings, in the immediate or near future. If there is any other land with building potentiality similar to the acquired land which had been sold for a price obtained by a willing seller from a willing purchaser, such price could be taken to be the market value of the acquired land, in that, it would have comprised of the market value of the land as was being actually used plus increase in price attributable to its building potentiality. If the prices fetched by sale of similar land with building potentiality in the neighbourhood or vicinity of the acquired lands with building potentiality, as on the relevant date envisaged under Section 4(1) of the LA Act, are unavailable, it becomes necessary to find out whether any building plots laid out in a land similar to the acquired land had been sold by a willing seller to a willing buyer on or near about the relevant date under Section 4(1) when the acquired land had been proposed for acquisition and then to find out what would be the price which the acquired land would have fetched if had been sold by making it into building plots similar to those sold. In other words, an hypothetical lay- out of building plots in the acquired land similar to that of the layout of building plots actually made in the other similar land, has to be prepared, and the price fetched by sale of building plots in the lay-out actually made should form the basis for fixing the total price of the acquired land with building potentiality, to be got if plots similar to other plots had been made in the latter land and sold by taking into account plus factors and minus factors involved in the process.

13.Prices fetched by sales of building plots which may become available could be of building plots in either a fully developed layout of building plots or in an un- developed layout of building plots, situated in the vicinity of the acquired land with building potentiality. If the market value of the acquired land with building potentiality has to be fixed on. the basis of the evidence of the said prices, the first thing required to be done is to prepare a hypothetical layout of building plots of the acquired land itself Then, how much of land out of the acquired land becomes available to be made into plots similar to those in the developed layout of building plots or in the undeveloped layout of building plots has to be found out. If the building plots which so become available were to be sold at the prices at which the 603 building plots in the developed layout of building plots or undeveloped layout of building plots could have been sold on the date envisaged in section 4(1) of the Act, what would be the total amount of such prices which could have been ob- tained has to be seen. Then, what could have been the losses suffered or expenses incurred for getting such total amount has to be found out. The market value of the acquired land with building potentiality, can then be regarded as the total amount of the prices of sales of all the building plots envisaged in the hypothetical layout of building plots in the acquired land minus the losses which could have been suffered or expenses which could have been incurred in making the hypothetical layout of building plots in the acquired land on par with the developed layout of building plots or the undeveloped layout of building plots, as the case may be. If losses to be suffered or expenses to be incurred for making a layout of building plots in the acquired land with building potentiality for purposes of selling such building plots at the prices to be fetched by similar building plots in the developed layout of building plots or in the undeveloped layout of building plots are to be found out, the losses which might have been suffered or expenses which might have been incurred by the owners of the lands of either of a developed layout of building plots or of an undeveloped layout of building plots, in making such lay outs, could prove to be the best evidence. The evidence of losses suffered or expenses incurred in having made a layout of building plots may relate to lands lost for laying roads, drains, sewerages, parks etc., costs incurred in the making of roads, drains, sewerages, providing water supply, electric supply, losses on investments and paying of conversion charges, development charges etc. in a developed layout or an undeveloped layout in which building plots had been laid and sold and which sales form the basis for determining the market value of the acquired land. If evidence to be adduced in the said regard is of public authorities or local boards or private developers who will have formed such layouts of building plots in the lands in the neighbourhood of the acquired land and sold them, it could be of great value. No difficulty arises when all the materials needed to determine the market value of the acquired land with building potentiality on the basis of a hypothetical layout of building plots to be formed in respect of it is made available to the Court, so as to enable it to find out the possible market value of the acquired land with reference to the price to be fetched by sale of building plots to be made in such land. But, owners of the acquired land with building potentiality, rarely produce all the material or evidence needed for the Court to determine the market value of the acquired land with building potentiality on the basis of a hypothetical layout of building plots to be thought of by the Court in respect of such land, although they rely on the price fetched by sale of plots in a developed layout or an undeveloped layout for determining the market value of their lands with building potentiality in the vicinity of such layout. It is where, the Court may have to inevitably fix the market value of the acquired land with building potentiality on the basis of the prices got in the sale transactions relating to the building plots in a developed or an undeveloped layout, relied upon by the owners of the land, if such transactions are found to be genuine. A simple method, therefore, is evolved by courts in determining the market 604 value of the acquired land with building potentiality with reference to the retail price to be fetched by sale of plots in a fully developed layout as on the date of publication of Notification under section 4(1) of the Act In Bombay Improvement Trust v. Marwanji Manekji Mistry reported in AIR 1926 Bombay 420, the said method is referred to by Macleod, C.J. as that where the wholesale price of the acquired land with building potentiality could be fixed at one-third to one-half of the retail price fetched by sale of building plots in a developed layout of building plots, depending upon the nature of development taken place in such layout.

Thus, when it becomes inevitable for the Court to fix the market value of the acquired land with building potentiality on the basis of the price fetched by sale of a building plot in a developed layout of building plots in the vicinity, it must, in our view, fix the wholesale market value of the acquired land with building potentiality at one-third to one-half of the retail price got by genuine sales of plots in a developed layout in the vicinity, by deducting two- thirds to onehalf out of the retail prices of plots, as losses or expenses involved in having made the land where the plots are formed as developed, according to the degree of development. For instance, if the retail price of plot is Rs. 12/- per square yard, the wholesale price of the acquired land with building potentiality could be fixed at rupees varying between Rs.4/- and Rs.6/- depending upon the nature of development found in the layout of the plot sold in retail. Coming to fixation of the wholesale price of the acquired land with building potentiality on the basis of retail price of a building plot sold out of an undeveloped layout of building plots, such wholesale price ought to be fixed by deducting at least one-third of the retail price of the building plot in such layout, because such would be the least loss to be suffered in forming a layout of building plots in the acquired land with building potentiality, after leaving out land for roads, drains etc. by obtaining the needed permissions from public authorities for making such layout. Therefore, the wholesale price of the acquired land could be fixed at Rs.8/- per square yard if the price fetched or to be fetched by sale of building plot in an un- developed layout is Rs. 12/-. However, in either of the said cases whether it be the determination of the market value of the acquired land with building potentiality with reference to the price fetched by sale of plots in a well developed layout in the neighbourhood or whether it be the determination of the market value of the acquired land with building potentiality with reference to the price fetched by sale of building plots in an undeveloped layout of building plots in the neighbourhood, it becomes inevitable for the Court to find out what will be the price fetched or to be fetched by the sales of plots in the layouts, relied upon by any of the parties with reference to the price which the plots could have fetched if sold on the date of the publication of the preliminary notification under Section 4(1) of the Act. Further, where no evidence of price fetched by the sales of the plots in layouts of building plots in the neighbourhood of the acquired lands becomes available, then what could be done is to find out the market value of the acquired land with reference to the relevant date of publication under Section 4(1) of the LA Act, according to the actual use to which it was put and increase its value by a small percentage having regard to the degree of its building potentiality ascertained on the basis of evidence 605 to be made available in that regard. A small percentage increase to be given shall not exceed 1/5th of the market value of the land found out according to its actual user since resort to the method of giving increased value for such building potentiality arises only when there is no evidence of sales of building plots in the neighbourhood of the acquired land indicating that there was no immediate de- mand, as such, for building plots even if formed in the acquired land.

14. Hence, whether the acquired land has building potentiality or not, while has to be decided upon reference to the material to be placed on record or made available by the parties concerned, the market value of the acquired land with building potentiality, is also required to be deter- mined with reference to the material to be placed on record or made available in that regard by the parties concerned and not solely on surmises, conjectures or pure guess.

Re: Question (2)

15. Value of building plots found in the Basic Valuation Register The value of building plots mentioned in the Basic Valuation Register can be of no assistance in determining the market value of the land acquired under the LA Act is no Divisional Officer, Adilabad, A.P. and Others [(1 994) 4 SCC 595], it is ruled by this Court that the value of lands mentioned in the Basic Valuation Register prepared and maintained for the purpose of collecting stamp duty since lacks statutory base, the same cannot form the foundation to determine the market value of the lands acquired under the LA Act by observing thus:

"It is, therefore, clear that the Basic Valu- ation Register prepared and maintained for the purpose of collecting stamp duty has no statutory base or force. It cannot form a foundation to determine the market value mentioned thereunder in instrument brought for registration. Equally it would not be a basis to determine the market value under Section 23 of the Act, of the lands acquired in that area or town or the locality or the taluk etc."

16. Therefore, the value of building plots as found in the Basic Valuation Register maintained under the Stamp Act cannot form the basis for determining the market value of the lands acquired under the LA Act.

Re: Question (3):

17. Non cross-examination or ineffective cross-examination of witnesses for the claimant Oral evidence is generally adduced in the enquiry held by Court for determination of the compensation payable for lands acquired under the LA Act. Such oral evidence, generally, comprises of either of the claimants or their witnesses examined in support of the claims of claimants for grant of enhanced compensation, which in its very nature, would be referable to matters of situation of the acquired lands, their surroundings, their value or the like. Several statements would be made by such claimants or their witnesses when they are examined-in-chief in Court, on matters that may bear on the market value of acquired lands. If the witnesses who make such statements arc not subjected to cross-examination or effective cross- examination or no contrary evidence is adduced, is the Court obliged to accept such state- 606 ments to be true in determining the market value of the acquired lands ? It is, no doubt true, that whenever oral evidence is adduced by parties on certain matters in controversy, it may become difficult for Court to overlook such evidence, if it is not shown by effective cross- examination of such witnesses who have given such evidence or by adducing contra-evidence, that the oral evidence was unreliable or the witnesses themselves are not credit worthy. But, in land acquisition references before Civil Courts, when witnesses give oral evidence in support of the claims of claimants for higher compensation the ineffective cross-examination of such witnesses, is not an uncommon feature if regard is had to the manner in which claims for enhanced compensation in land acquisition cases are defended in courts on behalf of the State. Indeed, when a question arose before this Court whether the Court is bound to accept the statements of witnesses only because they have not been effectively cross-examined or evidence in rebuttal has not been adduced, it was observed by this Court in Chaturbhuj Pande and Others v. Collector, Raigarh, [AIR 1969 S.C. 255], thus :

"It is true that the witnesses examined on behalf of the appellants have not been effectively cross-examined. It is also true that the Collector had not adduced any evidence in rebuttal; but that does not mean that the court is bound to accept their evidence. The Judges are not computers.....

they are bound to call into aid their experience of life and test the evidence on the basis of probabilities." 18.Hence, we are unable to think that whenever the statements made by claimants' witnesses in courts are not got over on behalf of the Collector or the LAO by subjecting the witnesses to effective crossexamination or by not adducing evidence in rebuttal, the courts are obligated to accept such statements of witnesses as true, if tested on the basis of probabilities, become unreliable. If the courts were to accept such statements of witnesses as true merely because they are not subjected to cross-examination or effective cross-exam nation or because evidence in rebuttal thereof has not been adduced, it would amount to doling out public money to the claimants far in excess of their legitimate entitlement for just compensation payable for their lands. If such situation is prevented by courts dealing with claims for compensation by testing the statements of witnesses for claimants on the basis of probabilities, the Court will have performed the duty justly expected of them. Hence, no Court which tests the oral evi- dence of the claimants on the touch-stone of probabilities calling into aid, its experience of life, men and matters and find such evidence to be untrustworthy, the same cannot be found fault with.

Re: Question (4)

19. Market Value of large extents of acquired lands vis-a- vis value fetched by small extents - It is a matter of common knowledge that the large extents of lands if arc to be sold, they cannot fetch the value which may be fetched by sale of small extents of land. It is for that reason the courts do not ordinarily accept the value fetched by small extents as the basis for determination of the value of large extents of acquired lands. In fact, where the small extent of land sold is in significant when compared with large extent of land acquired, the market value of large extent of acquired lands shall not be determined 607 on the basis of value fetched by sale of infinitesimally small extent of land. But, in exceptional cases when small extent of land sold for a price as compared with the acquired large extent of land, the market value of which is required to be determined is not so insignificant, the Court depending upon the possibility of the large extent of land of the claimant being sold as a small extent of land as that already sold for a price the market value of the large extent could be fixed on the basis of the price fetched by sale of small extent. Even then, how far the price fetched by sale of small extents can be made the basis for determining the market value of large extents must necessarily depend on the fact situation including that as to why the purchase was made, in each case, which has come on its record. However, when the value fetched by small extents, are of building plots, in a building lay-out formed of a large plot, it has to be seen whether the large acquired land if is laid out into small building plots and sold, whether they could fetch the price fetched by sale of small building plots in the already formed building lay-out.

Then, the market value of the acquired land has to be determined with reference to the value fetched by sale of small plots by making allowances for various factors, such as; loss of land required out of the acquired land to be used for roads, drains, parks, the expenditure involved in forming the layout waiting involved in sale of plots and several other factors which will necessarily reduce the wholesale price of the acquired land. Thus, how far the value fetched by sale of small extents of lands could form the basis for determining the market value of the acquired land has to inevitably depend upon the allowances to be made for factors which distinguish the acquired land from the plots of land sold and the sale value of which is relied upon as the basis for determining the market value of the acquired land.

Re: Question (5) :

20. Section 51-A of the Land Acquisition Act 7 Section 51 -A of the LA Act reads thus :

"51-A. Acceptance of certified copy as evidence. In any proceeding under this Act, a certified copy of a document registered under the Registration Act, 1908 (16 of 1908), including a copy given under Section 57 of that Act, may be accepted as evidence of the transaction recorded in such document." 21.Certified copy of a document registered under the Registration Act, 1908, but for the above provision could have been only secondary evidence which could have been accepted by the court when primary evidence relating to the original documents were shown to be unavailable. Section 5 1-A of the LA Act, as seen therefrom, is enacted to enable the parties in land acquisition cases, to produce certified copies of documents, to get over the difficulty of parties, in that, persons in possession of the original documents would not be ready to put them in courts, for when once they are put in Court, they cannot be sure, when they could take their return from Court. However, the mere fact that a certified copy of the document is accepted as evidence of the transaction recorded in such document does not dispense with the need for a party relying upon the certified copies of such documents produced in court in examining witnesses connected with documents to establish their genuineness and the truth of their contents.

608 Therefore, the certified copies of registered documents, though accepted as evidence of transactions recorded in such documents, the court is not bound to act upon the contents of those documents unless persons connected with such documents give evidence in court as regards them and such evidence is accepted by the Court as true. But, when the LAO or the Collector has made his award, based on the contents of documents, as found in the registers kept under the Registration Act and produces registration copies of such documents in support of his award in Court, they could be regarded acceptable as evidence by Court given in support of the award unless it is shown by contra-evidence on behalf of the claimants that such documents could not have been relied upon by the Collector or LAO in making the award. It would be so for the reason that when the LAO produces in court Registration (certified) copies of those documents which he had made the basis for determining the market value, that would be only to support his award and not to establish something independent of the award. If that be so, when such documents are produced on behalf of the LAO in court, they cannot be rejected on the ground that the wit- nesses associated with those documents cannot be examined by the LAO, inasmuch , even without producing such documents he can rely upon the award made by him to show that he had looked into those documents and he had determined the market value on their basis. Hence, the mere fact that witnesses associated with such certified copies of documents produced as evidence in court were not examined on behalf of the LAO will not in any way affect the award of the

LAO, if he has determined the market value of the acquired land having perused those documents as found in the Registers kept under the Registration Act or their certified copies, before determining the market value of those lands on the basis of such documents.

Re: Questions (6) and (7):

22. Section 23 (1-A) of the Land Acquisition Act Section 23 (1-A) of the LA Act reads thus :

"23 (1-A). in addition to the market-value of the land, as above provided, the Court shall in every case award an amount calculated at the rate of twelve per centum per annum on such market-value for the period commencing on and from the date of the publication of the notification under Section 4, sub-section (1), in respect of such land to the date of the award of the Collector or the date of taking possession of the land, whichever is earlier.

Explanation In computing the period referred to in this sub-section, any period or periods during which the proceedings for the acquisition of the land were held up on account of any stay or injunction by the order of any court shall be excluded. "

23. -It is clear from a reading of the above section that in addition to the market value of the land awardable for the acquired land under first clause of sub-section (1) of section 23, the Court shall in every case award an amount calculated at the tee of twelve per centum per annum on such market value for the period commencing on and from the date of the publication of the Notification under section 4(1) of the LA Act, in respect of such land to the date of the award of the Collector or the date of taking possession of the land, whichever is earlier. Explanation, merely 609 disentitles the claimant for the amount during the period referred to in the subsection, that is, the proceedings for the acquisition of the land were held up by any stay or injunction by the order of any court. The amount awardable under sub-section (1-A) of section 23 of the LA Act, there- fore, would be an amount of 12 per centum per annum on the market value of the land determined under first clause of sub-section (1) of section 23 for the period between the date of publication of Notification under section 4(1) (i.e., the last of the dates of such publication and the giving of such public notice) and to the date of the award of the Collector or the date of taking possession of the land, whichever is earlier.

24. In this context it has to be noted that the amount payable is 12 per centum per annum on the market value in the first clause of sub-section (1) of section 23 of the LA Act. It has also to be noted that solatium under sub- section (2) is not payable in respect of the amount awardable under sub-section (1-A), in that, sub-section (2) says that in addition to the market-value of the land, as above provided, the Court shall in every case award a sum of thirty per centum on such market-value, in consideration of the compulsory nature of the acquisition.

25. Since the amount payable under sub-section (1-A) of section 23 as well as the solatium payable under sub-section (2) are in addition to the market value of the land, as above provided, they necessarilY refer to the market value of the land award able in the first clause of sub-section (1 of section 23 of the LA Act.

Re: Question (8) :

26. Market value of the lands of the claimant The High Court has refused to act upon documents. Exs. A-1 to A-6 relied upon on behalf of the claimant for obtaining enhanced compensation for his acquired land. Ex. A-1 is a certified copy of Sale Deed dated 16.2.1985. It was sought to be proved by examination of PW2 the purchaser under that document. The amount of consideration passed under that document, though was mentioned as Rs.60,000/- for 250.80 sq.

yards of land sold thereunder, it had been said that that amount had been paid before the witnesses. The High Court has refused to believe the evidence as to passing of consideration of Rs.60,000/- under that document. Whether the consideration mentioned in a document, like sale deed did pass from the buyer to the seller of land, being a matter of pure appreciation of evidence and when the High Court in appreciation of such evidence has refused to accept that evidence and rejected the document, we find it difficult to interfere with such finding of fact recorded by the High Court and take a contrary view in the matter.

27. Similar is the view taken by the High Court in respect of Sale Deed dated 26.7.1985, Ex. A-3, in proof of which the vendor has been examined. Here again, the High Court has rejected the sale deed by refusing to accept the oral evidence adduced. Here also there is no justification for us to take a view in the matter contrary to the view taken by the High Court in the matter. Insofar as documents Exs.

A-2, A-4 and A-5 are concerned, those are gift deeds of different dates. The claimant sought to rely upon the amounts mentioned in them as the value of lands for purposes of registration of documents, as those which could be taken for purposes of 610 determining the market value of the acquired land in the vicinity. The High Court took the view that the parties to the gift deeds, when were near relatives, as father and daughter or husband and wife, consideration mentioned in them as the value of land which is solely for the purpose of registration cannot represent the real market value of any of those lands and hence cannot form the basis for determination of the market value of the acquired land.

Consequently, High Court rejected the gifts deeds as unhelpful for determination of the market value of the acquired land. When rejection by the High Court of the gift deeds is made on the basis of appreciation of evidence available before it, there can be no justification for us to interfere with such rejection. The other document on which reliance was placed by the claimant was Ex. A-6, which is an extract of the Basic Valuation Register. As we have al- ready held following an earlier judgment of this Court that Basic Valuation Register extracts cannot be of any assistance in determination of market value of an acquired land, the rejection by the High Court of Ex. A-6, the basic register extract, on its view, that on its basis the market value of the acquired land cannot be determined, it is difficult for us to hold that the High Court was unjustified in rejecting Ex A-6 as that which cannot form the basis for determination of the market value of the acquired land.

Thus, the said documents which were made the bask for determination of the market value of the acquired land by the civil court were rejected by the High Court on reappraisal made by it of the oral evidence adduced in respect those documents by taking into consideration the relevant factors to which we have already referred, such rejection, cannot be found fault with. However, what the High Court has done in determining the market value of the acquired land is to double the amount of the market value disclosed in the sale deeds referred to in that award and on that basis to fix the market value of the acquired land after giving deduction of 20 per cent out of it towards allowance of lay-out and then fix the market value of the acquired land at Rs.32/- per sq. yard.

28. No doubt, as pointed out on behalf of the LAO, no specific reason is given by the High Court in its judgment as to why it doubled the amount of Rs.20/- per square yard, the value fetched by sale deeds (Exhibits B-2, B-3 and B-4) for fixing the market value of the acquired land. But, then whether the award of the LAO himself lends support for such doubling of the value of plots of land sold under the sale deeds, Exhibits B-2, B-3 and B-4, for determining the market value of acquired lands which were notified under Section 4(1) of the Act a few years thereafter, requires to be seen.

The award of the LAO (Ex. B-1) insofar, it concerns the question reads thus:

"The land under acquisition is located between the National Highway No. 7 and Old Kurnool road and the proposed ring road connects these two roads. The lands are also located near Shivarampally railway station and in close proximity to Katedan Industrial Estate and fall within the newly formed Rajendranagar Municipality. The area is fast developing and there is much demand for residential house plots particularly after developing the N.G.Os colony at Mylardevally and Madhuban residential complex of HUDA in the neighbouring area. The area is also served with all modem amenities like power, transport , telephone etc., with high potentiality for developing housing colonies." 611 29.Therefore, when the LAO himself has stated as above of the fast development of the area where the acquired lands and adjoining building plots sold at Rs. 20 per square yard were situated and the rush of people for purchase of residential building plots in that area, ;he High Court cannot be said to have gone wrong in stating that the building plots sold under Exhibits B-2, B-3 and B-4 if had been sold at the time of acquisition concerned, could have fetched double the rate of Rs.20/per square yard. Even so, the High Court, in our view, could not have fixed the wholesale price of acquired lands of the claimant at Rs.32/- per square yard by deducting only 20% of Rs.40/- per square yard fixed as the retail value of building plots in the undeveloped layout of building plots formed in the land adjacent to the acquired lands as on the date when they were notified for acquisition under Section 4(1) of the Act. As we have pointed out earlier whenever the wholesale price of the acquired land with building potentiality is required to be determined on the basis of prices of retail sales of building plots in an undeveloped layout of building plots in the vicinity of the acquired lands, at least one-third of the retail price to be got by sale of plots in an unde- veloped layout of building plots had to be deducted to arrive at the wholesale price of the acquired lands with building potentiality since the entire acquired land cannot be sold as building plots, and some expense will have been incurred by the owners of lands in laying it into building plots and selling them even though they might not have spent any amount on development of the layout.

30.When considered in the above perspective, the wholesale price of the entire acquired lands of the claimant could be fixed at Rs.27/- per square yard, that is, Rs.40/- per square yard retail price to be got by sale of plots in the undeveloped layout minus one-third of it to be deducted for making of layout. Thus, the market value of the entire land of the claimant would be Rs. 27/- per square yard and it has to be determined accordingly.

31. In the result, we determine the market value of the claimant's acquired land of 4 acres 3 guntas i.e. 19723 square yards at Rs.27/- per square yard and that would be Rs.5,32,521/-. The claimant would be entitled to get solatium at the rate of 30 per cent on that market value of the land. In addition to the market value of the land of Rs.5,32,521/-, the claimant would be entitled to get an amount at the rate of 12 per cent per annum thereon from the date of publication of Notification under section 4(1) of the LA Act, i.e., 2.9.1985 till the date of the award, i.e., 14.7.1988. Again, the claimant would be entitled to get interest on the enhanced compensation at the rate of 9 per cent per annum from the date on which he gave the possession of the land to the date of payment of such excess amount.

However, if such amount has not been paid by the expiry of the period of one year from the date when possession was taken, enhanced compensation would be payable at the rate of 15 per cent per annum from the date of the expiry of the period of one year till the excess amount was paid to the claimant or paid into court.

32. We, accordingly, allow Civil Appeal arising out of S.L.P (C) No. 18202 of 1993 partly and dismiss Civil Appeals arising out of S.L.P. (C) Nos. 13362-63 of 1993.

However, we make no order as to coos.

LAND ACQUISITION OFFICER, CITY IMPROVEMENTTRUST BOARD V. H. NARAYANAIAH [1976] INSC 175 (16 August 1976)

BEG, M. HAMEEDULLAH BEG, M. HAMEEDULLAH RAY, A.N. (CJ) SINGH, JASWANT

CITATION: 1976 AIR 2403 1977 SCR (1) 178 1976 SCC (4) 9

CITATOR INFO :

RF 1976 SC2517 (2,3,5,8)

ACT:

Land acquisition--City of Bangalore Improvement Act, 1945, ss. 16 18 and 27--Notification under ss. 16. and 18 on different dates--Date for determining market value for awarding compensation for acquisition of land.

Evidence Act (1 of 1872) s. 43 and Code of Civil Proce- dure (ACt 5 of 1908) O. 41, 27--Admission of Judgments in land acquisition proceedings as additional evidence.

HEADNOTE:

The City of Bangalore Improvement Act, 1945, is con- cerned with the improvement and future expansion of the city, and for the appointment of a Board of Trustees with special powers to carry out that purpose. As. an incident of such improvement and expansion, it provides for acquisi- tion of land also. .Section 16 of the Act provides for the publication of a notice so that any representations which objectors may make may be considered by the Board itself under s.. 17. The object of the two sections is to provide for the notification similar to that under 5. 4(1), Mysore Land Acquisition. Act. 1894, and for hearing of objections as under s. 5A, of that Act. Section 18 of the Bangalore Act provides for the publication in the Gazette of the declaretion that the land is acquired for a public; purpose.

Section 27 provides that acquisitions otherwise than by agreement, shall be regulated by the provisions of the Acquisition Act in so far as they are applicable and by certain further provisions in the section. Section 27(1) provides that upon the passing of a resolution by the Board that an improvement scheme under s. 14 is necessary in respect of any locality, it shall be lawful for any person, authorised by the Board to do all such acts in respect of the land as it would be lawful for an officer duly autho- rised by the Government under s. 4(2) of the Acquisition Act; and under s. 27(2) the publication Of a declaration under s. 18 shall be deemed to be the publication of a declaration under s. 6, Acquisition Act In the present case, the notifications under s. 16 of the Bangalore Act were issued in 1960 and the notifications under s. 18 were published in 1967. On the question as to which date was to be taken for the determination of the market value for the purpose of awarding compensation, the High Court held that the date of notification under s. 18 is the relevant date. The High. Court held that decision of Full Bench of the High Court in Venkatamma v. Special Land Acquisition Officer (AIR 1972 Mysore 193) covered the ques- tion: and it also relied on another decision of the Court, determining compensation with respect of the acquisition of certain other lands, as relevant evidence for the purpose of determining compensation in the instant case. In appeal to.

this Court the respondent also supported the judgment of the High Court on the ground that s. 23(1) of the Acquisition Act which provides that the determination of the market value should be as on the date of the publication of a notification under s. 41(1), would not apply, because, (a) no. principle o.r procedure governing award of compensation is specified in the Bangalore Act, (b) the words "so far as applicable", used in s. 27, are equivalent to "in so far as they are specifically mentioned"; and s. 23(1) is not so specifically mentioned; and, (c) since no. procedure or principle is laid down for the= award of compensation in the Bangalore Act, it would be equitable to hold that the market value should be determined with reference to the late.r date of. the notification under s 18 of the Act.

Allowing the appeal,

HELD: The matter should be remanded to the High Court for determination of the market value of the land as on the date of the notification under 179 s. 16 of the Bangalore Act, which corresponds to. the notification under s. 4(1) of the Acquisition Act, after affording opportunities to the parties whether the judgment sought to be offered as additional evidence could be so admitted shall be decided. [193 E-F] (1)(a) The Full Bench of the High Court, while inter- preting the City of Mysore Improvement Act, 1903, observed that the Acquisition Act had been amended in 1927 so as to make compensation payable as on the date of the notification under s. 4(1) of that Act instead of the date of notifica- tion under s. 6 according to the unamended law and but that, in the Mysore Act, there was no corresponding amendment.

Therefore, the Mysore Act had to be construed with refer- ence to the provisions of the Land Acquisition Act as it stood in 1903. [182 F-G] But, the Bangalore Act, even though its corresponds substantially with the provisions of the Mysore Act of 1903, should be interpreted with reference to the Acquisition Act as it stood in 1945, because, the Bangalore Act was, enacted in 1945. [182 H] (b) The Full Bench also held that if there was long delay between the two notifications, the acquisition itself would be unconstitutional, and the.re.fore the date of notifica- tion under s. 18 would be the relevant date. The delay between the dates of notification under s. 16 and under s.

18 would not have any bearing on the question of the date on which the market value is to, be determined, because, if a particular acquisition becomes unconstitutional due to an unreasonable mode. of exercising the statutory powers of acquisition, the meaning of provisions, which are relevant for determining the date of market value, could not be affected. [183 F-H, 184 A] (2) Under s. 43, Evidence Act, judgments other than those falling under ss. 40 to 42, Evidence Act are irrele- vant unless they fall under some other provisions of the Evidence Act. In the present case, the earlier judgment of the High Court cannot operate as resjudicata because it is not between the same parties. Such judgments are also not judgments in rem. However, in Khaja Fizuddin v. State of Andhra Pradesh (CA. No. 176 dt.. 10-4-1963) this Court held that such judgments would be relevant if they relate to similarly situated properties and contain determinations of value on dates fairly proximate to the relevant date in a case. BUt, in the present case, the appellant was not given any opportunity of showing that the earlier judgment related to dissimilar land. The High Court also did not comply with the provisions of 0.41 r. 27, C.P.C. before admitting the earlier judgment as additional evidence. It had recorded no 'reasons to show that it had considered the requirements or' the rule and why it found the admission of such evidence to be necessary.

[191 G-H, 192 B-H 193 A-B] Special Land Acquisition Officer, Bombay v. Lakhamsi Ghelabhai, AIR 1960 Bom. 78, referred to.

(3)(a) Section 27 of the Bangalore Act enables the procedure in the Acquisition Act to be utilised except tel the extent to which the procedure in the bangalore Act may differ from that in the Acquisition act. These difference s. 27(2) and (2); are: (i) that the Board of Trustees could do the:

things provided for in s. 4.(2) of the Acquisition: Act without a notification under s. 4(1); and (ii) the notifica- tion under s. 18 of the Bangalore Act is equated to the one under s. 6 of the Land Acquisition Act. Therefore, even though s. 23 of the Acquisition Act is' not specifically mentioned in the Bangalore Act, the obvious purpose of the opening words of s. 27 of the Bangalore Act, and the effect of non-specification of a different principle in the Banga- lore Act, is that the award of compensation, which is a necessary part of any law providing for acquisition must be governed by s. 23 of the Acquisition Act, which is the only provision applicable; for determining the date of market value.[189 D-G] (b) The words "so far as they are applicable" cannot be equated to in so far as they are specifically mentioned." The words are used to exclude only those provisions of the acquisition Act which become inapplicable, because 180 of the special procedure prescribe.d by the Bangalore Act.

They cannot be construed as excluding the application of general provisions such as s. 23 of the Acquisition Act.

They amount to stating that what is not either expressly or by necessary implication excluded must be applied. [190 H, 191 A-B] (c) Equity supplements but does not supplant law. If, in the face of the provision that the notification under s.

18, Bangalore Act is equated with a notification under s. 6 of the. Acquisition Act for the purpose of determining the market value for awarding compensation, some transcendental principle of' equity is applied, then, it would be supplant- ing the law laid down in s. 27 of the Bangalore Act read with s. 23 of the Acquisition Act. It would also be absurd to hold that a notification under s.18, Bangalore Act, could be equated with a notification under s. 4(1) Acquisition Act. Therefore, the relevant date would be the date of notification under s. 16, because, the objects achieved by a notification under s. 16, Bangalore Act, and one under s. 4, Acquisition Act are identical. In the Full Bench decision of the High Court, it was held. relying on s. 23 of the City of Mysore Improvement Act, 1903 that s. 14 of that Act should be equated to s. 4(1) of the Acquisition Act. But in view of the provisions of r. 27 of the Bangalore Act, the only result of equating a resolution under s. 14 of the Bangalore Act with a notification under s. 4(1) of the Acquisition Act would be to shift the date of ascertaining of market value still further back which is not the conten- tion of the respondents. [191 A, F] OBITER: An additional compliance with s. 4(1) of the Acquisition Act is not necessary in view of the special procedure unders. 16 of the Bangalore Act: and, it would be reasonable for the authorities to exercise the powers pro- vided for by s. 27(1) of the Bangalore Act, corresponding to those in s. 4(2) of the Acquisition Act, only after the notification under s. 16 of the Bangalore Act. [185 B.C] M. Manicklal v. The State of Mysore 1967 (2) M.L.J. 239 approved.

CIVIL APPELLATE JURISDICTION: Civil Appeals Nos. 644-650/74.

(Appeals by Special Leave from the Judgment and Order dated 21-6-1975 of the Karnataka High Court in Misc. First Appeal Nos. 77, 444-450/70 respectively).

K. Sen, V.M. Tarkunde, H.B. Datar and R.B. Datar for the appellant.

S. Rangaraj, M. Qamaruddin, P.N. Purl, S.K. Mehta for Mr. K.R. Naggrain, for respondent in CA. No. 644/74.

A.R. Somnath Iyer, S. Laxminarasu, for respondents in CA. Nos. 645-650/74.

The Judgment of the Court was delivered by BEG, J. Civil Appeals Nos. 644. to. 650 of 1974 are by special leave against the judgment of a Division Bench of the Karnataka High Court. The common and principal question of law which arises is: Does the City of Bangalore Improve- ment Act, 1945 (hereinafter referred to as 'the Act' or 'the Bangalore Act'), applying the provisions of the Land Acqui- sition Act, 1894 (Central Act 1 of 1894). (hereinafter referred to as 'the Acquisition Act'), to acquisitions of land in Bangalore require the determination of market value, for purposes of awarding compensation, on a date correspond- ing to the date of notifi- 181 cation under Section 4 of the Acquisition Act or to the date corresponding to that of the notification under Section 6 of the Acquisition Act The facts of the cases are not really material for the determination of the question of law stated above. A few facts relating to the lands acquired may, however, be men- tioned. They have a bearing on a connected question dealt with at the end of this judgment.

The seven appeals by special leave arise out of land acquisition proceedings in which the 1st of the preliminary notifications, under Section 16 of the Bangalore Act, took place in the Mysore Gazette from 1960 onwards; and, the subsequent notifications, under Section 18 of the Bangalore Act, equated by Section 27(2) of the Bangalore Act with notifications under Section 6 of the Acquisition Act, were made in 1967. All the lands involved in these appeals are situated in Birmamangala Village, Bangalore North Taluk, and are .shown to have been acquired for the purposes. of a scheme known as 'Bhinnamangala Lay Out II Stage or Indira Nagar Extension'.

The Bangalore Act, as its preamble states, is really concerned with the "improvement and future expansion of the City of Bangalore and for the appointment of a Board of Trustees with .special powers to carry out the aforesaid purposes;". As an incident of this improvement and expansion it provides for acquisition of land also.. It does not, however, contain a separate code of its own for such acqui- sitions. But, Section 27 of the Bangalore Act lays down:

"27. Provisions applicable by the acquisition of land otherwise than by agreement.--The acquisi- tion otherwise than by agreement of land within or without the City under this Act shall be regulated by the provisions, ,so. far as they are applicable, of the Mysore Land Acquisition Act, 1894, and by the following further provisions, namely :-- (1) Upon the passing of a resolution by the Board that an improvement scheme under Section 14 is necessary in respect of any locality, it shall be lawful for any person either generally or spe- cially authorised by the Board in this behalf and for his servants and workmen, to do all such acts on or in respect of land in that locality as it would be lawful for an officer duly authorised by the Government to act under Section 4(2) of the Mysore Land Acquisition Act, 1894 and for his servants and workmen to do thereunder; and the provision contained in Section 5 of the said Act shall likewise be applicable in respect of damage caused by any o.f the acts first mentioned.

(2) The publication of a declaration under section 18 shall be deemed to be the publication of a declaration under section 6 of the Mysore', Land Acquisition Act, 1894.

182 (3) For the purposes of section 50(2) of the Mysore Land Acquisition Act, 1894 the Board shall be deemed to be the local authority concerned.

(4) After the land vests in the Government under section 16 of the Mysore Land Acquisition Act, 1894 the Deputy Commissioner shall, upon payment of the cost of the acquisition, and upon the Board agreeing to pay any further costs which may be incurred on account of the acquisi- tion, transfer the land to the Board, and the land shall thereupon vested in the Board".

The Mysore Land Acquisition Act of 1894 exactly reproduces our Central Land Acquisition Act 1 of 1894. Therefore, the term 'Acquisition Act' in this judgment covers references to both the Mysore Land Acquisition Act as well as the Central Land Acquisition Act 1 of 1894. It was stated by Counsel that the Mysore Land Acquisition Act was also correspondingly amended whenever provisions of the Central Land

Acquisition Act 1 of 1894 were altered .so that the two could be treated as iden- tical for our purposes.

The judgment and orders of the Division Bench, under appeal before us, purports to follow a Full Bench decision of the Mysore High Court in Venka- tamrna v. Special Land Acquisition Officer(1), where it was held that the relevant date for deter- mining the market value of the property to be acquired is the date of notification under section 18 of the City of Mysore Improvement Act of 1903.

It appears that the provisions of the last men- tioned Mysore Act of 1903 largely correspond with the provisions of the Bangalore Act before us.

It has, however, to be remembered that the Act which the Full Bench of the Mysore High Court was interpreting was. enacted in 1903. It had, there- fore, to be construed with reference to the provi- sions of the Acquisition Act as it stood in 1903.

The Mysore Full Bench had observed that the Mysore Land Acquisition Act had been amended by the Mysore Act 1 of 1927 "so as to make compensation payable as on the date of publication of the notification under section 4(1) of that Act" instead of with reference to the date of notification under section 6 according to the unamended law. It said:

"It is significant to note that the Mysore Legis- lature did not make any corresponding amendment in the Act" (that is to say, the City of Mysore Act of 1903). The Bangalore Act, even though it may Correspond substantially with the provisions of the Mysore Improvement Act 3 of 1903, was enacted in 1945. Hence, references in the Bangalore Act to the Acquisition Act, which had been amended considerably between 1903 and 1945, could not have the same effect as similar references to the Acqui- sition Act in the Mysore Act of 1903. We think that the Division Bench of the Karnataka High Court overlooked this vital distinction.

(1) A.I.R. 1972 Mysore 193.

183 The Full Bench of the Mysore High Court ex- pressed the view that the contention that a notifi- cation under Section 16 of the Mysore Act of 1903 could be equated with a notification under section 4 of the Acquisition Act was negatived by the provisions of Section 23 sub. s. (1) of the Mysore Act of 1903. It said (at p. 198):

"Section 23 (1) of the Act states that upon the passing of a resolution by the Board that an improvement scheme under Section 14 is necessary, it would be lawful for any person authorised by the Board to enter upon the land carry out the several acts on the land in question as provid ed under section 4(2) of the Acquisition Act and the pro visions of section 5 of the Acquisition Act would likewise be applicable in respect of damage caused by any of the acts of servants or workmen of the Board".

It, therefore, thought that what was sought to be achieved by notification under section 4(1) of the Acquisition Act was done by a resolution under section 14 of the Mysore Act.

Taking the view that such a resolution could only be anterior to the publication of the notification under sec- tion 16, it equated the notification under section 16 of the Mysore Act with a notification under section 6 of the Acquisition Act. Thus, the Mysore. Full Bench found in Section 23 (1) of the Mysore Act of 1903, a justification for equating provisions of section 14 of that Act with, those of section 4(1) of the Acquisition Act. But, we do not find either in section 23 of the Bangalore Act, which deals with an entirely different subject matter, or, any- where, apart from section 27, additional provision (1) of the Bangalore Act, a similar provision which could ;indicate that proceedings under a section other than those under section 16 of the Bangalore Act could possibly correspond with those under section 4(1) of the Acquisition Act. And, we think that to equate a resolution under section 14 of the Act with a notification under section 4(1) of the Acquisi- tion Act, on a similar reasoning, would be to miss the very different purposes meant to be served by a resolution under section 14 of the Bangalore Act and a notification under section 4(1) of the Acquisition Act. Such reasoning appears to us to be very far fetched.

Another reason given by the Full Bench of the Mysore High Court, for holding that market value should be deter- mined as on the date of notification under section 18 and not that of notification under section 16 of the City of Mysore Improvement Act (both these sections, correspond to section 16 and 18 of the Bangalore Act) was that a delay of 20 years between the two notifications would make the acquisition unconstitutional. We are unable to appreci- ate the bearing of this consideration on a decision of the statutory requirements as to the date on which market value is to be determined for purposes of compensation. If a particular acquisition becomes unconstitutional due to an unreasonable mode of exercising the statutory powers of acquisition, neither the provision which is so misused nor the meaning. of other provisions, which are relevant for determining the date of market value, is affected.

We are constrained to observe that some of the reasons 184 given by the Full Bench of the Mysore High Court as well as the Division Benches of the Karnataka High Court have little connection with the date on which the market value has to be determined according to statutory provisions. A pure ques- tion of interpretation of fairly clearly expressed legis- lative intent which should not have been permitted to be fogged by adverting to irrelevant matters.

It is true that the Bangalore Act has its own distinct purposes and prescribed modes in which they are to be car- ried out. Acquisition of land, as already observed, is a mere incident in the carrying out of those purposes. Sec- tion 26 of the Act gives, it the power to acquire land by agreement. Section 27 of the Act reproduced above, enables the procedure 'found in the Acquisition Act to be utilised except to the extent to which the procedure for compulsory acquisition in the Bangalore Act may differ from that con- tained in the Acquisition Act. Section 27 of the Banga- lore Act gives certain "further provisions" indicated under four heads. Apparently. these are meant to dis- place corresponding actions under the Acquisition Act. We have to identify the corresponding provisions only for the purposes of applying Section 23(1) of the Acquisition Act.

It is evident that the first of these additional provi- sions enables the Board of Trustees, by virtue of section 14, to undertake what could have been done under the Acquisition Act only after a notification under section 4(1) of the Acquisition Act. In other words, the deviation from the procedure laid down in the Acquisition Act is that, whereas the Agents of the Govt. could not undertake any- thing provided for by section 4(2) of the Acquisition Act without a notification under section 4(1) of the Acquisition Act, the Board of Trustees could do those very things with- out any notification under section 4(1) of the Acquisition Act. Even if we could equate the resolution under section 14 of the Bangalore Act with a notification under section 4(1) of the Acquisition Act, we could not dispense with the requirements of section 23(1) of the Acquisition Act which is the only provision applicable for determining the date of the market value. The only result of equating a resolution under section 14 with a notification under section 4(1) of the Acquisition Act could be to shift the date of as certainment of market value farther back. But, that is not what the respondents contend for.

The second additional provision under section 27(2) seems designed, by way of abundant caution, to clarify the mean- ing of provisions of section 18 of the Act, Obviously, it prevents any construction which could enable a notifica- tion under section 18 of the Bangalore Act to be equated with section 4(1) of the Act. To hold that a notification under section 18 of the Bangalore Act could be equated with section 4(1) of the Acquisition Act, in the face of this clear provision, equating it with a notification under section 6 of the Acquisition Act, is to countenance the obvious absurdity that there is no difference between a notification under section 4(1) and section 6 of the Acqui- sition Act.

A possible line of argument, in view of the 1st addi- tional provision in section 27 of the Bangalore Act, could be that, since the 185 general procedure under the Acquisition Act applies, a notification under section 4(1) of the Acquisition Act itself should precede any action under section 14 of the Act which is to be equated with section 4(2) of the Acquisi- tion Act. But, that has not been the argument of any side either in the Karnataka High Court or before us. Had that been necessary and no notification under section 4(1) of the Act had taken place, the validity of the whole acquisition proceedings could have been challenged, but, the validity of the Acquisition proceedings is not assailed before us at all. Such a line reasoning would be also shut out by the principle that the particular and the especially provided procedure ;would exclude the more general if we hold, as we have to having regard to Section 16 of the Act, that the special procedure was meant to take the place of and to serve the same object as the general. The argument that an additional compliance with section 4(1) of-the Acquisi- tion Act was necessary despite the special procedure in section 16 of the Act, which fulfils the same function, is also repelled by the correct view taken in M. Manicklal v.

the State of Mysore (1) by the Mysore High court.

The real question before us is whether the market value should be determined with reference to the date of notifica- tion under section 16 of the Act. As we find that the notification under section 18 has been actually equated, by the second additional provision contained in section 27 of the Bangalore Act, with a notification under section 6 of the Acquisition Act, so that it could not be also equated with any notification under section 4(1) of the Acquisition Act and, as we also find that the provisions of section 16 of the Bangalore Act and section 4(1) of the Acquisition Act show that the obvious intention behind and objects achieved by a notification under section 16 of the Act and one under section 4(1) of the Acquisition Act are identical, we think that it is most reasonable to hold that it is not necessary at all, in such cases, to comply with section 4(1) of the Acquisition Act in addition to complying with section 16 of the Bangalore Act. The general provisions of section 4(1) of the Acquisition Act are displaced by the special provisions of section 16 of the Act.

Here, we may set out the provisions of section 4 of the Acquisition Act and section 16 of the Bangalore Act to indi- cate the identity of purposes and the extent of similarity of procedure.

Section A of the Acquisition Act provides:

"4. Publication of preliminary notification and powers of officers there upon.--(1) Whenever it appears to the appropriate Government or the Deputy Commissioner that land in any locality is needed or is likely to be needed for any public purpose, a notification stating the purpose for which the land is needed, or likely to be needed, and describing the land by its survey number, if any, and also by its boundaries and its approximate area; shall be published in the official Gazette, and its Deputy Commissioner (1) 1967 (2) M.L.J.p.239 1414--1003SCI/76 186 shall cause public notice of the substance of such notification to be given at convenient places in the said locality. The Deputy Commis- sioner may also cause a copy of such notification to be served on the owner, or where the owner is not the occupier, on the occupier of the land.

Explanation.--The expression 'convenient places' includes, in the case of land situated in a vil- lage, the office of the panchayat within whose jurisdiction the land lies.

(1A) The notification under sub-section (1) shall also specify the date, (such date not being less than thirty days from the date of publication of the notification) on or before which, and the manner in which, objections to the proposed acqui- sition may be made, under section 5A.

(2) On the publication of such notification it shah be lawful for any Officer, either generally or specially authorized by such Government or by the Deputy Commissioner in this behalf, and for his servants and workmento enter upon and survey and take levels of the land; to dig or bore into the sub-soil;

to do all other acts necessary to ascertain whether the land is adapted for such purpose;

to set out the boundaries of the land proposed to be taken and the intended line of work (if any) proposed to be made thereon;

to mark such levels, boundaries and line by placing marks and cutting trenches; and where otherwise the survey cannot be completed and the levels taken and the boundaries and line marked, to cut down and clear away any part of any standing crop, fence or jungle:

Provided that no person shall enter into any building or upon any enclosed court or garden attached to a dwelling house (unless with the con- sent of .the occupier thereof) without previously giving such occupier at least seven days notice in writing of his intention to do so.

(3) Where the acquisition is for a company, an officer of such company may be authorised by the appropriate Government or the Deputy Commissioner to exercise the powers conferred by sub-section (2).

(4) The Officer authorised, under sub-section (2)or sub-section (3) shall complete his investiga- tion and submit his report to the Deputy Commis- sioner within a period of three months (or within such longer period not exceeding six months in all as the Deputy Commissioner may allow), from the date of the publication of the notification under subsection (1). with his remarks to the appropriate Government along-with his report under sub-section (2) of section 5A".

187 Section 16 of the Bangalore Act enacts:

"16. Procedure on completion of scheme.--(1) Upon the completion of an improvement scheme, the Board shall draw up a notification stating the fact of a scheme having been made and the limits of the area comprised therein, and naming a place where particulars of the scheme, a map of the area comprised therein and a statement specifying the land which it is proposed to acquire and of the land in regard to which it is proposed to recover a betterment fee may be seen at all reasonable hours; and Shall-
(a) Copy of notification of scheme to be communicated to May or of the Corporation- Communi- cate a copy of such notification to the Mayor of the Corporation who shall, with in thirty days from the date of receipt thereof forward to the Board, for transmission to the Government as hereinafter provided, any representation which the Corporation may think fit to make with regard to the scheme;

(b) Publication of notification.--Cause a copy of the said notification to be publication during three consecutive weeks in the Mysore Gazette and posted up in some conspicuous part of its own office, the Deputy Commissioner's office, the office of the Corporation and in such other places as the Board may consider necessary.

(2) Service of notices on owners of property to be acquired in executing the scheme.-- During the thirty days next following the day on which such notification is published in the Mysore Gazette the Board shall serve a notice on every person whose name appears in the assessment list of the Corpora- tion or the Municipality or local body concerned or in the land revenue register as being primarily liable to pay the property tax or land revenue assessment on any building or land which it is proposed to acquire in executing the scheme, or in regard to which the Board proposes to recover a betterment fee, stating that the Board proposes to acquire such building or land or to recover such bettermentfee for the purpose of carrying out an improvement scheme and. requiring an answer within thirty days from the date of service of the notice stating whether the person so served,dissents or not to such acquisition of the building or land or to the recovery of such betterment fee, and if the person dissents, the reasons for such dissent.

(3) Notice how to be served.--Such notice shall be signed by, or by the order of, the Chairman and shall be served- (a) by delivery of the same personally to the person required to be served or if such person is absent or cannot be found, to his agent, or if no agent can be found, then by leaving the same on the land or building; or (b) by leaving the same at the usual or last known place of abode or business of such person as

afore- said; or 188 (c) by registered post addressed to the usual or last known place of abode or business of such person".

It will be set that Section 16 of the Bangalore Act provides even more elaborately for the publication of the initial notice which is given in section 4(1) of the Acquisition Act so that any representa- tions which the objectors may have to make may be considered by the Board itself under section 17 of the Bangalore Act. Thus, the object of the procedure provided by section 16 and section 17 seems to be to take the place of the notification under section 4(1) and the hearing of objections under section 5A of the Acquisition Act. Under the Bangalore Act, it is the Board itself which gives notices and considers objections to a scheme before communicating the scheme to the Govt. for sanction.

It is true that the Board has not been specifically given the power by the Bangalore Act to rescind the scheme. The Bangalore Act only mentions the Board's power to modify the scheme, if it considers that to be necessary. After that, the Act directs the Board to send it to the Government for sanc- tion. Of course, the Govt. could either sanction or reject the scheme. And, in suitable cases, the Board could perhaps revoke its own resolution.

But, we need not consider or decide that question here. All we need observe here is that a corre- sponding special procedure, which we find in the provisions of section 16 of the Bangalore Act, need not necessarily be identical with the general procedure, serving the same object, which we find in section 4(1) of the Acquisition Act. We are concerned more here with the identity of objects and functions of provisions rather than with that of precise steps prescribed or words used in them.

The next stage is found in section 18 which lays down:

"18. On receipt of sanction, declaration to be published giving particulars of land to be acquired- (1) (a) On receipt of the sanction of the Govern- ment,. the Chairman shall forward a declaration for notification under the signature of a Secretary to the Government, stating the fact of such sanction and that the land proposed to be acquired by the Board for the purposes of the scheme is required for a public purpose.

(b) The declaration shall be published in the Mysore Gazette and shall state the limits;

within which the land proposed to be acquired is situate, the purpose for which it is needed, its approximate area and the place where a plan of the land may be inspected.

(c) And upon such publication Board to proceed to execute the scheme.--The said declara- tion shall be conclusive evidence that the Land is needed for a public purpose, and the Board shall, upon the publication of the said declaration, proceed to execute the scheme.

(2) Board to have power to alter any part of the Scheme.--(a) If at any time it appears to the Board that an improvement can be made in any part of the scheme, the Board may alter the scheme for the purpose of making such 189 improvement, and shall, subject to the provisions contained in the next two clauses of this sub- section forthwith proceed to execute the scheme as altered.

(b) If the estimated cost of executing the scheme as altered exceeds, by a greater sum than five per cent the estimated cost of executing the scheme as sanctioned, the Board shall not, without the previous sanction of the Govern- ment, proceed to execute. the scheme as altered.

(c) If the scheme as altered involves the acquisition otherwise than by agreement, of any land other than that specified in the schedule accompanying the scheme under section 17(2)(e), the provisions of sections 16 and 17 an sub-sec- tion (1) shall apply to the part of the scheme so altered, in the same manner as if such altered part were the scheme".

It will be seen that, but for the 1st additional provi- sion, contained in section 27 of the Bangalore Act, perhaps it could be urged that the powers contained in section 4(2) of the Acquisition Act and the fight to damages, con- tained in section 5 of the Acquisition Act, do not apply at all to acquisition under the Act. Hence, this additional provision became necessary. We are not called upon to determine here at what stage, powers under section 4(2) of the Acquisition Act could or should reasonably be. exercised in a case falling under the provisions of the Bangalore Act. Nevertheless, we may mention that it would seem more reasonable to exercise the powers provided for by section 27(1) of the Bangalore Act (i.e. powers in section 4(2) of the Acquisition Act) only after a notification under section 16 of this Act.

An examination of the provisions of the Bangalore Act and of acquisition proceedings under the Acquisition Act, contemplated by it, would reveal that, whereas the procedure from the notification under section 4 to the notification under section 6 of the Acquisition Act gives place to the procedure provided by sections 14 to 18 of the Bangalore Act, the stage at which compensation is to be determined is to be regulated entirely by the general provisions of sec- tion 23 (1) of the Acquisition Act because there is no special or separate provision in the Bangalore Act to regu- late the compensation payable. It is true that section 23 is not specifically mentioned in the Bangalore Act. But, the obvious purposes of the opening words of section 27 of the Bangalore Act seems to us to be that award of compensa- tion, which is a necessary part of any law providing for acquisition, must be governed by section 23 of the Acquisi- tion Act. The last mentioned section enacts:

"23. Matters to be considered in determining compensation.--(1) In determining the. amount of compensation to be awarded for land acquired under this Act, the Court shah take into consideration-- 190 first, the market value, of the land at the date of the publication of the 'notification under section 4, subsection (1);

secondly, the damage sustained by the person interested, by reason of the taking of any standing crops or trees which may be on the land at the time of the Deputy Commissioner's taking possession thereof;

thirdly, the damage (if any), sustained by the person interested, at the time of the Deputy Com- missioner's taking possession of the land, by reason of severing such land from his other land;

fourthly, the damage (if any), sustained. by the person interested, at the time of the Deputy Com- missioner's taking pOssession of the land, by reason of the acquisition injuriously affecting his other property. movable or immovable, in any other manner, or his earnings;

fifthly, if, in consequence of the acquisition of the land by the Deputy Commissioner, the person interested is compelled to change hie residence. or place of business, the reasonable expenses (if any), incidental to such change; and sixthly, the damage (if any), bona fide result- ing from diminution of the profits of the land between the time of the publication of the declaration under section 6 and the time of the Deputy Commissioner's taking possession of the:

land.

(2) In addition to the market-value of the land, as above provided, the Court shall in every case award a sum of fifteen per centum on such market value, in consideration of the compulsory nature of the acquisition".

Non-specification of a different principle or procedure in the Act, governing award of compensation under the Banga- lore Act, far from indicating, as learned Judges of the High Court erroneously opined, that section 23(1) of the Acquisi- tion was not applicable here at all, was one of the strong- est arguments for holding that it is covered by the general provisions applied by section 27 of the Bangalore Act. An acquisition proceeding without providing for award of com- pensation on some principle is unthinkable. Such a situa- tion would have invited an attack on the validity of the acquisition itself. But, as we have already observed, there is n` such challenge here.

There was some argument on the meaning of the words "so far as they are applicable", used in section 27 of the Bangalore Act. These words cannot be changed into: "in so far as they are 191 specifically mentioned" with regard to the procedure in the Acquisition Act. On the other hand, the obvious intention, in using these words, was to exclude only those provisions of the Acquisition Act which become inapplicable because of any special procedure prescribed by the Bangalore Act (e.g. section 16)corresponding with that found in the Acqui- sition Act (e.g. section 4(1). These words bring in or make applicable, so far as this is reasonably possible, general provisions such as section 23(1) of the Acquisition Act. They cannot be reasonably construed to exclude the application of any general provisions of the Acquisition Act. They amount to laying down the principle that what is not either expressly, or, by. a necessary implication,, excluded must be applied. It is surprising to find mis- construction of what did not appear to us to be reasonably open to more than one interpretation.

Learned Counsel for the respondents, rather desparately, attempted to argue that, as there was no procedure or prin- ciple laid down at all for award of compensation in the Bangalore Act, we should invoke the aid of Equity and hold that the market value should be determined with reference to the date of notification under section 18 of the Act. We do not think that such an argument could be advanced at all in the face of the provisions of section 27(2) which clearly equate a notification under section 18 of the Bangalore Act with the notification under section 6 of the Acquisition Act. We know the maxim that "equity follows the law". We have not heard of the proposition that some transcendental Equity should be so used as to defeat or amend the' law as it stands. Maitland said long ago that equity came to supplement and not to supplant the law. We think that, if we were to aquate a notification under section 18 with the notification under section 6 of the Act for purposes of determining the market value, which is to be awarded, we would be doing nothing short-of supplanting at least 'the law as found clearly laid own in section 27 of the Banga- lore Act read with section 23 of the Acquisition Act. We think that the Division Bench of' the Karnataka High Court had seriously misdirected itself in not giving effect to obvious meanings of the plain words used in statutes under consideration.

Another contention which found favour in the Karnataka High Court was that a judgment filed by the respondents claimants m Civil Appeals Nos. 644-650 of 1974, when they appealed to the Karnataka High Court against the' orders passed by a Civil Judge of Bangalore, on a reference made under the Acquisition Act, could be accepted as additional evidence under Order 41, Rule 27 C.P.C. on the ground that it. was relevant, evidence for the purpose of determining compensation of lands which were the subject matter of appeals before the High Court. The reasons given for admit- ting, at the appellate stage, a judgment of the High Court, which had not been filed before the Trial Court, were:

firstly, that it was not available when the proceedings were pending in the Trial Court; and secondly, that lands dealt with by the judgment were adjacent to the lands the value of which needed determination, and that both sets of 192 lands were acquired at different stages of what is known as the "layout scheme within the limits of Bhinnamangala vil- lage'. The High Court overruled the objection that the judgment admitted as additional evidence was not final inasmuch as an appeal against it was pending in this Court.

We find that the High Court did not consider it, for some reason, necessary to refer to the provisions of the Indian Evidence Act which regulate the admissibility of all evi- dence including judgments. There could be no question of res judicata in such a case. The previous judgment was not between the same parties. Furthermore, the appellant was not given any opportunity of showing that the judgment related to land which was at some distance from the lands whose value was to be determined or that its site value was, for some reason, higher. Even the time at which the value of the other land was determined was not shown to be identical. Such judgments are not judgments in rem. They are judgments in personam. The general provision of law governing admissibility of all judgments, whether they are judgments in rem or judgments in personam operating as res judicata, is section 43 of the Evidence Act which reads as follows:

"43. Judgments, orders or decrees, other than those mentioned in Sections 40, 41 and 42, are irrelevant, unless the existence of such judg- ment, order or decree, is a fact in issue, or is relevant under some other provision of this Act".

It is apparent that section 43 enacts that judgments other than those falling under sections 40 to. 42 are irrel- evant unless they fall under some other provision of the Evidence Act; and, even if they do fall under any such other provision, all that is relevant, under section 43 of the Evidence Act, is "the existence" of such judgment, order, or decree provided it "is a fact in issue, or is relevant under some other provision of this Act". An obvious instance of such other provision is a judgment falling under section 13 of the Evidence Act. The illustration to section 13 of the Evidence Act indicates the kind of facts on which the existence of judgments may be relevant.

In Special Land Acquisition Officer, Bombay v. Lakhamsi Ghelabhai,(1) Shelat J, held that judgments not inter partes, relating to land acquired are not admissible merely because the land dealt with n the judgment was situated near the land of which the value is to be determined. It was held there that such judgments would fall neither under section 11 nor under section 13 of the Evidence Act. Ques- tions relating to value of particular pieces of land depend upon the evidence in the particular case in which those facts are proved. They embody findings or opinions relating to facts in issue and investigated in different cases. The existence of a judgment would not prove he value of some piece of land not dealt within at all in the judgment admit- ted in evidence. Even slight differences in situation can, (1) A.I.R. 1960 Bom. 78.

193 sometimes, cause considerable differences in value. We do not think it necessary to take so restrictive a view of the provisions of Sections 11 anti 13 of the Evidence Act as to exclude such judgments altogether from evidence even when good grounds are made out for their admission. In Khaja Fizuddin v. State of Andhra Pradesh,(1) a bench of three Judges of this Court held such judgments to be relevant if they relate to similarly situated properties and contain determinations of value on dates fairly proximate to the relevant date in a case.

The Karnataka High Court had, however, not complied with provisions of Order 41, Rule 27 of the C.P.C. which require that an Appellate Courts should be satisfied that the additional evidence is required to enable them either to pronounce judgment or for any other substantial cause. It had recorded no reasons to show that it had considered the requirements of Rule 27, Order 41, of the C.P.C. we are of opinion that, the High Court should have recorded its rea- sons to show why it found the admission of such evidence to be necessary for some substantial reason. And if it found it necessary to admit it, an opportunity should have been given to the appellant to rebut any inference arising from its existence by leading other evidence.

The result is that we allow these appeals and set aside the judgment and order of the Karnataka High Court and direct it to decide the cases afresh on evidence on record, so as to determine the market value of the land acquired on the date of the notification under section 16 of the Bangalore Act. It will also decide the question, after affording parties opportunities to lead necessary evi- dence, whether the judgment, sought to be offered as addi- tional evidence, could be admitted.

The parties will bear their own costs.

V.P.S. Appeal allowed.

DAULAT SINGH SURANA & ORS V. FIRST LAND ACQUISITION COLLECTOR & ORS [2006] INSC 798 (13 November 2006)

ASHOK BHAN & DALVEER BHANDARI

Dalveer Bhandari,J.

This appeal is directed against the judgment of the Division Bench of the Calcutta High Court delivered in FMAT No.6 of 1997 dated 10th October, 2002.

The appellant is aggrieved by the Notification under Section 4 and declaration under Section 6 of the Land Acquisition Act, 1894 dated 13th December, 1994 and 23rd June, 1995 respectively published and made by the Government of West Bengal in respect of premises no.4, Pretoria Street, Calcutta measuring more or less 0.0988 hectare (0.2441 acre).

The appellant had challenged the said notification by filing a writ petition before the Calcutta High Court.

The learned Single Judge had allowed the writ petition and quashed the notification. The said notification under section 4 reads as under:

"NOTIFICATION Calcutta No.4364-LA(PW)/3P-21/94/Home (Police) Dated, Calcutta the 13th December, 1994 WHEREAS it appears to the Governor that land is likely to be needed for a public purpose not being a purpose of Union namely for permanent accommodation of office-cum-residence of Dy.

Commissioner of Police Security Control under Commissioner of Police, Calcutta, Home (Police) Deptt. Government of West Bengal in Police Station District Calcutta Ward No.63 of Calcutta Municipal Corporation, it is hereby notified that a piece of land comprising Western portion of premises No.4, Pretoria Street, Calcutta and measuring more or less 0.0988 hectare (0.2423 acre) and bounded as specified below:- North by : Pretoria Street East by : Remaining portion of Premises No.4, Pretoria Street.

South by : Premises No.5, Pretoria Street West by : Premises Nos.12 & 15, Lord Sinha Road is likely to be needed for the aforesaid public purpose at the public expense within the aforesaid Ward of the Calcutta Municipal Corporation in the City of Calcutta.

This Notification is made, under the provisions of Section 4 of Act I of 1894 to all whom it may concern.

A plan of the land may be inspected in the Office of the First Land Acquisition Officer, Calcutta, at No.5, Bankshall Street, Calcutta 700 001.

In exercise of the powers conferred by the aforesaid Section, the Governor is pleased to authorise the Officers for the time being engaged in the undertaking, with their servants and workmen, to enter upon and survey the land and do all other acts required or permitted by that section.

Any person interested in the above land, who has any objection to acquisition thereof, may within thirty days after the date on which public notice of the substance of this Notification is given in the locality, file an objection in writing before the First Land Acquisition Collector, Calcutta, at No.5, Bankshall Street, Calcutta-700 001.

By Order of the Governor T.N. Khan Deputy Secretary to the Govt. of West Bengal." Thereafter, on 23.6.1995, declaration under section 6 was issued by the Government of West Bengal. The said declaration as published in Calcutta Gazette reads as under:

"DECLARATION Calcutta No.4059-L.A./3P-21/94/Home (Police) Dated: 23.6.95 WHEREAS the Governor is satisfied that land is needed for a public purpose being/not being a purpose of Union, namely for permanent accommodation of office-cum-residence of Dy.

Commissioner of Police Security Control under Commissioner of Police Calcutta, Home (Police) Deptt. Govt. of N. Bengal, in Police Station Park Street, District Calcutta, Ward No.63 of Calcutta Municipal Corporation, it is hereby declared that a piece of land comprising premises No. Western portion of Premises No.4, Pretoria Street, Calcutta and measuring more or less 0.0988 hectare (0.2441 acre) and bounded on the North by : Pretoria Street East by : Remaining portion of Premises No.4, Pretoria South by : Premises No.5, Pretoria Street West by : Premises No.12 & 15, Lord Sinha Road is needed for the aforesaid public purpose at the public expense partly at the public expenses and partly at the expense of within the aforesaid ward of the Calcutta Municipal Corporation in the City of Calcutta.

This Declaration is made under the provision of Section 6 of Act 1 of 1894/read with the said Notification, to all whom it may concern.

A plan of the land may be inspected in the Office of the First Land Acquisition Collector, Calcutta, at No.5, Bankshall Street, Calcutta-700 001.

By order of the Governor, (P.K. Guha Roy) Deputy Secretary to the Govt. of W.B.

I.C.A. 2744(2)/95 Date: 28.6.95." In the said declaration, it is clearly incorporated that the said piece of land is needed for office-cum- residence of Dy. Commissioner of Police (Security Control) at the public expense.

The reasons for setting aside section 4 notification and declaration under section 6 of the Land Acquisition Act, were as follows:

(I) the publication thereof, having not been preceded by handing over vacant possession of the land, by the Government to the respondents, in compliance with the order dated 18th August, 1993, passed by the learned Single Judge in Writ Petition No.3799 of 1992, had amounted to practicing fraud by the Government upon the statute;

(II) the declaration under Section 6 was set aside on the ground that the statement incorporated in the said declaration that the said premises was being acquired 'partly at the public expense and partly at the expense of within the aforesaid ward' as published in the newspaper indicated total non-application of mind by the concerned authorities".

In the year 1943, under the Defence of India Rules, the premises situated at 4, Pretoria Street, Calcutta was requisitioned by the Government of West Bengal. After requisition, the Government started using the ground floor of the two-storeyed building, standing thereon, as office of the Dy. Commissioner of Police (Security Control), and the first floor thereof, as residential accommodation of the said officer. Admittedly, the premises and the land appurtenant to the premises has been continuously in possession of the respondent-State Government since 1943 and from year 1943, the said premises is being used as the office of the Dy.

Commissioner of Police (Security Control). In other words, for the last more than 63 years the office of Dy.

Commissioner of Police (Security Control) has been continuously functioning from the said premises.

In this petition, we are primarily concerned with the validity of the issuance of notification under section 4 and declaration under section 6 of the Land Acquisition Act, 1894 in respect of the said premises.

In the impugned judgment and other judgments delivered from time to time, the other facts regarding requisition and acquisition have been incorporated.

Therefore, briefly, we would indicate those facts in order to understand the controversy involved in the said case properly and comprehensively. We would like to clearly indicate that our directions would remain confined only to the validity of Section 4 and declaration made under Section 6 of the Act.

Essential facts Brief facts necessary to understand and comprehend the controversy involved in the case are briefly stated as under.

After the acquisition of the said premises in the year 1943, both office and residence of the Dy. Commissioner of Police (Security Control) started functioning at the said premises. On 28th December, 1947, the Government of West Bengal de-requisitioned the said land, but detained possession thereof. Again, by order dated 30th January, 1959 issued under Section 3(1) of the West Bengal Premises Requisition and Control

(Temporary Provision) Act, 1947, the Government requisitioned the said land and continued to use the same for the same purpose.

The appellant purchased the said land on 27.9.1982 along with the existing building. The appellant filed a writ petition being W.P. No.872 of 1984 before the Calcutta High Court in the year 1984.

The writ petition was allowed by the learned Single Judge vide judgment dated 17th September, 1985. The respondent-State preferred an appeal (FMA No.508 of 1985). The said appeal was disposed of by the judgment of the Division Bench dated 12th December, 1985. The requisition thereof was to remain valid for a period of six months from 12th December, 1985 and the requisition in regard to the garden was put to an end with the direction to hand over the possession to the appellant with liberty to acquire at the same time.

The appellant apprehending acquisition of the said land under the provisions of the West Bengal Land (Requisition and Acquisition) Act, 1948, on 25th April, 1986 moved the second Writ Petition (Civil Rule No.

5025(W) of 1986).

The respondent-Government once again requisitioned the said land by making an order dated 31st May, 1986 under Section 3(1) of the West Bengal Act 2 of 1948. The respondent-Government of West Bengal continued to use the said requisitioned land for the same purpose as before. Thereafter, for acquiring the said land, the government published a notice dated 14th August, 1986 under Section 4(1a) of the West Bengal Act 2 of 1948 in the official gazette on 16th August, 1986.

The appellant challenged the said order and notice under Sections 3(1) and 4(1a) of the West Bengal Act 2 of 1948 by filing a third Writ Petition (Civil Rule No.

8407(W) of 1987). The learned Single Judge disposed of the said Civil Rule 8407(W) of 1987. Both the said order under Section 3 (1) and Notice under Section 4(1a) were set aside.

The respondent-Government preferred an appeal (FMAT No. 2224 of 1987) and it was disposed of by the Division Bench on 7th September, 1990. The appeal was allowed and the judgment appealed from was set aside to the extent indicated hereinbelow. The relevant portion of the judgment is reproduced hereinbelow :- "It however appears to us that if the vacant land to the extent of 15 feet at the back side of the covered portion of the building is acquired the purpose for which the building is intended to be acquired will be satisfied and the entirety of the vacant land and the back side of the said building is not necessary to be acquired. The order of acquisition of vacant land at the back of the building beyond 15 ft.

of the vacant land at the back side of the building therefore stands annulled. It also appears to us that in the facts of this case that the State Government intended from the very beginning to acquire the premises for the said Security Control Department and for accommodating the in charge of the said department viz. The Deputy Commissioner of

Police (Security Control). It was never intended by the State Government to requisition the premises temporarily for the sole purpose of requisition. It will not be correct to contend that the Government had intended initially to keep the premises in requisition but later on, it decided to acquire the said premises. Records of the Government Department also clearly demonstrate that the property was intended to be acquired for the said purpose and as the time for acquisition as specified by the Court of Appeal was running out and there was urgent necessity to maintain status quo as regards possession before acquisition proceeding is finalized under Act II of 1948, the order of requisition was made within six months only as a step in aid to pass consequential order of acquisition under Section 4(1a) of Act 1948. Looking to the relevant records of the case it does not appear to us that the order of requisition was not passed within a period of six months but such order was antedated." Against the order of the Division Bench, special leave petition filed by the respondent-State was dismissed by this Court. Consequently, on 12th June, 1991 physical possession of the land beyond 15 ft. of the existing building was delivered back by the respondent- State to the appellant. A notice dated 14th September, 1992 under Section 5(3) of the West Bengal Act 2 of 1948 was issued by the First Land Acquisition Collector, Calcutta inviting the respondents to make their respective claims to compensation for the said land already acquired by the Government by publishing the said notice dated 14th August, 1986 under Section 4(1a) of the West Bengal Act 2 of 1948.

It may be pertinent to mention that the appellant instead of making any claim for the grant of compensation, filed Writ Petition Nos.3798-3799 of 1992.

In Writ Petition No.3798 of 1992, the notice dated 14th September, 1992 under Section 5(3) of the West Bengal Act 2 of 1948 and in FMAT No.2224 of 1987 was set aside on the ground that despite the judgment of the Division Bench in FMAT No.2224 of 1987, the said notice had been issued.

By the order passed in Writ Petition No.3799 of 1992, the requisition order dated 30th January, 1959 was set aside together with the direction to the State Government to deliver the vacant possession of the land and the building to the appellant within six months. By a subsequent order dated 8th July, 1994 passed in Writ Petition No.3798 of 1992, the learned Single Judge was pleased to modify his order dated 18th August, 1993 to the effect that the said order would not prevent the Government from issuing fresh notice in terms of the orders of the Court, for acquisition of the land within the period of six months after they wanted to acquire the land.

In this background, the respondent-State Government published the notification dated 13th December, 1994 in the official gazette on 21st December, 1994 under Section 4 of the Land Acquisition Act of 1894. In the notification, the same public purpose was indicated that the premises were required for the office of Deputy Commissioner of Police (Security Control) which had been in possession of respondent State of West Bengal since 1943. The land (the purpose for which it was being used from the year 1943) and the land (the covered area 15 ft. as upheld by the Division Bench in FMAT No.2224 of 1987) at the same premises was needed by the State Government at the public expense.

The appellant had filed his objections under Section 5A of the Act. The objections of the appellant were heard by the competent authority and thereafter, declaration under Section 6 of the Act was issued by the competent authority on 23rd June, 1995. It was published in the newspaper on 6 and 7th July, 1995 and in the official gazette on 7th August, 1995. According to the appellant, the notification under Section 4 of the Land Acquisition Act could not have been validly issued in respect of the land, possession whereof had been retained illegally by the State Government. It was further incorporated that the Government had earlier been continuing possession of the land only in terms of the requisition order dated 31st May, 1986. The said order of requisition having been quashed by the Court's order dated 18th August, 1993, the Government's possession of land sought to be acquired became illegal and unauthorized. It was asserted by the appellant that having abandoned the earlier proceedings initiated under the West Bengal Act 2 of 1948, as was evident from the fact of publication of the impugned Notification under Section 4 read with Section 4 of the Act No.1 of 1894, the State Government had lost the right to retain the possession of the land. The possession would have been taken only in terms of the provisions of Section 16 of the Act 1 of 1894. It was further asserted by the appellant that the very fact of Government publishing the Notification under Section 4, while illegally retaining possession of the land was sufficient to hold that the power was exercised mala fide.

The learned Single Judge came to the conclusion that possession of the land could be taken by the Government only after passing of an award under the provisions of the Act 1 of 1894.

In the instant case, no award has been passed, the possession of the land had always remained with the Government. The possession of the land had not been handed over to the respondent in spite of Court's order dated 18th August, 1993 passed by the learned Single Judge. According to the appellant, non-delivery of possession of the land had vitiated the Notification under Section 4 of the Land Acquisition Act so as to make it a nullity. The Government was granted liberty to acquire the land in accordance with law but that liberty was subject to handing over the derequisitioned land to the respondent.

The appellant submitted that the publication of the Notification under Section 4 of the Act 1 of 1894 without first delivering back possession of the land to the respondent in terms of the court's order passed in Writ Petition No.3799 of 1992 amounted to practicing fraud by the government upon the statute.

It was contended by the respondent before the Division Bench that since the Government had been granted liberty to take steps for acquisition of the land and the Notification under Section 4 of the Act 1 of 1894 was issued pursuant to grant of such liberty, there was no scope and reason for the State Government to give back possession of the land to the appellant; as a condition precedent for initiation of proceedings. As regards the declaration, it has been contended that the learned Single Judge should not have decided the question of validity by relying on a printing mistake appearing in the declaration which had been published in the newspaper because the purported vagueness indicated by the learned Single Judge did not exist and a real one as was apparent from the Notification itself and the declaration published in the official gazette.

Both the notification under section 4 and declaration under section 6 have been reproduced in the earlier part of the judgment. The respondent placed reliance on Sri Nripati Ghoshal v. Premavati Kapur & Ors. [(1996) 5 SCC 386 (para 4)] and First Land Acquisition Collector & Ors. v. Nirodhi Prakash Gangoli & Anr. [(2002) 4 SCC 160 (para 6)] and contended that the State Government had power to initiate an acquisition proceeding by publishing a Notification under Section 4 of the Act and in respect of any land which is in the Government's possession and, therefore, Notification published in the instant case cannot be faulted with, on the ground as contended by the appellant.

The learned counsel for the appellant also contended that delivery of possession of the land in the facts and circumstances of the present case was a sine qua non for publishing the Notification under Section 4 of the Land Acquisition Act.

On the question of requirement of delivery of possession reliance has been made on Raghunath & Ors. v. State of Maharashtra & Ors. [AIR 1988 SC 1615 (para 9)] Hindustan Oil Mills Ltd. & Anr. v.

Special Deputy Collector (Land Acquisition) [AIR 1990 SC 731 (paras 8 & 9)] and State of West Bengal v.

Bireshwas Dutta Estate (P) Ltd. [(2000) 1 Calcutta Law Times 165(HC) (para 37)].

Reliance has also been placed on Sailendra Narayana Bhanja Deo v. State of Orissa [AIR 1956 SC 346 (para 8).

Analysis of the impugned judgment The Division Bench carefully examined the pleadings, documents and the judgments cited at the Bar. The Court came to a categorical finding that for the purpose of examining the validity of a Notification under Section 4 of the Land Acquisition Act, the question of possession of land is absolutely irrelevant; the examination should remain confined only to the question of existence of public purpose. The Division Bench drew support for the aforesaid view from the case of Nirodhi Prakash Gangoli. The Division Bench also observed that neither the appellant had seriously contended that behind the proposed acquisition, the public purpose was absolutely absent; nor did the learned Single Judge arrived at the conclusion that the proposed acquisition was not for a notified public purpose.

The Government of West Bengal was empowered to take steps for acquisition of any land in any locality, if the same was needed for public purpose under section 4 of the Land Acquisition Act. According to the Division Bench, in absence of any bar, the Government was fully empowered to publish a notification under Section 4 in respect of a piece of land which is already in the government's possession. The Division Bench observed that the order dated 18th August, 1993 passed by the learned Single Judge was in ignorance of both the aforementioned statutory provisions and the binding Division Bench judgment.

In Nirodhi Prakash Gangoli's case (supra), exactly similar controversy came before the Court for adjudication regarding physical possession. The Court held as under:

"6. It is indeed difficult for us to uphold the conclusion of the Division Bench that acquisition is mala fide on the mere fact that physical possession had not been delivered pursuant to the earlier directions of a learned Single Judge of Calcutta High Court dated 25.8.1994. When the Court is called upon to examine the question as to whether the acquisition is mala fide or not, what is necessary to be inquired into and found out is, whether the purpose for which the acquisition is going to be made, is a real purpose or a camouflage. By no stretch of imagination, exercise of power for acquisition can be held to be mala fide, so long as the purpose of acquisition continues and as has already been stated, there existed emergency to acquire the premises in question. The premises which were under occupation of the students of the National Medical College, Calcutta, were obviously badly needed for the College and the appropriate authority having failed in their attempt earlier twice, the orders having been quashed by the High Court, had taken the third attempt of issuing notification under Sections 4(1) and 17(4) of the Act, such acquisition cannot be held to be mala fide and, therefore, the conclusion of the Division Bench in the impugned judgment that the acquisition is mala fide, must be set aside and we accordingly set aside the same." The High Court was correct and justified in holding that while examining the validity of notification under Section 4 of the Land Acquisition Act, the question of possession of land was absolutely irrelevant.

The Division Bench held that the order dated 18th August, 1993 was per incurium. The Court also observed that the learned Single Judge was wrong in holding that the publication of the said Notification under Section 4 was an act done in violation of the said order dated 18th August, 1993. According to the Division Bench, the learned Single Judge proceeded on a completely wrong premise that the land in question had been kept in possession by the Government, even after formally derequisitioning the same; for, as a matter of fact, the piece sought to be acquired, had never been derequisitioned after 30th January, 1959; it had rather stood absolutely vested in the Government. The Division Bench clearly came to the conclusion that the State Government's possession of the land never became illegal or unauthorized by the operation of law.

The Division Bench specifically observed that the declaration published on 7th August, 1995 in the official gazette has been produced before them. The Division Bench observed that they were satisfied that the words 'partly at the public expense and partly at the expense of' within the aforesaid ward published in the newspaper did not correctly reproduce the declaration issued under section 6 of the Act. The official gazette had correctly incorporated that the land was acquired at the public expense only. Therefore, the Division Bench did not find any infirmity in Section 4 notification and in the declaration dated 23rd June, 1995 made under Section 6 of the Land Acquisition Act, 1894.

The Division Bench was also justified in coming to the conclusion that the appellant cannot be permitted to take advantage of some typographical error in the newspaper particularly when in the official gazette as well as Notification under Section 4 and in the declaration of 23rd June, 1995 made under Section 6 of the Act of 1894, no such mistake appeared. Therefore, the submission of the appellant was totally devoid of any merit.

It may be pertinent to mention that the Division Bench was quite careful about the rights of the appellant and various proceedings and orders passed in those proceedings.

While taking into consideration all the relevant facts and circumstances, the Division Bench clearly observed as under and we deem it appropriate to quote the relevant observation of the Division Bench:- "We have already seen that there was an unbroken and continuous valid requisition, which had ultimately merged in the acquisition notice dated 14th August, 1986. Therefore, to whatever rent compensation or damages the respondents were entitled in law; they were always and still are, at liberty to claim and realize the same from the Government, in accordance with law. Regarding the propriety and necessity of the publication of the notification dated 13th December, 1994, under section 4 of the Act 1 of 1894, in the face of the Division Bench decision dated 7th September, 1990 in F.M.A.T. No. 2224 of 1987, we do not propose to express any opinion, lest we should allow the appellants to challenge their own action, to the inevitable detriment of valuable accrued right, if any, of the respondents. We only say that in view of our decision to allow the appeal, and uphold the section 4 notification and consequent section 6 declaration, we do not think it proper or necessary to pass any further order on the respondents' said applications (C.A. Nos. 4592 and 5886 of 2001); and they shall be deemed to be disposed of, with liberty to the respondents to claim their dues, if any, before the appropriate forum, in accordance with law." The Division Bench allowed the appeal and set aside the impugned judgment of the learned Single Judge dated 2nd December, 1996. The Division Bench has observed that the appellant would be entitled to recover rent, compensation of rent to which he was entitled in law in appropriate proceedings. The appellant has failed to point out any infirmity as far as Notification under Section 4 and consequent declaration under Section 6 of the Act. Section 4 of the Notification is usually assailed on the ground of public purpose. Therefore, we deem it appropriate to enumerate the concept of Public Purpose and deal with the decided cases interpreting the scope and ambit of public purpose.

Public Purpose Public Purpose has been defined in the Land Acquisition Act as under:- "(f) the expression "public purpose" includes (i) the provision of village-sites, or the extension, planned development or improvement of existing village sites;

(ii) the provision of land for town or rural planning;

(iii) the provision of land for planned development of land from public funds in pursuance of any scheme or policy of Government and subsequent disposal thereof in whole or in part in lease, assignment or outright sale worth the object of securing further development as planned;

(iv) the provision of land for a corporation owned or controlled by the State;

(v) the provision of land for residential purposes to the poor or landless or to persons residing in areas affected by natural calamities, or to persons displaced to affected by reason of the implementation of any scheme undertaken by Government, any local authority or a corporation owned or controlled by the State;

(vi) the provision of land for carrying out any educational, housing, health or slum clearance scheme sponsored by Government, or by any authority established by Government for carrying out any such scheme, or, with the prior approval of the appropriate Government, by a local authority or a society registered under the Societies Registration Act, 1860 (21 of 1860), or under any corresponding law for the time being in force in a State, or a co-operative society within the meaning of any law relating to co-operative societies for the time being in force in any State;

(vii) the provision of land for any other scheme of development sponsored by Government or, with the prior approval of the appropriate Government, by a local authority;

(viii) the provision of any premises or building for locating a public office;

but does not include acquisition of land for Companies." Public purpose will include a purpose in which the general interest of community as opposed to the interest of an individual is directly or indirectly involved.

Individual interest must give way to public interest as far as public purpose in respect of acquisition of land is concerned.

In the Constitution of India, some guidelines can be traced as far as public purpose is concerned in Article 37 of the Constitution. The provisions contained in this Part (Directive Principles of the State Policy) shall not be enforceable by any Court, but the principles therein laid down are nevertheless fundamental in the governance of the country. It shall be the duty of the State to apply these principles in making laws.

According to Article 39 of the Constitution, the State shall, in particular, direct its policy towards securing that the ownership and control of the material resources of the community are so distributed as best to subserve the common good. The laws made for the purpose of securing the constitutional intention and spirits have to be for public purpose.

The term 'public purpose' has been defined in Black Law Dictionary (Fifth Edition) as under:

"A public purpose or public business has for its objective the promotion of the public health, safety, morals, general welfare, security, prosperity and contentment of all the inhabitants or residents within a given political division, as, for example, a state, the sovereign powers of which are exercised to promote such public purpose or public business." Public purpose is bound to vary with times and prevailing conditions in the community or locality and, therefore, the legislature has left it to the State (Government) to decide what is public purpose and also to declare the need of a given land for the purpose. The legislature has left the discretion to the Government regarding public purpose. The Government has the sole and absolute discretion in the matter.

In State of Bihar v. Kameshwar Singh reported in AIR 1952 SC 252 at page 259, a Constitution Bench of this Court considered the expression 'public purpose'.

Mahajan, J. explained the expression 'public purpose' in the following manner:

"The expression "public purpose" is not capable of a precise definition and has not a rigid meaning. It can only be defined by a process of judicial inclusion and exclusion. In other words, the definition of the expression is elastic and takes its colour from the statute in which it occurs, the concept varying with the time and state of society and its needs. The point to be determined in each case is whether the acquisition is in the general interest of the community as distinguished from the private interest of an individual." In that case, S. R. Das, J. observed as under:

"We must regard as public purpose all that will be calculated to promote the welfare of the people as envisaged in the Directive Principles of State policy whatever else that expression may mean." Almost a century ago, in Hamabai v. Secretary of State reported in (1911) 13 Bom LR 1097, Batchelor, J.

observed: "General definitions are, I think, rather to be avoided where the avoidance is possible, and I make no attempt to define precisely the extent of the phrase 'public purpose' in the lease; it is enough to say that, in my opinion, the phrase, whatever else it may mean, must include a purpose, that is, an object or aim, in which the general interest of the community, as opposed to the particular interest of individuals, is directly and vitally concerned" received the approval of the Privy Council".

The definition of public purpose has been relied in number of subsequent decisions including the Constitution Bench judgment of this Court.

The concept of public purpose was dealt in great detail in a leading American case Munn v. Illinois reported in (1877) 94 US 113: 24 L. Ed 77 and in some other cases. The doctrine declared is that property becomes clothed with a public interest when used in a manner to make it of public consequence, and affect the community at large and from such clothing the right of the legislature is deduced to control the use of the property and to determine the compensation which the owner may receive for it. Field, J. observed as follows:

"The declaration of the Constitution of 1870, that private buildings used for private purposes shall be deemed public institutions, does not make them so. The receipt and storage of grain in a building erected by private means for that purpose does not constitute the building a public warehouse. There is no magic in the language, though used in a constitutional convention, which can change a private business into a public one, or alter the character of the building in which the business is transacted." In United Community Services v. Omaha Nat.

Bank 77 N.W.2d 576, 585, 162 Neb. 786, the Court observed that a public purpose has for its objective the promotion of the public health, safety, morals, security, prosperity, contentment, and the general welfare of all the inhabitants.

In People ex rel. Adamowski v. Chicago R.R.

Terminal Authority, 151 N.E.2d 311, 314, 14 III.2d 230 the Court observed that public purpose is not static concept, but is flexible, and is capable of expansion to meet conditions of complex society that were not within contemplation of framers of Constitution.

In Green v. Frazier, 176 N.W. 11, 17, 44 N.D. 395, the Court observed that a public purpose or public business has for its objective the promotion of the public health, safety, morals, general welfare, security, prosperity, and contentment of all the inhabitants or residents within a given political division, as, for example, a state, the sovereign powers of which are exercised to promote such public purpose or public business.

In the words of Lord Atkinson in Central Control Board v. Cannon Brewery Co. Ltd. (1919) A.C. 744, the power to take compulsorily raises by implication a right to payment.

The power of compulsory acquisition is described by the term "eminent domain". This term seems to have been originated in 1525 by Hugo Grotius, who wrote of this power in his work "De Jure Belli et Pacis" as follows :

"The property of subjects is under the eminent domain of the State, so that the State or he who acts for it may use and even alienate and destroy such property, not only in the case of extreme necessity, in which even private persons have a right over the property of others, but for ends of public utility, to which ends those who founded civil society must be supposed to have intended that private ends should give way. But it is to be added that when this is done the State is bound to make good the loss to those who lose their property." The Court observed that the requirement of public purpose is implicit in compulsory acquisition of property by the State or, what is called, the exercise of its power of 'Eminent Domain'.

The Court further observed that the principle of compulsory acquisition of property, says Cooley (in Vol. II at p. 113, Constitutional Limitations) is founded on the superior claims of the whole community over an individual citizen but is applicable only in those cases where private property is wanted that public use, or demanded by the public welfare and that no instance is known in which it has been taken for the mere purpose of raising a revenue by sale or otherwise and the exercise of such a power is utterly destructive of individual right.

In The State of Bombay v. R.S. Nanji (1956) SCR 18, the Court observed that it is impossible to precisely define the expression 'public purpose'. In each case all the facts and circumstances will require to be closely examined in order to determine whether a public purpose has been established. Prima facie, the Government is the best judge as to whether public purpose is served by issuing a requisition order, but it is not the sole judge.

The courts have the jurisdiction and it is their duty to determine the matter whenever a question is raised whether a requisition order is or is not for a public purpose.

In the said case, the Court observed that the phrase 'public purpose' includes a purpose, that is, an object or aim, in which the general interest of the community, as opposed to the particular interest of individuals is directly and vitally concerned. It is impossible to define precisely the expression 'public purpose'. In each case all the facts and circumstances will require to be closely examined to determine whether a public purpose has been established.

In that case, the Court also referred to the following cases: The State of Bombay v. Bhanji Munji & Another (1955) 1 SCR 777 and The State of Bombay v.

Ali Gulshan (1955) 2 SCR 867.

In Somawanti v. State of Punjab (1963) 2 SCR 774, the Court observed that public purpose must include an object in which the general interest of the community, as opposed to the particular interest of individuals, is directly and vitally concerned. Public purpose is bound to change with the times and the prevailing conditions in a given area and, therefore, it would not be a practical proposition even to attempt an extensive definition of it. It is because of this that the legislature has left it to the Government to say what is a public purpose and also to declare the need of a given land for a public purpose.

The Constitution Bench of this Court in Somawanti (supra) observed that whether in a particular case the purpose for which land was needed was a public purpose or not was for the Government to be satisfied about and the declaration of the Government would be final subject to one exception, namely that where there was a colourable exercise of the power the declarations would be open to challenge at the instance of the aggrieved party.

In Babu Barkya Thakur v. The State of Bombay & Others (1961) 1 SCR 128, the Court observed as under:

"It will thus be noticed that the expression 'public purpose' has been used in its generic sense of including any purpose in which even a fraction of the community may be interested or by which it may be benefited." The Constitution Bench in Satya Narain Singh v.

District Engineer, P.W.D., Ballia and Anr. reported in AIR 1962 SC 1161 while describing public service observed :- "It is undoubtedly not easy to define what is "public service" and each activity has to be considered by itself for deciding whether it is carried on as a public service or not. Certain activities will undoubtedly be regarded as public services, as for instance, those undertaken in the exercise of the sovereign power of the State or of governmental functions. About these there can be no doubt.

Similarly a pure business undertaking though run by the Government cannot be classified as public service. But where a particular activity concerns a public utility a question may arise whether it falls in the first or the second category. The mere fact that that activity may be useful to the public would not necessarily render it public service. An activity however beneficial to the people and however useful cannot, in our opinion, be reasonably regarded as public service if it is of a type which may be carried on by private individuals and is carried on by government with a distinct profit motive.

It may be that plying stage carriage buses even though for hire is an activity undertaken by the Government for ensuring the people a cheap, regular and reliable mode of transport and is in that sense beneficial to the public".

In Arnold Rodricks v. State of Maharashtra, reported in (1966) 3 SCR 885, while Justice Wanchoo and Justice Shah dissenting from judgment observed that there can be no doubt that the phrase 'public purpose' has not a static connotation, which is fixed for all times. There can also be no doubt that it is not possible to lay down a definition of what public purpose is, particularly as the concept of public purpose may change from time to time. There is no doubt however that public purpose involves in it an element of general interest of the community and whatever furthers the general interest must be regarded as a public purpose.

In Bhim Singhji v. Union of India (1981) 1 SCC 166, as per Sen, J., the concept of public purpose necessarily implies that it should be a law for the acquisition or requisition of property in the interest of the general public, and the purpose of such a law directly and vitally subserve public interest.

Broadly speaking the expression 'public purpose' would however include a purpose in which the general interest of the community as opposed to the particular interest of the individuals is directly and virtually concerned.

In Laxman Rao Bapurao Jadhav v. State of Maharashtra reported in (1997) 3 SCC 493, this Court observed that "it is for the State Government to decide whether the land is needed or is likely to be needed for a public purpose and whether it is suitable or adaptable for the purpose for which the acquisition was sought to be made. The mere fact that the authorized officer was empowered to inspect and find out whether the land would be adaptable for the public purpose, it is needed or is likely to be needed, does not take away the power of the Government to take a decision ultimately".

In Scindia Employees' Union v. State of Maharashtra & Others reported in (1996) 10 SCC 150, this Court observed as under:

"The very object of compulsory acquisition is in exercise of the power of eminent domain by the State against the wishes or willingness of the owner or person interested in the land. Therefore, so long as the public purpose subsists the exercise of the power of eminent domain cannot be questioned. Publication of declaration under Section 6 is conclusive evidence of public purpose. In view of the finding that it is a question of expansion of dockyard for defence purpose, it is a public purpose." The right of eminent domain is the right of the State to reassert either temporarily or permanently its dominion over any piece of land on account of public exigency and for public good.

In the case of Coffee Board v. Commissioner of Commercial Taxes reported in (1988) 3 SCC 263, the Court observed that the eminent domain is an essential attribute of sovereignty of every State and authorities are universal in support of the definition of eminent domain as the power of the sovereign to take property for public use without the owner's consent upon making just compensation.

The power of eminent domain is not exercisable in Anglo-Saxon jurisprudence except on condition of payment of compensation. In V.G. Ramachandran's Law of Land Acquisition and Compensation (Eighth Edition) by G.C. Mathur, it is stated (at page 1)- "In United States, the power of eminent domain is founded both on the Federal (Fifth Amendment) and on the State Constitutions.

The scope of the doctrine in America stands considerably circumscribed by the State Constitutions. Now, the Constitution limits the power to taking for a public purpose and prohibits the exercise of power of eminent domain without just compensation. The process of exercising the power of eminent domain now is commonly referred to as 'condemnation' or 'expropriation'." A seven-Judge Bench of this Court in The State of Karnataka & Another v. Shri Ranganatha Reddy & Another reported in (1977) 4 SCC 471, explained the expression 'public purpose' in the following words:

"6. It is indisputable and beyond the pale of any controversy now as held by this Court in several decisions including the decision in the case of His Holiness Kesavananda Bharati Sripadagalaveru v. State of Kerala [1973] Supp. 1 S.C.R. 1 - popularly known as Fundamental Rights case - that any law providing for acquisition of property must be for a public purpose. Whether the law of acquisition is for public purpose or not is a justifiable issue. But the decision in that regard is not to be given by any detailed inquiry or investigation of facts. The intention of the legislature has to be gathered mainly from the Statement of Objects and Reasons of the Act and its Preamble. The matter has to be examined with reference to the various provisions of the Act, its context and set up, the purpose of acquisition has to be culled out therefrom and then it has to be judged whether the acquisition is for a public purpose within the meaning of Article 31(2) and the law providing for such acquisition.

61. When we ascertain the content of 'public purpose', we have to bear the above factors in mind which mean that acquisition of road transport undertakings by the State will undoubtedly be a public purpose. Indeed, even in England, 'public purposes' have been defined to mean such 'purposes' of the administration of the government of the country (p. 228, Words & Phrases Legally defined, II Edn.). Theoretically, or even otherwise, there is no warrant for linking up public purpose with State necessity, or in the court throwing off the State's declaration of public purposes to make an economic research on its own. It is indeed significant that in Section 40 (b) of the Land Acquisition Act, 1894, the concept of 'public use' took in acquisition for the construction of some work even for the benefit of a company, provided such work as likely to prove useful to the public. Even the American Constitution, in the 5th Amendment, uses the expression 'public use' and it has been held in India in Kameshwar that 'public purpose' is wider than 'public use'." Ambiguity, indefiniteness and vagueness of public purpose are usually the grounds on which notifications under Section 4(1) of the Land Acquisition Act are assailed.

Public purpose cannot and should not be precisely defined and its scope and ambit be limited as far as acquisition of land for the public purpose is concerned.

Public purpose is not static. It also changes with the passage of time, need and requirements of the community. Broadly speaking, public purpose means the general interest of the community as opposed to the interest of an individual.

The power of compulsory acquisition as described by the term 'eminent domain' can be exercised only in the interest and for the welfare of the people. The concept of public purpose should include the matters, such as, safety, security, health, welfare and prosperity of the community or public at large.

The concept of 'eminent domain' is an essential attribute of every State. This concept is based on the fundamental principle that the interest and claim of the whole community is always superior to the interest of an individual.

Public purpose for which the premises was required in the instant case was not questioned seriously. As a matter of fact, the State of West Bengal has been using the premises in question for more than six decades for the safety and security of the people by having an office of the Deputy Commissioner of Police (Security Control).

Therefore, by no stretch of imagination, it can be said that the premises was not required by the State Government for the interest and welfare of the people or there was no public purpose involved in acquiring the premises in question.

We have heard the learned counsel for the appellant and the respondent at length. We have also carefully examined the pleadings, documents, impugned judgments and other judgments cited at the Bar. We see no reason to interfere with the well-reasoned judgment passed by the Division Bench of the Calcutta High Court, particularly, when the Division Bench had given liberty to the appellant to recover rent, compensation or damages in appropriate proceedings in accordance with law.

The appeal being devoid of any merit is accordingly dismissed.

In the facts and circumstances of the case, we direct the parties to bear their own costs.

MILKMEN COLONY VIKAS SAMITI V. STATE OF RAJASTHAN & OTHERS [2007] INSC 48 (17 January 2007)

S.B. SINHA & DALVEER BHANDARI

[Arising out of SLP (C) No.16751 of 2004) WITH
CIVIL APPEAL NO. 247 OF 2007 [Arising out of SLP (C) No.23389-90 of 2004) Shri Ghanchi Mahasabha, Jodhpur .... Appellant Versus Rajasthan Chapter of Indian Association of Lawyers & Others .... Respondents DALVEER BHANDARI, J.

Leave granted.

In a public interest litigation instituted under Article 226 of the Constitution, the High Court of Rajasthan at Jodhpur, by the impugned judgment, has directed that the milk dairies located in the city of Jodhpur be shifted from their present location to alternative sites. These appeals by grant of special leave are preferred against the said judgment and order dated 12th July, 2004 of the High Court passed in D.B. Civil Misc. Writ Petition No.4409 of 1994.

Both these appeals are inter-connected and are arising out of a common judgment, therefore, we would refer to the facts as mentioned in Civil Appeal No. 246 of 2007 arising out of SLP (C) No.16751 of 2004.

The appellant-Milkmen Colony Vikas Samiti is an association of milkmen engaged in the business of selling milk and milk products in the city of Jodhpur (Rajasthan) for the last 44 years. The Government of Rajasthan vide Notification No.F.1 LSG/56 dated 5.11.1956 introduced a scheme, namely, 'Masuriya Colony Scheme', under which the members of the appellant Samiti and other milkmen, who were carrying on business of selling milk and milk products, were allotted plots of land in the city of Jodhpur @ Rs.2/- per sq. yards. In all, 332 plots were allotted by the Government under the said scheme to different milkmen for developing dairies. Since 1956, the said milkmen have been carrying their business of selling milk and milk products in the above colony. The said colony was duly conceived and planned as a milkmen colony by the Urban Improvement Trust, Jodhpur with the approval of the State Government.

It is stated that the owners of the bovine animals, in the city of Jodhpur, after milching the bovine animals were turning them out of dairies so that they could eat whatever was available on the roads. The stray cattle including the cows, bulls, dogs etc. freely roam in the city of Jodhpur and in the porch of the Mahatma Gandhi Hospital, the principal government hospital in the city.

It is further stated that the excreta of these animals was also visible all over, even in the corridors of the High Court. This totally unhygienic, unhealthy and injurious practice was creating considerable nuisance to the citizens of the city of Jodhpur.

The citizens of the City, being aggrieved by the said nuisance caused by the stray cattle and dogs, filed a petition in public interest in the High Court of Rajasthan at Jodhpur through the Rajasthan Chapter of Indian Association of Lawyers, respondent no.4 herein, associated with the International Association of Democratic Lawyers established in 1946 and in consultative status with UN Economic and Social Council, UNESCO and UNICEF.

In the instant petition, it was stated that stray animals, such as, bulls, dogs and cattle were roaming all around inside and outside the city freely. Cattle were found loitering and squatting on the roads of Jodhpur City and that they were causing danger to human life and were creating a traffic hazard. It is stated in the petition that the entire city was full of dirt, refuge and was stinking beyond all limits and that the excreta of stray cattle was a breeding ground for various diseases.

Drains were clogged and sewerage water was getting mixed up with the drinking water spreading many diseases. These unhygienic and unhealthy prevalent conditions are adversely affecting the quality of life of the residents living in the city of Jodhpur and thereby impinging upon their constitutional rights enshrined under Article 21 of the Constitution of India. In the writ petition, following reliefs were prayed:

1. To direct the respondent Jodhpur Municipal Corporation and the Urban Improvement Trust to take steps to ensure that animals and cattle do not inhibit roads and public places and make proper arrangement in this behalf;

2. In order to oversee that all this is done, to appoint a Committee constituting of eminent citizens authorizing such Committee to see:

(i) that the direction aforesaid are given effect to;

(ii) to receive complaints from the people; and (iii) make appropriate directions to meet genuine grievances; and (iv) the respondents be directed to comply with the direction of the aforesaid committee in this behalf;

(v) to take immediate steps to make city clean, revamp sewerage system;

(vi) For above purposes, if necessary, the State Government be directed to make funds available to respondent Municipal Corporation.

It was stated before the High Court that with the passage of time, Jodhpur City became very dense and, therefore, it was necessary to eliminate the menace of stray animals from the roads of the city of Jodhpur. It was also urged before the High Court that the milkmen colony when devised was more or less outside the city but now it is in the heart of the city because of expansion of the City.

The main cause of expansion has been unchecked growth in the population. Therefore, a direction was sought to relocate the dairies out of the city of Jodhpur.

The High Court entertained the writ petition and, looking to the seriousness of the matter, issued certain directions, vide its order dated 23.1.2003, which are reproduced hereinbelow:

(i) The Municipal Corporation, Jodhpur shall make every endeavour to shift dairies from the city and have them relocated with the assistance of the State to the outskirts and periphery of the city or beyond the city limits.

(ii) The Municipal Corporation shall relocate stray cattle from the roads to Gaushalas or institutions made for providing shelter to stray cattle including the institutions at Pawapuri.

(iii) For the removal of stray cattle, bulls and dogs from the roads and for their relocation to shelter etc. the Municipal Corporation shall press into service sufficient number of persons and vehicles for impounding and relocating animals.

(iv) Cattle and animals located in Jodhpur City shall have a tag number tied around their necks. The tag numbers should be indicative of the name and address of the person to whom the animal belongs so that there will be no difficulty in tracing their owners. This direction shall be carried out by the person(s) owning the cattle and animal(s). The enforcement of the condition shall be made by the civil authorities.

(v) Prosecutions should be launched under the various penal provisions against the owners of such cattle and animals which are found on the streets and roads unattended.

(vi) The Municipal Corporation shall employ sufficient number of persons to catch stray cattle and animals found on the roads and streets. Once they are caught, they shall be impounded and may be released to owners on pay of fine of Rs.500/- each and subject to other directions mentioned herein.

(vii) The vehicles which are used for carrying impounded cattle and animals shall be fitted with ramps in order to avoid the chances of injury to them.

(viii) The transit and handling of the stray cattle and animals will be in conformity with the laws providing for their safety and prevention of injuries to them including Prevention of Cruelty to Animals Act, 1960.

(ix) Electric supply to unauthorized dairies which are operating in the city shall be disconnected with immediate effect.

(x) The direction of serial No. (ix) above shall also be applicable to the organized and unauthorized dairies located within the city in the event of their failure to shift out of the city within the time allowed to them by this order. The place to which such dairies are to be shifted shall be earmarked by the competent authority within three weeks.

(xi) The Municipal Corporation, Jodhpur shall file statements detailing the fine(s) collected by it in terms of directions given at serial no. (vi) above.

(xii) The roads of Jodhpur City shall be made free of stray cattle bulls and roaming animals by 31st March 2003.

(xiii) Periodical progress report shall be submitted by the Municipal Corporation by 15th of each calendar month.

(xiv) The State Government shall assist the Municipal Corporation, Jodhpur in securing the implementation of the aforesaid directions. This will include financial assistance, which would be required by the Municipal Corporation of Jodhpur to carry out the directions contained in this order effectively.

(xv) The Chief Execution Officer of the Municipal Corporation, Jodhpur shall nominate two officers, who shall be responsible for carrying out the directions of this Court.

The aforesaid directions will not only bind the Municipal Corporation of Jodhpur, its functionaries and officers nominated by the Chief Executive Officer, Municipal Corporation, but it shall also be equally binding on the State Government and its functionaries and electric supply companies. Needless to say that failure on the part of the concerned authorities and functionaries shall be actionable under Article 215 of the Constitution and the Contempt of Courts Act, 1971." The aforesaid petition again came for consideration before the High Court on 06.1.2004. On that day, the Court found that the Collector, Jodhpur had complied with the orders and allotted 2500 bighas of land to the Urban Improvement Trust for the purpose of shifting dairies from the city of Jodhpur. The State Government had also made a sum of Rs.50,00,000/- available to the Municipal Corporation to meet the expenses of (i) catching the stray cattle; (ii) for their transportation; and (iii) for purchase of fodder for the stray cattle. The Collector further made 500 bighas of land available to the Municipal Corporation in Kali Beri, Soor Sagar, Jodhpur for creation of a pond. The Court further issued the following directions:

"We direct that dairy owners/operators who were allotted the land in the Milkmen Colony at Pal Road or who are now operating within the city limits should be shifted to the new area which has been made available by the Collector to the Urban Improvement Trust.

For this purpose, the Urban Improvement Trust shall provide 30 days to the dairy operators to apply for allotment of lands in the new area. The dairy operators shall deposit the requisite amount with the Urban Improvement Trust for allotment of lands in the new area. In case, the dairy operators do not deposit the amount within the aforesaid 30 days, their dairies will be sealed by the Municipal Corporation and the bovine animals shall be impounded.

The Municipal Corporation is also directed to develop the pond in Kali Beri, Soor Sagar, Jodhpur within a period of two months from today. 75% of the requisite funds for development of the pond shall be allocated by the State Government." On 10.2.2004, the High Court again heard the above matter when the appellant Samiti herein was allowed to intervene in the matter being a necessary party. The learned counsel for the Samiti stated that the milkmen colony was being shifted to Barli, which was a hilly area and which was not a suitable place for bovine animals. However, the High Court rejected this contention of the learned counsel for the Samiti by observing as under:

"We are told by the counsel for the respondents that the area in question has been selected after the experts had opined that the land is suitable for the purpose of establishing the milkmen colony. In the circumstances, therefore, we will not permit attempts on the part of certain persons to stifle our order. The milkmen and dairy owners must shift to Barli and subsequently in case, it is found that there are some practical difficulties for them only in that event the Collector can be asked to allot some other land to them. It appears that there are a large number of milkmen and they are entrenched in city. It is surprising that after milching the bovine animals, the dairy owners turn them out so that they can eat whatsoever is available on the roads. Bovine animals in order to satisfy their hunger even consume plastics. Once plastic goes in their systems, it causes severe harm to them and some of them even die. But this is not the concern of the dairy owners. Though people consider cow as mother yet the treatment which is meted out to it is extremely harsh and cruel. There is no justification whatsoever for the diary owners not to shift from the city to the designate area." (Emphasis supplied) After passing the above order, the High Court adjourned the matter to 11th March, 2004, on which date, the learned counsel appearing for Municipal Corporation and the learned counsel appearing for milkmen made their statements. The order dated 11th March, 2004 reads thus:

"Learned counsel appearing for the Municipal Corporation says that pond is being created at Kali Beri within a period of six weeks. Learned counsel appearing for the Milkmen says that the entire Milkmen community will shift on their own to another site. He says that his clients undertake to comply with the order passed by this Court and shift from the present site within two weeks. In case, the Milkmen do not comply with the undertaking, the Municipal Corporation shall in compliance of the order seize the dairies." The aforesaid matter once again came for hearing before the High Court on 14.5.2004. On that day, the learned counsel appearing for the respondents sought some time so as to enable them to make arrangement for preventing the cattle and bulls from moving on roads.

They undertook to do the following exercise:

"(i) all the bovine animals in Jodhpur shall have the tags in consonance with the directions issued by the Court;

(ii) the work for construction of wall around the milkmen colony shall be started in right earnest;

(iii) that no bovine animals including bulls shall be seen on the roads as the same shall be caught by the milkmen and handed over to the Municipal Corporation." Having regard to the submissions of the learned counsel, the High Court granted 10 days time to the milkmen for doing the needful. The High Court constituted a monitoring committee to evaluate the progress made by the milkmen in preventing the animals from moving on the roads.

Finally, the aforesaid matter came up for hearing before the High Court on 12th July 2004, when the High Court passed the impugned order:

"We find that the order dated 14th May, 2004 has not been complied with. The milkmen were provided sufficient opportunity to shift from the city area as the bovine animals are creating nuisance in the city.

The District Magistrate is directed to see that the public nuisance caused by the stray animals is removed and the bovine animals are shifted outside the city limits in consonance with the order dated 6.1.2004. The District Magistrate shall file a compliance report within two weeks. The Municipal Corporation shall assist the District Magistrate in effecting the compliance of the order.

The Municipal Corporation and the U.I.T.

shall be duty bound to construct a pond and provide necessary facilities to the milkmen shifting to Barli." Being aggrieved by the aforesaid order, these appeals have been preferred before this Court.

In the appeals before this Court, certain issues have been raised. The learned counsel appearing for the appellant urged that the High Court was not justified in issuing directions to evict milkmen from the land, which was allotted to them by the Government for the purpose of milk dairies after accepting allotment charges; that, the High Court was not justified in passing an order of eviction of milkmen from the land, without following the procedure established by law i.e. under the Land Acquisition Act or Public Premises Act; that, the High Court was not justified in not appreciating the fact that the land allotted for shifting of cattle and bulls of the milkmen was located in a hilly area and no rehabilitation facilities were provided by the authorities to facilitate the shifting of the cattle; and that, the High Court erred in not considering the fact that the Committee set up for monitoring the progress made by the milkmen for preventing their cattle from coming to the roads had failed to appreciate the genuine problems of shifting the animals, especially in terms of the report of the specialist that Barli was a hilly area and cows and other animals would not be able to survive. It was further argued that the milkmen were ready to shift out of milkmen colony if some suitable area was earmarked for them, where the land was not rocky and water was sufficiently available for their cattle. If such suitable site was allotted to them, they would move to that place within such reasonable time as may be granted by this Court. They would also deposit the amount as per the directions of this Court.

The learned counsel for the appellants urged that that the State Government may be directed to allot suitable land located at some other place in Jodhpur City like in Salawas, Old Pali Road in place of Barli.

The learned counsel appearing on behalf of the State of Rajasthan stated that the order passed by the High Court was just and fair and the same had been passed after carefully appreciating all the circumstances and interest of all sections of the residents of Jodhpur.

The milkmen were provided sufficient opportunity to shift from the city of Jodhpur. It was stated that the members of the appellant Samiti were allotted plots at nominal rates for construction of milk dairies way back in 1956.

There was a condition in the letter of allotment that the allottees shall carry out constructions according to the type design issued to them. However, no construction in accordance with the type design was carried out by the milkmen. Most of the milkmen had constructed houses and shops in the plots meant for milk dairies. The milkmen were leaving their cattle stray on the roads, which were leading to public nuisance, accidents etc. It was further argued that a bare perusal of the various orders passed by the High Court would make it clear that sufficient opportunities were granted to the milkmen to shift from the city of Jodhpur and a specific undertaking was also given on their behalf before the High Court that they would shift from the city of Jodhpur within a specific period. However, they neither shifted from the area nor deposited the requisite amount with the Government. On the other hand, the Government had already developed a pond at the site as per directions of the High Court. The plea of the appellant Samiti was without any basis that the land could not be developed so far.

The learned counsel for the State further drew our attention towards the public notice dated 20.7.2004 issued by the Office of Municipal Corporation, Jodhpur and notification dated 23.7.2004 issued by Urban Improvement Trust, Jodhpur, which read as under:

"Office of Municipal Corporation, Jodhpur.

No. Writ/Stray Cattle/04/S.P.3 Dated: 20.7.2004 PUBLIC NOTICE In the Hon'ble High Court of Rajasthan at Jodhpur, a Writ Petition No. 4409/94 relating to stray cattle is pending for consideration. In this writ petition, the Hon'ble High Court has passed the orders from time to time in which it has found that in Jodhpur city on roads, ways in colonies, bastis etc., the cattle wander in stray condition. In this connection, the Hon'ble High Court has given orders to the Town Development Trust that in the city for cattle dairies in Barli area plots should be allotted in which the cattle dairies which are at present in city should be shifted in that area.

For this purpose, the owner of the cattle should get the certificate of owner of the cattle/guardian of the cattle and then an application should be submitted for allotment of plot by these persons in the Town Development Trust. Some persons have given such applications for allotment of plot and out of them the plots have been allotted by the trust on 6.1.2004. The Hon'ble High Court has passed the orders to shift the dairy owners who are in the city at present and also to apply for allotment of plots by giving application to the Town Development Trust. This order has been issued to the corporation that those cattle owners who are not shifting their dairies out of the city should be sealed. The Hon'ble High Court on 12.7.2004 has passed the order that all the owners of the animal husbandry should be transferred out of the city.

Therefore, it is requested to all the cattle owners that they should transfer/shift their animals within 7 days from the receipt of this notice out of the boundary of Municipal Corporation failing which the proceedings with the help of District Administration to transfer/shift their animals outside the boundary of corporation and expenses to be recovered from the owners of the animals. The proceedings for contempt of court order shall also be started against them.

Sd/- Chief Executive Officer Municipal Corporation, Jodhpur" "Office of Urban Improvement Trust, Jodhpur.

No. 1348 Dated: 23.7.2004 NOTIFICATION It is informed to all the animal husbandry holders that in the implementation of the Hon'ble High Court order the scheme has been prepared by the trust which is in New/Nai Milkmen colony at village Barli in Kharas No.88, for which the application form should be filled after obtaining from the trust office within 7 days. These forms should be submitted in the office of the trust for which the proceedings of the distribution of plots shall be started for the animal husbandry holders. The terms and conditions of the allotment of the plots are given as below.

1. The certificate of animal husbandry of the applicant, which should be certified by the corporation of Jodhpur and it is necessary that this certificate should be attached with the application form.

2. The demand draft of Rs.1000/- (One Thousand Rupees) as an earnest money should be attached in the name of Secretary, Town Development Trust, Jodhpur.

3. The whole amount should be deposited after obtaining the order of the allotment of the plot within 30 days. An allotment will be done at the reserved rate.

4. In this scheme, the cancellation of the corner plots will not be done. The execution rules of 1974 of Rajasthan Town Development will be applied on the allotments.

5. The use of the allotted plot will be done only for animal husbandry and the work regarding transferring the animal husbandry should be started as early as possible in his allotted plot by the allottee.

Sd/- Secretary Town Development Trust, Jodhpur" In the background of the above notifications, the learned counsel appearing for the State stated that the respondent State Government had complied with the orders of the High Court. The members of the appellant Samiti were not complying with the orders of the High Court and, therefore, no interference was called for in the impugned orders of the High Court.

Respondent No.4, Rajasthan Chapter of Indian Association of Lawyers, who filed the writ petition in the High Court, also sought dismissal of the present appeals on the ground that the appellant Samiti itself chose to undertake before the High Court that the milkmen were willing to shift their dairies from the milkmen colony and that for this purpose, the milkmen repeatedly sought time from the High Court. The High Court found the milkmen resiling from their undertakings that they were ready to shift from the city of Jodhpur and thereafter the High Court issued certain directions to the Government to comply with its earlier orders regarding shifting of milk dairies from the city of Jodhpur. It was only after these directions that the milkmen have come to this Court. It was further argued that the High Court had nowhere said that the milkmen would be deprived of the plots allotted to them. Only the dairies had been directed to be shifted out of the city of Jodhpur. The High Court never gave any direction affecting ownership of the plots of the milkmen in the milkmen colony, which now fall in the heart of the city after expansion. The High Court's directions are based on larger public interest and protection of clean and healthy environment.

In Virender Gaur & Others v. State of Haryana & Others reported in (1995) 2 SCC 577, referring to principle No.1 of Stockholm Declaration of United Nations on Human Environment, 1972, this Court observed that right to have living atmosphere congenial to human existence is a right to life. The State has a duty in that behalf and to shed its extravagant unbridled sovereign power and to forge in its policy to maintain ecological balance and hygienic environment. Where in the Zonal plan, a land is marked out and reserved for park or recreational purpose, it cannot be allotted for building purpose though housing is a public purpose.

Further, it was observed that though the Government has power to give directions, that power should be used only to effectuate and further goals of the approved scheme, Zonal plans etc. and the land vested under the Scheme or reserved under the plan would not be directed to be used for any other public purposes within the area envisaged thereunder.

While it is true that the High Court has directed the relocation of the milk dairies from the city of Jodhpur on the grounds mentioned above and the same may cause some inconvenience to a set of people of the Society but the sole aim, object and spirit of the order was to meet the community need. Clean surroundings lead to healthy body and healthy mind. The public interest has to be understood and interpreted in the light of the entire scheme, purpose and object of the enactment. The hazard to health and environment of not only the persons residing in the illegal colonization area but of the entire town as well as the provision and scheme of the Act have to be taken into consideration. [See: Administrator, Nagar Palika v. Bharat & Others reported in (2001) 9 SCC 232].

From the facts set out above and on hearing the rival contentions of the parties, avowedly, the menace by stray cattle has grown without any check from the authorities in the city of Jodhpur. The plots meant for developing milk dairies have become large commercial houses. The manner in which such large-scale violations continue leaves no doubt that it was not possible without the connivance of those who are required to ensure compliance with law and the reasons are obvious. Such activities result in putting extra load on the infrastructure. The entire planning has gone haywire.

The law-abiders are sufferers. All this has happened at the cost of the health and decent living of the residents of the city violating their constitutional rights enshrined under Article 21 of the Constitution. The Government and its agencies have been negligent in discharging of their functions and obligations. Inaction by the Government amounts to indirectly permitting unauthorized use which amounts to the amendment of the master plan without following due procedure. [See:

M.C. Mehta v. Union of India & Others reported in (2004) 6 SCC 588].

In State of Gujarat v. Mirzapur Moti Kureshi Kassab Jamat & Others reported in (2005) 8 SCC 534, this Court held as under:

"176. The court should guard zealously Fundamental Rights guaranteed to the citizens of the society, but at the same time strike a balance between the Fundamental Rights and the larger interests of the society. But when such right clashes with the larger interest of the country it must yield to the latter.

Therefore, wherever any enactment is made for advancement of Directive Principles and it runs counter to the Fundamental Rights an attempt should be made to harmonise the same if it promotes larger public interest." In Milk Producers Association, Orissa & Others v. State of Orissa & Others reported in (2006) 3 SCC 229, this Court considered the question of town planning and removal of encroachment by the milk dairies. In that case, this Court considered the law as laid down by this Court in its earlier decisions. The relevant para is quoted as under:

"17. The question came up for consideration, in Friends Colony Development Committee v. State of Orissa reported in (2004) 8 SCC 733, wherein this Court observed:

"The individuals as property owners have to pay some price for securing peace, good order, dignity, protection and comfort and safety of the community. Not only filth, stench and unhealthy places have to be eliminated, but the layout helps in achieving family values, youth values, seclusion and clean air to make the locality a better place to live. Building regulations also help in reduction or elimination of fire hazards, the avoidance of traffic dangers and the lessening of prevention of traffic congestion in the streets and roads. Zoning and building regulations are also legitimised from the point of view of the control of community development, the prevention of overcrowding of land, the furnishing of recreational facilities like parks and playgrounds and the availability of adequate water, sewerage and other governmental or utility services." On careful consideration of the arguments advanced on behalf of the parties and the case law as discussed above, we are of the opinion that the High Court was fully justified in entertaining the writ petition filed in public interest. The High Court rightly opined that it is the dire need of the city of Jodhpur to relocate the milk dairies which were creating nuisance for the citizens of the city of Jodhpur. We do not find any illegality in the directions of the High Court particularly when the High Court did not give any directions affecting their ownership of the existing plots though these plots of land were allotted to them on a highly concession rate (Rs.2 per square yard) for a definite purpose and majority of the milkmen did not use the land for the purpose it was allotted to them.

Now what remains to be dealt with is the plea raised by the appellants regarding relocation of the milk dairies on any site other than Barli. We are of the opinion that the appellant Samiti cannot take this plea at a belated stage. The milkmen have already undertaken before the High Court to shift at the place earmarked by the Government of Rajasthan and have sought more time for the said purpose. Even the extended period for shifting has lapsed a long time ago. The Government of Rajasthan has earmarked and allotted the land on experts' advice. In view of the directions of the High Court, the

Government of Rajasthan has already provided basic amenities at the New Milkmen Colony.

The plots have been allotted to a number of milkmen in view of the notification issued by the State Government.

The Government is the best judge of what is good for the community. Therefore, the decision of the Government of relocating the milkmen to a new site can not be questioned at this stage particularly when the State Government has taken the decision based on expert's advice in the larger public interest.

It has been submitted on behalf of the State Government that the State has taken all steps in pursuance to the directions of the High Court and has made available 2500 bighas of land to the Urban Improvement Trust, Jodhpur for the purpose of shifting dairies from the city of Jodhpur. The State Government has also made available a sum of Rs.50,00,000/- to the Municipal Corporation to meet the expenses- (i) catching the stray cattle;

(ii) for their transportation; and (iii) for purchase of fodder for the stray cattle.

The Collector, Jodhpur has further made 500 bighas of land available to the Municipal Corporation in Kali Beri, Soor Sagar, Jodhpur for creation of a pond. The land and the money made available by the respondent State should be meticulously used for the same purpose.

In Ramji Patel & Others v. Nagrik Upbhokta Marg Darshak Manch & Others reported in (2000) 3 SCC 29, this Court has laid down that in a situation where the interest of the community is involved, the individual interest must yield to the interest of the community or the general public.

We have heard the learned counsel for the parties at length and carefully perused the orders passed by the High Court from time to time. In our considered view, no interference is called for in the impugned judgment.

On consideration of the totality of the facts and circumstances of the case, in the larger interest of the citizens of Jodhpur, we issue the following directions:

1. We direct the dairy owners/operators who were allotted land in the milkmen colony at Pal Road, but are still continuing to operate within the city limit to shift to a new colony which has been made available to them by the respondent State as expeditiously as possible and in any event on or before 31st March, 2007;

2. The other milk dairy owners/operators who are running the dairies and keeping their cattle in the city of Jodhpur but have not been allotted land shall also shift their dairies and their cattle outside the city of Jodhpur on or before 30th April, 2007. The respondent State of Rajasthan and the Municipal Corporation at Jodhpur are directed to ensure that necessary facilities and infrastructure as directed by the Division Bench to the dairy owners/operators are provided, if not already provided;

3. The Municipal Corporation of Jodhpur is directed to remove unattended stray animals, such as, stray cattle, bulls, dogs, pigs etc. from the city of Jodhpur as expeditiously as possible and in any event on or before 30th April, 2007;

4. The respondent State Government is directed to frame guidelines regarding proper use of plastic bags in the State because number of deaths of cattle on account of consuming of plastic bags have been reported. The State Government is directed to frame necessary guidelines on or before 31st March, 2007;

5. The Municipal Corporation is directed to ensure that used plastic bags and other plastic materials must be separated from other garbage and destroyed to prevent their consumption by cattle, bulls and other animals;

6. The respondent State Government and the Corporation are directed to ensure that the basic infrastructure is made available to the milk dairy owners/operators as expeditiously as possible and in any event on or before 25th March, 2007;

7. In order to ensure meticulous compliance of the directions of this Court and that of the High Court and to ensure relocation of the milk dairies, we direct the Committee appointed by the High Court to submit compliance report on or before 7th May, 2007.

These appeals to be listed for further directions on 14th May, 2007.

M.C. MEHTA V. UNION OF INDIA & ORS [2006] INSC 625 (29 September 2006)

CJI Y.K. Sabharwal,C.K. Thakker & R.V. Raveendran

I.A. NO. 1970 IN I.A. NO. 22 IN WRIT PETITION (C) NO. 4677 OF 1985 [With W.P. (C) Nos. 263, 264, 266, 450, 464 & 470 of 2006, I.A. Nos. 3-6, 8-12, 15-16, 18-22 in W.P. (C) No. 263 of 2006, I.A. No. 17 in I.A. Nos. 5-6 in W.P. (C) NO. 263 of 2006 AND I.A. Nos. 1926-27, 1928-29, 1948, 1949, 1961, 1969, 1971-72, 1974, 1975, 1976, 1977-78, & 1973 IN I.A.

22 IN W.P. (C) No. 4677 of 1985] Y.K. Sabharwal, CJI.

The city of Delhi is an example of a classical case, which, for the last number of years, has been a witness of flagrant violations of municipal laws, town planning laws and norms, master plan and environmental laws. It is borne out from various orders and judgments passed by this court and Delhi High Court, whether in a case of shifting of hazardous and polluting industries or providing cleaner fuel (CNG) or encroachment of public land and streets or massive unauthorized construction and misuser of properties. It is a common knowledge that these illegal activities are also one of the main sources of corruption.

The issue of commercial use of residential premises was decided by this Court by judgment dated 16th February, 2006 in M.C. Mehta v. Union of India and Ors. reported in (2006) 3 SCC 399. While reversing a Full Bench decision of Delhi High Court, the stand of Municipal Corporation of Delhi (MCD) was accepted and it was held that the Commissioner of MCD is empowered to exercise power of sealing in case of misuse of any premises. The judgment also noted certain individual cases as also other residential properties being illegally used for commercial purposes. Besides noting orders passed by this Court, from time to time, in the last so many years which had no effect on the authorities, reference was also made to some of the orders passed by the High Court in last about 15 years. There was, however, no implementation. It was also observed that such large scale misuser cannot take place without the connivance of the officers who will have to show as to what effective steps were taken to stop the misuser but the issue of accountability of officers would be taken up after misuser is stopped at least on main roads. The misuser activities included big furnishing stores, galleries, sale of diamond and gold jewellery, sale of cars etc. While issuing directions for implementation of laws, it was noted that if the entire misuser cannot be stopped, at one point of time because of its extensive nature, a beginning has to be made in a phased manner by first taking sealing action against major violators. The cases of small shops opened in residential houses for catering day-to-day basic needs were left out for the present.

Thus, the plea of M.C.D. that it has power to seal premises in case of misuser having been accepted, various directions were issued. The directions included giving of wide publicity for stoppage of misuser by the violators on their own and the commencement of sealing process if the misuser is not stopped. The sealing process in a phased manner was to commence on 29th March, 2006.

On 24th March, 2006, considering the prayer of the traders, time to stop misuser was extended upto 30th June, 2006 subject to persons claiming benefit of extended time filing affidavit stating that (i) on or before 30th June, 2006, misuser shall be stopped and no further extension on any ground whatsoever shall be asked for, and (ii) giving an undertaking to the effect that violation of condition of not stopping the misuser by 30th June, 2006 would subject him/her to offence of perjury and contempt of court for violation of the order of the court. It was further directed that premises in respect of which affidavits are not filed the process of sealing shall commence with effect from 29th March, 2006.

A Monitoring Committee was also appointed to oversee the implementation of the law, namely, sealing of the offending premises in letter and spirit of the court's directions. However, on 28th March, 2006, a Notification was issued by Delhi Development

Authority (DDA) modifying Master Plan insofar as the chapter on mixed use is concerned.

The Union of India filed I.A. No.1931, inter alia, praying that the local bodies be directed to complete the exercise of identification of mixed use of roads/streets in residential areas within a period of six months. An order was, therefore, passed on 28th April, 2006 permitting the Government to place detailed facts before the Monitoring Committee to find out if it is possible to give some relief to the traders. It was directed that the Monitoring Committee will examine the facts broadly from prima facie point of view to assist the Court and report if, in its view, some relief in regard to the ongoing sealing can be given in respect of some of the areas temporarily till the exercise as contemplated in the application was complete. The Monitoring Committee heard all concerned including Secretary of the Urban Development Ministry of Government of India and examined the matter and filed its report on 4th May, 2006.

When the Application along with the report of the Monitoring Committee came up for consideration before this Court, the same was withdrawn by the Government of India on 11th May, 2006.

On 12th May, 2006, the Delhi Laws (Special Provision) Bill, 2006 was passed by Lok Sabha; Rajya Sabha passed it on 15th May, 2006 and on receipt of assent of the President on 19th May, 2006, it was notified the same day.

On 20th May, 2006, the Government of India issued a Notification placing a moratorium for a period of one year in respect of all notices issued by local authorities in respect of categories of unauthorized development. In exercise of powers conferred by Section 5 of the Delhi Laws (Special Provisions) Act, 2006 (22 of 2006), the Central Government directed local authorities to give effect to provisions of the said Act, namely, 1) the premises sealed by any local authority in pursuance of a judgment, order or decree of any court after the 1st day of January, 2006, shall be eligible to be restored, for a period of one year, with effect from 19th day of May, 2006, to the position as was obtaining as on 1st day of January, 2006.

2) All commercial establishments which are required to cease carrying out commercial activities at their premises by the 30th day of June, 2006, may continue such activities, as they were being carried out on the 1st day of January, 2006 for a period of one year, with effect from 19th day of May, 2006.

By the aforesaid Act and the notice dated 20th May, 2006, the Government purported to relieve the persons of the undertaking though given to this Court and also purported to issue directions for removal of seals though placed on the premises under the order of this Court.

On writ petitions being filed to declare the aforesaid Act unconstitutional, on 23rd May, 2006, notices returnable for 17th July, 2006 were directed to be issued to the respondents in the writ petition as well as on the Applications for stay. The matters were, however, taken up on 1st August, 2006, when the writ petitions were admitted and rule issued by the Court noting that serious challenge had been made to the constitutional validity of the Act.

The stay applications were considered on 10th August, 2001. In support of plea for grant of stay, it was contended on behalf of the petitioners that it is a unique statute which overrules, annuls and sets aside the decision of this Court dated 16th February, 2006 and other orders passed thereafter.

In terms of Order made on 10th August, 2006 while not granting the complete stay of the impugned legislation, the aforenoted two directions were stayed. Considering, however, that those who had given undertaking may have been misled by directions contained in the notice dated 20th May, 2006, time to comply the same was extended upto 15th September, 2006. It was further directed that premises de-sealed pursuant to notice dated 20th May, 2006 shall have to be again sealed with effect from 16th September, 2006 in case misuser is not stopped by 15th September, 2006. Certain other directions were also issued on 10th August, 2006. After this Order, the Government withdrew the public notice that had been issued on 20th May, 2006 in respect of the undertakings and the premises that were sealed by the Court.

We may further note that on 21st July, 2006, public notices were issued by DDA in exercise of power under Section 11-A of Delhi Development Act stating that it proposed further modifications in the Master Plan and inviting objections within 30 days from the date of publication of the notice, namely, 23rd July, 2006.

The aforesaid public notice was in respect of mixed use policy. Another public notice was also issued on the same date inviting objections to the proposal for regularization of constructions carried out in excess of the norms laid down by the notification dated 23rd July, 1998. According to the Government, public hearings on the aforesaid notice were conducted between 23rd August, 2006 and 3rd September, 2006. DDA recommended the amendment of the Master Plan on 5th September, 2006. The Master Plan was accordingly amended. On 7th September, 2006 and on 15th September, 2006 about 2002 patches/streets were notified for mixed use.

The constitutional validity of the Notification dated 7th September, 2006 is under challenge on various grounds in W.P.(C) Nos.450, 464 and 470/2006. The challenge deserves to be examined in depth and, therefore, in these writ petitions, we issue Rule. Counter affidavit shall be filed by respondents within 4 weeks. The respondents are further directed to place before this Court material which was taken into consideration for arriving at the decision leading to the amendment of the Master Plan in terms of the Notification dated 7th September, 2006 and the consequential Notification dated 15th September, 2006.

Mr.Ranjit Kumar, senior advocate appearing as Amicus Curiae and other learned counsel appearing for the petitioners as also petitioners appearing in person seek stay of the impugned Notification dated 7th September, 2006. The Government, on the other hand, seeks modification of Order dated 10th August, 2006 in the light of the said Notification.

In the writ petition of Mr.Omesh Sehgal, a former Chief Secretary of Delhi, one of the pleas raised is that inviting objections and grant of hearing was a farce since decision had already been made to amend Master Plan even before inviting objections and the hearing was a mere formality and further the modification of an already expired Master

Plan is not permissible. It has been further submitted that if any interim relief is to be granted, it should be confined only to small shops.

The small shops are presently protected as noted in the M.C.Mehta (supra). Further, the Monitoring Committee classifying shops measuring 20 sq. meters as 'small shops' has recommended that the said shops be exempted from the purview of sealing operation in the residential areas.

According to the Reports dated 14th September, 2006 and 27th September, 2006 of the Monitoring Committee, the shops falling in the category of small shops trading in the following items may be allowed in residential areas :

i. Vegetables/fruits/flowers;

ii. Bakery items/confectionary items;

iii. Kirana/General stores;

iv. Dairy products;

v. Stationery/Books/Gifts/Book binding;

vi. Photostat/Fax/STD/PCO;

vii. Cyber cafi/Call phone booths;

viii. LPG Booking office/Show room without LPG cylinders;

ix. Atta chakki;

x. Meat/Poultry and Fish shop;

xi. Pan shop;

xii. Barber shop/Hair dressing saloon/Beauty Parlour;

xiii. Laundry/Dry cleaning/ironing;

xiv. Sweet shops/Tea stall without sitting arrangements;

xv. Chemist shops;

xvi. Optical shops;

xvii. Tailoring shops;

xviii. Electrical/Electronic repair shop; and xix. Photo studio xx. Cable TV/DTH Operations xxi. Hosiery/Readymade Garments/Cloth shops xxii. ATM In the report dated 14th September, 2006, the Monitoring Committee has also noted about the survey conducted by MCD on 185 notified roads to find out nature of activities of the commercial establishments on those roads. Broadly the activities of commercial establishments on these roads are of automobile showrooms; automobile workshops; branded showrooms; call centers; coaching institutes; business offices;

building materials; godowns; tent houses; guest houses;

jewellery shops; restaurants and iron & steel shops.

At this stage, the question to be considered is whether pending the decision of the writ petitions, should this Court modify Order dated 10th August, 2006 and decline prayer for stay of the Notification dated 7th September, 2006 or decline modification of the Order and stay the Notification or pass any other order having regard to the facts and circumstances of the entire situation. We have heard extensive submissions made by learned counsel.

Many of persons, who gave undertakings to remove the misuser by 30th June, 2006 have filed separate applications in view of the Notification dated 7th September, 2006 and in substance sought to be relieved of the undertakings so that they could continue commercial user. Likewise, those whose premises were sealed also seek issue of directions for the opening of the seals.

The sealing was to commence on 29th March, 2006.

However, in view of the undertakings, misuser was allowed to be continued upto 30th June, 2006. Despite the undertakings, the misuser has continued till date, as noted hereinbefore.

There cannot be any doubt that the Legislature would lack competence to extend the time granted by this Court in the purported exercise of law making power. That would be virtually exercising judicial functions. Such functions do not vest in the Legislature. In fact, those who gave undertakings are already in breach of the undertakings by not stopping misuser by 30th June, 2006. The dignity and authority of the Court has to be protected not for any individual but for maintenance of the rule of law. The fact that those who gave undertakings may have been misled in view of subsequent developments can only be a mitigating factor while considering the action to be taken for breach of the undertakings.

Further, there are no equities in favour of those who gave undertakings to this Court and obtained the benefit of time otherwise their premises could have been sealed on 29th March, 2006 or soon thereafter. The nature of trade conducted by most of them who gave undertakings has been noted above. There is serious challenge to the validity of the Act and the Notification. Pending determination thereof, such persons cannot be allowed to claim any benefit of the Notification.

In the background of the above facts and having considered the submissions made, we issue the following directions :

(i) Re : Premises relating to which undertakings were given The commercial activities by those who gave undertakings deserve to be stopped forthwith. Having regard, however, to the plea of forthcoming major festivals, we permit those who gave undertakings to stop misuser on or before 31st October, 2006.

(ii) Re : Small Shops Small Shops, i.e., measuring not more than 20 sq. mts.

in residential areas are allowed trading in the following items :

i. Vegetables/fruits/flowers;

ii. Bakery items/confectionary items;

iii. Kirana/General stores;

iv. Dairy products;

v. Stationery/Books/Gifts/Book binding;

vi. Photostat/Fax/STD/PCO;

vii. Cyber cafi/Call phone booths;

viii. LPG Booking office/Show room without LPG cylinders;

ix. Atta chakki;

x. Meat/Poultry and Fish shop;

xi. Pan shop;

xii. Barber shop/Hair dressing saloon/Beauty Parlour;

xiii. Laundry/Dry cleaning/ironing;

xiv. Sweet shops/Tea stall without sitting arrangements;

xv. Chemist shops;

xvi. Optical shops;

xvii. Tailoring shops;

xviii. Electrical/Electronic repair shop; and xix. Photo studio xx. Cable TV/DTH Operations xxi. Hosiery/Readymade Garments/Cloth shops xxii. ATM (iii) Re : Other premises for which protection is extended by Notification dt. 7.9.2006 Regarding the remaining premises which may be covered by the Notification dated 7th September, 2006 read with 15th September, 2006, we direct that the said premises may not be sealed pending decision of these petitions on undertakings being filed before the

Monitoring Committee on or before 10th November, 2006 that misuser shall be stopped as per the directions of this Court if the Act is invalidated and/or the Notification is quashed. Further, the undertakings shall state that the trade is being conducted in respect of the permissible items and only in that part of the premises in which commercial activity is now permitted as per the impugned Notification dated 7th September, 2006 read with Notification dated 15th September, 2006, viz. if commercial activity has been made permissible on the ground floor, the affidavit shall state that it is being carried out only in the ground floor and not on the other floors and in support a certificate of the registered Architect shall be annexed. Any Architect giving wrong certificate would subject himself to appropriate action including cancellation of certificate to carry on the profession of Architect.

(iv) Re : Premises for which protection is not extended by Notification dated 7.9.2006 In respect of the remaining premises not covered by the Notifications dated 7th September, 2006 and 15th September, 2006, the sealing process will continue in terms of the Order dated 16th February, 2006 and 10th August, 2006. The direction of sealing premises will also apply to specific properties mentioned in the judgment dated 16th February, 2006 and in the Report of the Monitoring Committee dated 14th September, 2006. The sealing would be done in a systemic manner as per directions of Monitoring Committee and not in a haphazard manner. There shall be no misuser of public land or public street. The authorities shall ensure that the Roads, Public Streets and pathways meant for public is kept free for their use and the commercial activity is not extended thereupon. The commercial user in contravention of judgment in M.C. Mehta's case (supra), order dated 10th August, 2006 and Notifications dated 7th September, 2006 and 15th September, 2006 subject to what is stated in this order shall be liable to be sealed.

(v) General Directions :

(a) We direct that the owner/occupier of small shops and also others who have been permitted to continue and not stop commercial activity for the present, under this order shall get themselves registered upto 31st December, 2006.

(b) In respect of the premises which have been sealed under the orders of this Court, we permit them to approach the Monitoring Committee which will consider each case on its merit and make appropriate report to this Court on consideration whereof necessary directions may be issued.

(c) The respondents are restrained from issuing any other Notification for conversion of residential user into commercial user except with the leave of this Court.

(d) We also hope that without any further loss of time the Government and the concerned authorities, instead of ad hoc measures like the present, would now undertake proper planning keeping into consideration all relevant factors including the interests of those residents which may not have any voice.

(e) Before concluding, we may note the grievance placed before us on behalf of professionals including Doctors, Lawyers, Chartered Accountants and Architects in respect of the Notification dated 7th September, 2006. Relying upon notifications dated

27th November, 1998 and 7th June, 2000 and Press Release dated 27th November, 1998, they say that restrictions sought to put in the Notification dated 7th September, 2006 were not there earlier and may be restrictions have been put by inadvertence. Mrs.Indira Jaisingh, appearing for Government of India says that she will have it examined by the Government and, if required, necessary correction will be made.

The Common Cause Society is permitted to intervene in the matter. The Interlocutory Application Nos. 5, 6, 8 to 12, 15-16, 18 to 22 in Writ Petition (C) No. 263 of 2006, I.A. No.

17 in I.A. Nos. 5-6 in Writ Petition (C) No. 263 of 2006 and I.A.

Nos. 1970, 1926-27, 1928-29, 1948, 1949, 1961, 1969, 1971- 72, 1974, 1975, 1976, 1977-78 and 1973 in I.A. No. 22 in Writ Petition (C) No. 4677 of 1985 are disposed of in terms of the aforesaid order. List the matters in the month of November 2006 for further directions.

M.C. MEHTA V. UNION OF INDIA & ORS [2006] INSC 79 (16 February 2006)

Y.K. Sabharwal, B.N.Srikrishna & R.V. Raveendran

INTERLOCUTORY APPLICATION NO. 22 IN WRIT PETITION (CIVIL) NO.4677 OF 1985 [With IA Nos.1816 & 1860 in WP (C) No.4677/1985, C.A.Nos.5413 & 8694 of 2002, SLP(C) Nos.23145, 23220, 23896, 23934 of 2002, 7128/2004, 23139/2002 & C.A.Nos.608-611/2003] Y.K. Sabharwal, CJI.

In respect of large number of immoveable properties throughout Delhi, flagrant violations of various laws including Municipal Laws, Master Plan and other plans besides Environmental Laws have been engaging the attention of this Court for number of years. With a view to secure the implementation of laws and protect fundamental rights of the citizens, various orders were passed from time to time.

This Court has a constitutional duty to protect the fundamental rights of Indian citizens. What happens when violators and/or abettors of the violations are those, who have been entrusted by law with a duty to protect these rights? The task becomes difficult and also requires urgent intervention by court so that the rule of law is preserved and people may not lose faith in it finding violations at the hands of supposed implementers. The problem is not of the absence of law, but of its implementation.

Considering such large-scale flagrant violations, this Court had to prioritize as to which violations may be taken up first and then issue appropriate directions. In this view, at first instance, directions were issued in respect of shifting of hazardous and noxious industries out of Delhi. Directions were also issued for shifting of heavy and large industries as also some extensive industries. For shifting polluting industries had to be given top most priority. Later, directions were issued for shifting of other extensive industries considering the continued unauthorized use contrary to Master Plan and Zonal Plan, by those industries as well as some other industries continuing in residential/non- conforming areas.

On one hand repeated orders were made to seek implementation of the laws and, on the other hand, simultaneously, more and more violations were taking place.

Detailed reference to earlier orders made from time to time, the shifting stand of the authorities, various laws being violated, requirements of Town Planning and the constitutional obligations of the authorities, has been made by this Court in the judgment dated 7th May, 2004 while dealing with unauthorized industrial activity and issuing time bound directions for compliance and appointing a Monitoring Committee with directions for filing of periodical progress reports (M.C. Mehta v. Union of India [(2004) 6 SCC 588].

The order dated 19th August, 2003 sets out various issues involved including the issue of misuse but, at that stage, the issue of unauthorized industries was given priority and the directions in respect of shifting of industries were issued. In a way, this judgment is in continuation of the judgment dated 7th May, 2004 with the difference that now we have taken up the issue of large scale misuse of residential premises for commercial use.

With regard to commercial use of premises in residential areas, it has been more than three years, i.e., 30th September, 2002 when the order was made directing respondents to file reply. In fact, the question of misuse of residential premises for commercial purposes was taken up even earlier as is apparent from the orders dated 31st July, 2001 and 20th February, 2002. By order dated 31st July, 2001 passed in Writ Petition No.725 of 1994 titled News Item AQFMY v. Central Pollution Control Board, the Court directed that :

"The MCD will also inform this Court in the affidavit to be filed as to why no requisite action has been taken for stopping the gross misuse of buildings in the residential areas for commercial purposes and in the construction of commercial buildings in residential areas where only residential usage is permitted." Again on 20th February, 2002, the Order dated 31st July was reiterated in the following terms :

"MCD is also directed to file within four weeks from today an affidavit indicating as to what it intends to do for stopping the misuse of the buildings in the residential areas which are being used for commercial purposes as has been directed by this Court's order dated 31st July, 2001. If no affidavit is filed, the explanation in respect thereof should be given to the Court by the Municipal Commissioner." The learned Amicus Curiae filed IA No.1860/04 referring to aforesaid orders dated 31st July, 2001, 20th February 2002, 30th September, 2002 and 19th August, 2003 and bringing to the notice of this Court a press release dated 22nd July, 2004 issued by Municipal Corporation of Delhi ('MCD' for short) declaring a scheme to facilitate registration of shops, establishments, commercial establishments etc. in the non- conforming/residential areas by granting ad hoc licences in respect of premises existing till 31st March, 2003. This shows the apathy of a municipal body, which is constituted, amongst others, to ensure compliance of the laws. In this application, learned Amicus Curiae sought stay of the press release and the scheme. By order dated 2nd August, 2004, the press release and the ad hoc Trade Registration Scheme were stayed by this Court.

The question under consideration also is about the power of MCD and Delhi Development Authority (DDA) to direct demolition and/or sealing of the properties being misused.

Few residents of a residential colony by the name of Green Park Extension, making averments about large scale unauthorized constructions and stating that various letters written to the MCD complaining about the illegal and unauthorized constructions and misuser and consequent violation of Master Plan etc. resulted in no action, filed in about October 1994, a writ petition in Delhi High Court alleging how misuse of residential premises for commercial purposes was taking place, citing specific instances and complaining about total inaction on the part of the authorities in stopping such misuse. According to them, the officers were, in fact, encouraging or conniving with persons who were indulging in such misuse. The officers failed to carryout their statutory duties in stopping such misuse. A writ of mandamus was sought against the authorities directing them not to allow illegal commercial user. Petitioners therein alleged that such misuser and acts of omission and commission by the authorities was resulting in the environment in the residential colony being totally polluted and civic amenities jeopardised.

MCD, in reply, filed in April 1995, i.e., more than 10 years ago, admitted the violations and said that show cause notices had been issued under the Delhi Municipal Corporation Act, 1957 (for short, 'the DMC Act') and the Corporation was doing its best in the matter. The same was the stand of DDA. All officers being directed to file affidavits reporting as to what action had been taken, filed affidavits with reference to the properties of which instances had been given, inter alia, stating that owners had been booked and action was being taken. Similar affidavits were filed by both MCD and DDA. In March 2000, MCD filed a status report giving particulars of approximately 663 properties in Green Park Main and 407 properties in Green Park Extension stating that many properties were being used as commercial and others partly commercial. When this was the position in a small colony, one can well imagine the plight in manifold other residential colonies and of residents living in those colonies in the capital city of Delhi.

By impugned judgment dated 31st May, 2002, disposing of the aforenoted writ petition and other connected matters, a Full Bench of the High Court came to the conclusion that neither under the DMC Act nor under the Delhi Development Act, there was any power to seal property for its misuse, inter alia, holding that the power of sealing of premises is drastic as by reason of such sealing, a person could become homeless, thus, affecting his human or fundamental rights and that the power of sealing in relation to misuse has been intentionally excluded from the provisions of two Acts. Later, some other matters were also decided by the High Court following the Full Bench decision. Those judgments are also under challenge.

The judgment of the Full Bench is under challenge in Civil Appeal No.5413 of 2002 filed by the original writ petitioners/residents of Green Park colony and Civil Appeal No.8694 of 2002 filed by the MCD.

The questions to be determined are :

A. Whether MCD under the DMC Act has power to seal the premises in case of its misuser? B. Whether DDA, under the Delhi Development Act, has also similar power of sealing or not? C. Directions to be issued in respect of residential properties used illegally for commercial purposes.

In these matters, we are considering only the issue of misuser. We are not considering the issue of unauthorized constructions.

Re : Question A Whether MCD under the DMC Act has power to seal premises in case of its misuser It is not in dispute that large numbers of residential premises are being misused for commercial purposes. The question is can the MCD stop such misuser by putting a seal on misused property? For dealing with the question of power of MCD to seal the premises in case of misuser, it is necessary to examine few provisions of the DMC Act. The expression 'building' is defined in Section 2(3) of the DMC Act as a house, out-house, stable, latrine, urinal, shed, hut, wall (other than a boundary wall) or any other structure, whether of masonry, bricks, wood, mud, metal or other material but does not include any portable shelter.

The expression 'land' as per Section 2(24) includes benefits to arise out of land, things attached to the earth or permanently fastened to anything attached to the earth and rights created by law over any street.

Section 2(26) defines 'market' as under:

"Sec.2(26) - "market" includes any place where persons assemble for the sale of, or for the purpose of exposing for sale, meat, fish, fruits, vegetables, animals intended for human food or any other articles of human food whatsoever, with or without the consent of the owner of such place notwithstanding that there may be no common regulation for the concourse of buyers and sellers and whether or not any control is exercised over the business of, or the person frequenting, the market by the owner of the place or by any other person;" Section 2(34) defines 'occupier' as under:

"Sec.2(34) "occupier" includes- (a) any person who for the time being is paying or is liable to pay to the owner the rent or any portion of the rent of the land or building in respect of which such rent is paid or is payable;

(b) an owner in occupation of, or otherwise using his land or building;

(c) a rent-free tenant of any land or building;

(d) a licensee in occupation of any land or building; and (e) any person who is liable to pay to the owner damages for the use and occupation of any land or building;" Under Section 2(59) 'trade premises' means:

"2(59) - "trade premises" means any premises used or intended to be used for carrying on any trade or industry;" Chapter XVI of the DMC Act deals with building regulations and comprises Sections 330A to 349A.

The definition of the expression 'building' shows that it is very wide and encompasses any structure only excluding portable shelter with which we are not concerned. We are concerned with the building and its erection.

The definition of the words 'to erect a building' is very pertinent for deciding the present question. The expression 'to erect a building' is defined in Section 331 as under:

"Sec.331 Definition.-- In this Chapter, unless the context otherwise requires, the expression "to erect a building" means-- (a) to erect a new building on any site whether previously built upon or not;

(b) to re-erect-- (i) any building of which more than one-half of the cubical contents above the level of the plinth have been pulled down, burnt or destroyed, or (ii) any building of which more than one-half of the superficial area of the external walls above the level of the plinth has been pulled down, or (iii) any frame building of which more than half of the number of the posts or beams in the external walls have been pulled down;

(c) to convert into a dwelling house any building or any part of a building not originally constructed for human habitation or, if originally so constructed, subsequently appropriated for any other purpose;

(d) to convert into more than one dwelling house a building originally constructed as one dwelling house only;

(e) to convert into a place of religious worship or into a sacred building any place or building not originally constructed for such purpose;

(f) to roof or cover an open space between walls or buildings to the extent of the structure which is formed by the roofing or covering of such space;

(g) to convert two or more tenements in a building into a greater or lesser numbers;

(h) to convert into a stall, shop, warehouse or godown, stable, factory or garage any building not originally constructed for use as such or which was not so used before the change;

(i) to convert a building which when originally constructed was legally exempt from the operations of any building regulations contained in this Act or in any bye laws made thereunder or in any other law, into a building which had it been originally erected in its converted form, would have been subject to such building regulations;

(j) to convert into or use as a dwelling house any building which has been discontinued as or appropriated for any purpose other than, a dwelling house." Clauses (c), (h) and (j) are very significant. These clauses bring in the concept of user of a building for the purpose of definition of the expression 'to erect a building'. Under clause (h), if any building not originally constructed for use as a stall, shop, warehouse etc. is converted for use as such, it would fall within the expression 'to erect a building'.

In respect of an area where the notified/specified land use is residential, sanction for erection of a commercial building cannot be accorded, as is apparent from sub-section (2) of Section 336.

Section 336 reads as under:

"Section 336. - Sanction or refusal of building or work.-- (1) The Commissioner shall sanction the erection of a building or the execution of a work unless such building or work would contravene any of the provisions of sub-section (2) of this section or the provisions of section 340.

(2) The grounds on which the sanction of a building or work may be refused shall be the following, namely:-- (a) that the building or work or the use of the site for the building or work or any of the particulars comprised in the site plan, ground plan, elevation, section or specifica- tion would contravene the provisions of any bye-law made in this behalf or of any other law or rule, bye-law or order made under such other law;

(b) that the notice for sanction does not contain the particulars or is not prepared in the manner required under the bye-laws made in this behalf;

(c) that any information or documents required by the Commissioner under this Act or any bye-laws made thereunder has or have not been duly furnished;

(d) that in cases falling under section 312, lay-out plans have not been sanctioned in accordance with section 313;

(e) that the building or work would be an encroachment on Government land or land vested in the Corporation;

(f) that the site of the building or work does not abut on a street or projected street and that there is no access to such building or work from any such street by a passage or pathway appertaining to such site.

(3) The commissioner shall communicate the sanction to the person who has given the notice; and where he refuses sanction on any of the grounds specified in sub- section (2) or under section 340 he shall record a brief statement of his reasons for such refusal and communicate the refusal along with the reasons therefor to the person who has given the notice.

(4) The sanction or refusal as aforesaid shall be communicated in such manner as may be specified in the bye-laws made in this behalf." This takes us to the provision of sealing as contained in Section 345A of the DMC Act. That provision was inserted by Act 42 of 1984 with effect from 10th December, 1985. One of the objects for the amendments, as stated in the Statement of Objects & Reasons, is to contain massive conversion of residential constructions into commercial complexes. The Statement of Objects and Reasons, inter alia, states that 'in recent years, growth of unauthorized colonies, encroachment on public streets, unauthorized construction of public and private lands and conversion of residential constructions into commercial complexes have assumed alarming proportions'.

Section 345A reads as under:

"Section 345A. Power to seal unauthorised constructions.-- (1) It shall be lawful for the Commissioner, at any time, before or after making an order of demolition under section 343 or of the stoppage of the erection of any building or execution of any work under section 343 or under section 344, to make an order directing the sealing of such erection or work or of the premises in which such erection or work is being carried on or has been completed in the manner prescribed by rules, for the purpose of carrying out the provisions of this Act, or for preventing any dispute as to the nature and extent of such erection or work.

(2) Where any erection or work or any premises in which any erection or work is being carried on, has or have been sealed, the Commissioner may, for the purpose of demolishing such erection or work in accordance with the provisions of this Act, order such seal to be removed.

(3) No person shall remove such seal except-- (a) under an order made by the Commissioner under sub-section (2); or (b) under an order of an Appellate Tribunal or the Administrator, made in an appeal under this Act." A plain reading of the aforesaid provisions shows that sealing can be resorted to at any time, before or after making an order of demolition under Section 343 or under Section 344 in respect of such erection being carried on or completed, for the purpose of carrying out the provisions of the Act.

Sections 343 and 344 read as under:

"Sec. 343Order of demolition and stoppage of buildings and works in certain cases and appeal.-- (1) Where the erection of any building or execution of any work has been commenced, or is being carried on, or has been completed without or contrary to the sanction referred to in section 336 or in contravention of any condition subject to which such sanction has been accorded or in contravention of any of the provisions of this Act or bye-laws made thereunder, the Commissioner may, in addition to any other action that may be taken under this Act, make an order directing that such erection or work shall be demolished by the person at whose instance the erection or work has been commenced or is being carried on or has been completed, within such period (not being less than five days and more than fifteen days from the date on which a copy of the order of demolition with a brief statement of the reasons therefor has been delivered to that person), as may be, specified in the order of demolition:

Provided that no order of demolition shall be made unless the person has been given by means of a notice served in such manner as the Commissioner may think fit, a reasonable opportunity of showing cause why such order shall not be made:

Provided further that where the erection or work has not been completed, the Commissioner may by the same order or by a separate order, whether made at the time of the issue of the notice under the first proviso or at any other time, direct the person to stop the erection or work until the expiry of the period within which an appeal against the order of demolition, if made, may be preferred under sub-section (2).

(2) Any person aggrieved by an order of the Commissioner made under sub- section (1) may prefer an appeal against the order to the Appellate Tribunal within the period specified in the order for the demolition of the erection or work to which it relates.

(3) Where an appeal is preferred under sub-section (2) against an order of demolition the Appellate Tribunal may, subject to the provisions of sub-section (3) of section 347C

stay the enforcement of that order on such terms, if any, and for such period, as it may think fit:

Provided that where the erection of any building or execution of any work has not been completed at the time of the making of the order of demolition, no order staying the enforcement of the order of demolition shall be made by the Appellate Tribunal unless security, sufficient in the opinion of the said Tribunal has been given by the appellant for not proceeding, with such erection or work pending the disposal of the appeal.

(4) No court shall entertain any suit, application or order proceeding for injunction or other relief against the Commissioner to restrain him from taking any action or making any order in pursuance of the provisions of this section.

(5) Subject to an order made by the Administrator on appeal under section 347D, every order made by the Appellate Tribunal on appeal under this section, and subject to the orders of the Administrator and the Appellate Tribunal on appeal, the order of demolition made by the Commissioner shall be final and conclusive.

(6) Where no appeal has been preferred against an order of demolition made by the Commissioner under sub-section (1) or where an order of demolition made by the Commissioner under that sub-section has been confirmed on appeal, whether with or without variation, by the Appellate Tribunal in a case where no appeal has been preferred against the order of the Appellate Tribunal, and by the Administrator in a case where an appeal has been preferred against the order of the Appellate Tribunal the person against whom the order has been made shall comply with the order within the period specified therein, or as the case may be, within the period, if any fixed by the Appellate Tribunal or the Administrator on appeal and on the failure of the person to comply with the order within such period, the Commissioner may himself cause the erection or the work to which the order relates to be demolished and the expenses of such demolition shall be recoverable from such person as an arrear of tax under this Act." Sec. 344 Order of stoppage of buildings or works in certain cases.-- (1) Where the erection of any building or execution of any work has been commenced or is being carried on (but has not been completed) without or contrary to the sanction referred to in section 336 or in contravention of any condition subject to which such sanction has been accorded or in contravention of any provisions of this Act or bye-laws made thereunder, the Commissioner may in addition to any other action that may be taken under this Act, by order require the person at whose instance the building or the work has been commenced or is being carried on to stop the same forthwith.

(2) If an order made by the Commissioner under section 343 or under sub-section (1) of this section directing any person to stop the erection of any building or execution of any work is not complied with, the Commissioner may require any police officer to remove such person and all his assistants and workmen from the premises or to seize any construction material, tool, machinery, scaffolding or other things used in the erection of any building or execution of any work within such time as may be specified in the requisition and such police officer shall comply with the requisition accordingly.

(2A) Any of the things caused to be seized by the Commissioner under sub- section (2) shall be disposed of by him in the manner specified in section 326.

(3) After the requisition under sub-section (2) has been complied with, the Commissioner may, if he thinks fit, depute by a written order a police officer or a municipal officer or other municipal employee to watch the premises in order to ensure that the erection of the building or the execution of the work is not continued.

(4) Where a police officer or a municipal officer or other municipal employee has been deputed under sub-section (3) to watch the premises, the cost of such deputation shall be paid by the person at whose instance such erection or execution is being continued or to whom notice under sub-section (1) was given and shall be recoverable from such person as an arrear of tax under this Act." Section 347 contains a specific prohibition for change of the use of any land or building. The said section reads as under:

"Sec. 347 Restrictions on uses of buildings.-- No person shall, without the written permission of the Commissioner, or otherwise than in conformity with the conditions, if any, of such permission-- (a) use or permit to be used for human habitation any part of a building not originally erected or authorised to be used for that purpose or not used for that purpose before any alteration has been made therein by any work executed in accordance with the provisions of this Act and the bye-laws made thereunder;

(b) change or allow the change of the use of any land or building;

(c) convert or allow the conversion of one kind of tenement into another kind." Section 349A contains the power of the Central Government to make bye-laws for carrying out the provisions of Chapter XVI. Regulations may provide for various matters including the use of sites for buildings from different areas etc.

as mentioned in Clauses (a) to (w) of sub-section (2) of Section 349A, having regard to the requirement of town planning by the municipalities. Town planning is now part of constitutional obligation on insertion of Part IX-A in the Constitution of India w.e.f. 1st June, 1993. Section 349A was inserted soon thereafter on 1st October, 1993.

Reference may also be made to Chapter XX of the DMC Act which deals with markets, slaughter houses, trades and occupations and maintenance and regulations thereof. Section 416 recognises the importance of the density of population, pressure on the services in case more number of persons use the facilities or services. The said section under the heading 'Trade and Occupations' reads as under:

"Sec. 416 Factory, etc., not to be established without permission of the Commissioner.� (1) No person shall, without the previous permission in writing of the Commissioner, establish in any premises, or materially alter, enlarge or extend, any factory, workshop or trade premises in which it is intended to employ steam, electricity, water or other mechanical power.

(2) The Commissioner may refuse to give such permission, if he is of the opinion that the establishment, alteration, enlargement or extension of such factory, workshop or trade premises, in the proposed position would be objectionable by reason of the density of the population in the neighbourhood thereof, or would be a nuisance to the inhabitants of the neighbourhood." A bare perusal of building bye-laws shows how

relevant is the user, commercial or residential, and the large impact of occupation load on various facilities including water, sanitation and drainage.

Keeping future needs in view, experts prepare Master Plans. Perusal of the Delhi Master Plan, 1962 and 2001 shows what were plan projections. At the time of planning, the experts in the field of town planning, take into account various aspects, such as, healthy living, environment, lung space need, land use intensity, areas where the residential houses to be built and where the commercial buildings to be located, need of household industries etc. Provision for household industries in residential areas does not mean converting residential houses in the commercial shops. It only means permitting activities of household industry in a part of a residential property. It does not mean that residential properties can be used for commercial and trading activities and sale and purchase of goods. Master Plan contemplates shops in District Centres, Community Centres, Local Shopping Centres etc. and not in residential areas. Be that as it may, for the present, we are not considering the cases of small shops opened in residential houses for catering to day-to-day basic needs, but are considering large-scale conversion, in flagrant violation of laws, of residential premises for commercial use.

In respect of planning, reference can usefully be made to Section 313 of the DMC Act as well. The said section provides for the requirement of layout plan of the land. It, inter alia, provides that before utilizing, selling or otherwise dealing with any land under Section 312, the owner thereof shall send to the Commissioner a written application with a layout plan of the land showing various particulars including the purpose for which the building will be used. For breach of Section 313, action can be taken under Section 314. It has rightly not been disputed by any counsel that neither layout plan, nor the building plan, can be sanctioned by MCD except in the manner and for the purpose provided in the Master Plan. If in the master plan, the land use is residential, MCD cannot sanction the plan for any purpose other than residential.

In the impugned judgment, while dealing with the provisions of the layout plan, it was observed that the provisions for user 'are only regulatory in nature'. While dealing with the user, the High Court observed that 'the power, whereby and whereunder the basic human rights or the fundamental rights conferred upon a person is taken away, must be specifically conferred by a statute'. The provision of user may be regulatory but all the same, they are mandatory and binding. In fact, almost all the planning provisions are regulatory. The violations of the regulatory provisions on massive scale can result in plans becoming merely scraps of papers. That is the ground reality in the capital of the country. None has any right, human or fundamental, to violate the law with immunity and claim any right to use a building for a purpose other than authorised.

Further, the words 'unless the context otherwise requires' in Section 331 of the DMC Act are of no consequence for determining the point in issue as the context herein does not provide otherwise for the present purposes. It does not provide that the power of sealing under Section 345A cannot be exercised in case of misuser. In view of the clear language of Section 345A, we are also unable to sustain the view of the High Court that action under Section 345A can be taken only when there exists order of demolition under Section 343 or an order under sub-section (1) of Section 344. The conclusion of the High Court that action under Section 345A can be taken only when there exists an order of demolition under Section 343, or on passing of an order under sub-section (1) of Section 344, and in no other contingency cannot be accepted in view of the clear provision of Section 345A that action can be taken even before or after an order is made under those provisions.

It is clear from a conjoint reading of the definition of the expression 'to erect a building' in Section 331 and Section 345A that conversion of user would come within the purview of the expression 'to erect a building'. In this respect useful reference can also be made to Building Bye-Laws for the Union Territory of Delhi, 1983, in particular Bye-Law Nos. 2.17 and 2.85, defining the expressions 'Conversion' and 'To Erect' respectively, which read as under:

"2.17 Conversion� The change of an occupancy to another occupancy or change in building structure or part thereof resulting into change of space or use requiring additional occupancy certificates.

2.85 To Erect� To erect a building means:

(a) To erect a new building on any site whether previously built upon or not;

(b) To re-erect any building of which portions above the plinth level have been pulled down, burnt or destroyed; and (c) Conversion from one occupancy to another." Having regard to these definitions if a Building/structure not originally constructed for use as a shop, is put to use as a shop, such conversion of use would come within the ambit of the expression 'to re-erect' and, consequently, within the ambit of the definition of the expression 'to erect a building'.

In view of the aforesaid, reversing the impugned judgment of the High Court, we hold that under Section 345A of the DMC Act, the Commissioner of MCD is empowered to exercise power of sealing in case of misuser of any premises.

Re : Question No.B � Whether under the Delhi Development Act, DDA has power to seal premises on account of its misuser? The High Court held that both under Section 345A of the DMC Act and under Section 31-A of the Delhi Development Act, there is no power to seal premises on account of 'its' misuser. We have held that MCD has such a power under the DMC Act. The position, however, is different when the provisions of the Delhi Development Act are examined.

The Delhi Development Act defines in Section 2(e) 'development area' to mean any area declared to be a development area under sub-section (1) of Section 12. Section 12 reads as under:

"Sec. 12� Declaration of development areas and development of land in those and other areas.-- (1) As soon as may be after the commencement of this Act, the Central Government may, by notification in the Official Gazette, declare any area in Delhi to be a development area for the purposes of this Act :

Provided that no such declaration shall be made unless a proposal for such declaration has been referred by the Central Government to the Authority and the Municipal Corporation of Delhi for expressing their views thereon within thirty days from the date of the receipt of the reference or within such further period as the Central Government may allow and the period so specified or allowed has expired.

(2) Save as otherwise provided in this Act, the Authority shall not undertake or carry out any development of land in any area which is not a development area.

(3) After the commencement of this Act no development of land shall be undertaken or carried out in any area by any person or body (including a department of Government) unless,-- (i) where that area is a development area, permission for such development has been obtained in writing from the Authority in accordance with the provision of this Act, (ii) where that area is an area other than a development area, approval of, or sanction for, such development has been obtained in writing from the local authority concerned or any officer or authority thereof empowered or authorised in this behalf, in accordance with the provisions made by or under the law governing such authority or until such provisions have been made, in accordance with the provisions of the regulations relating to the grant of permission for development made under the Delhi (Control of Building Operations) Act, 1955, (53 of 1955), and in force immediately before the commencement of this Act:

Provided that the local authority concerned may subject to the provisions of section 53A amend those regulations in their application to such area.

(4) After the coming into operation of any of the plans in any area no development shall be undertaken or carried out in that area unless such development is also in accordance with such plans, (5) Notwithstanding anything contained in sub-sections (3) and (4) development of any land begun by any department of Government or any local authority before the commencement of this Act may be completed by that department or local authority without compliance with the requirements of those sub-sections." The power of DDA to develop land in non-development area is provided in Section 22-A, which reads as under:

"Sec. 22-A Power of Authority to develop land in non-development area.-- Notwithstanding anything contained in sub- section (2) of Section 12, the Authority may, if it is of opinion that it is expedient to do so, undertake or carry out any development of any land which has been transferred to it or placed as its disposal under Section 15 or Section 22 even if such land is situate in any area which is not a development area." Under Section 36, DDA has been empowered to require the local authority, within whose local limits area developed by it is situated, to assume responsibility for the maintenance of the amenities provided in the area by DDA and other ancillary matters. Section 30 provides for power of DDA to make an order of demolition of building where any development has been commenced or is being carried on or has been completed in contravention of the master plan or zonal development plan or without the permission, approval or sanction referred to in Section 12 or in contravention of any condition subject to which such permission, approval or sanction has been granted. Section 31 empowers DDA to stop development which is in contravention of the plan, permission, approval or sanction, mentioned therein or contravention of the conditions stipulated in such permission, approval or sanction.

Section 31A empowers DDA to seal unauthorised development. If the misuser of the premises would come within the ambit of unauthorised development, DDA would have power to seal the premises. On the other hand, if misuser does not come within the ambit of 'unauthorised development', the power of sealing would be lacking. Section 31-A of the Delhi Development Act reads as under:

"Sec. 31-A Power to seal unauthorised development.-- (1) It shall be lawful for the Authority or the competent authority, as the case may be, at any time, before or after making an order for the removal or discontinuance of any development under Section 30 or Section 31, to make an order directing the sealing of such development in the manner prescribed by rules, for the purpose of carrying out the provisions of this Act, or for preventing any dispute as to the nature and extent of such development.

(2) Where any development has been sealed, the Authority or the competent authority, as the case may be, may, for the purpose of removing or discontinuing such development, order the seal to be removed.

(3) No person shall remove such seal except-- (a) under an order made by the Authority or the competent authority under sub-section (2); or (b) under an order of the Appellate Tribunal or the Lieutenant Governor of the National Capital Territory of Delhi, made in an appeal under this Act." The expression 'development' is defined in Section 2(d) as under:

"Sec.2(d) "development" with its grammatical variations means the carrying out of building, engineering, mining or other operations in, on, over or under land or the making of any material change in any building or land and includes redevelopment;" The Scheme under the Act clearly seems to be that during development it is the responsibility of DDA to demolish and seal any premises if there is contravention. After the handing over of the area to the local authority under Section 36, the power of demolition and/or sealing is conferred on that authority. That local authority may be MCD or cantonment or any other authority depending upon the developed area falling in the local limits of one or the other. The 'development area' is any area declared to be such under sub-section (1) of Section 12. So long as an area is a development area, the power to deal with it remains with the 'authority' which means Delhi Development Authority in terms of Section 3(1) of the Act. After the responsibility of any area has been assumed by the local authority in the manner provided in Section 36, the power to deal with properties in that area for any contravention would be exercisable by such authority depending upon the statutory provisions governing the said local authority, referred to in Section 31-A as 'competent authority'. The power of 'Competent Authority' to seal premises would depend upon the statute governing it. The language of Section 31-A when it states that 'it shall be lawful for the authority, or the competent authority, as the case may be' shows that either the authority or the competent authority would have the power therein. The Act does not contemplate that both DDA and the competent authority would have concurrent power even after the local authority has assumed responsibility as provided in Section 36. Unlike Section 331, there is no provision in the Delhi Development Act to confer on the authority the power of sealing in case of misuse. The power under Section 31-A is to seal development under Section 30 or Section 31. The words 'such development' in Section 31-A refers to removal or discontinuance of development under Section 30 or Sec. 31-A and not for any development for the purpose of carrying out the provisions of the Act, as was sought to be contended by Mr. Ranjit Kumar.

Section 31-A does not provide that sealing can be resorted to also for the purpose of carrying out the provisions of the Act.

It can be resorted to for sealing of development under Section 30 or Section 31 for the purpose of carrying out the provisions of the Act. Misuse does not come within the ambit of development.

In view of the aforesaid, the High Court has rightly held that under the Delhi Development Act, there is no power of sealing in case of misuser.

Re : Individual cases and the Directions to be issued in respect thereof and also in respect of other residential properties used illegally for commercial purposes.

In Special Leave Petitions and Civil Appeal Nos. 608- 611of 2003 challenge is to the judgments of High Court disposing of writ petitions in terms of law laid down by Full Bench.

In Civil Appeal No.610 of 2003, it is contended on behalf of the private respondents that a factual error seems to have occurred when the matter was disposed of by the High Court along with batch matters. It has been pointed out that the Court has failed to note that the plot in question has been leased out by DDA for commercial purposes; due licence has been issued by the MCD to open a restaurant which is being run in the name of Copper Chimney and, therefore, there is no misuser. Our attention has been drawn to the copy of the lease deed and the licence. If this is the factual scenario, the authorities will examine it before taking action, if any, and the same would be subject to such legal remedy as may be available in law to the private respondents.

In Special Leave Petition No.23896 of 2002 on behalf of respondent�bank, it has been pointed out that as per scheme of DDA, banks have been permitted in the residential properties. For DDA, it was submitted that the benefit of the scheme is available subject to the fulfillment of various conditions stipulated therein. In this view, the matter will have to be examined by the authorities in the light of the scheme, before proceeding to take action, if any, that may be available in law and subject to legal remedies of the Bank.

In respect of C.A. No. 608 of 2003, MCD issued to the respondents, a show cause notice dated 1st August, 2000 under Section 345A read with Sections 347, 343 and 344 of the DMC Act stating that property No. 39 Ring Road, Lajpat Nagar III was being misused in the name and style of "Jagdish Store". In reply dated 15th September, 2000, it was, inter alia, stated that the MCD itself has been allowing non-residential activities in residential areas under a special scheme, without, however, giving any details or filing any document in support thereof. Further, we asked the learned counsel for the respondents to place on record the plan for the construction of the building which may have been sanctioned so as to ascertain whether the sanction was for construction of the residential property or commercial property. The plan has not been filed. The reasons are not far to seek. One of the simple method for ascertaining that there is misuser or not, is to examine the sanctioned plan.

At this stage, it would be useful to notice letter dated 28th August, 2000 sent by the Ministry of Urban Development to the Commissioner, MCD, Vice-Chairman, DDA and other authorities conveying the deep concern of Parliament Consultative Committee over the rising menace of unauthorized construction, suspected connivance of the staff of the different authorities in the matter and requesting the authorities to take strong and prompt action and suggesting ten measures for strict enforcement. The letter reads as under:

"Annexure-R-1 No.J-13036/3/96-DDIIB Government of India Ministry of Urban Development & Poverty Alleviation *** Nirman Bhawan, New Delhi Dated: 28.08.2000 To

1. Shri P.S.Bhatnagar, Chief Secretary, Government of National Capital Territory of Delhi, Delhi.

2. Shri P.K.Ghosh, Vice-Chairman, Delhi Development Authority, Vikas Sadan, INA, New Delhi

3. Shri S.P.Aggarwal, Commissioner, Municipal Corporation of Delhi, Town Hall, Delhi

4. Shri B.P.Misra, Chairperson New Delhi Municipal Committee, Palika Kendra, New Delhi

5. The Development Commissioner, Government of National Capital Territory of Delhi, Town Hall, New Delhi Subject: Unauthorised Encroachment and Illegal Constructions in Delhi Sir, I am directed to say that the menace of illegal encroachment/unauthorised construction in Delhi has been considered by the Government of India at its highest level and it has been decided to eliminate this menace with a firm hand. You are, therefore, requested to take strong and prompt action against all illegal constructions/unauthorised encroachments and also against misuses of land in violation of the provisions of the Master Plan of Delhi. The following measures are particularly required to be enforced strictly.

(i) All illegal constructions should be demolished, not cosmetically but in toto.

(ii) The cost of demolition should be recovered from the illegal builders within 15 days of demolition. In case of non-payment within 15 days, the amount due should be recovered as arrears of land revenue.

(iii) In all cases of illegal constructions, prosecution should invariably be launched against builders under the Delhi Municipal Corporation Act, Delhi Development Authority Act, New Delhi Municipal Council Act, etc. and the cases followed vigorously with the police authorities/courts.

(iv) Wherever the property is on lease, action should be taken under the terms and conditions of lease agreement and re-entry effected within the shortest permissible period under such lease agreement.

After re-entry, physical possession of the property should be taken by invoking the provisions of Public Premises Eviction Act and damages collected immediately. The rates of damages/misuse charges should be the same as per the formula followed by the L&DO and approved by the Ministry of Urban Development.

(v) In case of DDA flats, where constructions have come up beyond the condonable limits, cancellation of allotment should be carried out in addition to the demolition of the additional construction. Orders in respect of condonable and non- condonable items are being issued separately.

(vi) In cases, where after demolition, reconstruction is done, personal responsibility of the officer in-charge should be fixed and departmental action taken against him.

(vii) In cases where illegal construction have taken place on rural agricultural lands, action under the Provisions of the Delhi Land Reforms Act, 1954, should also be taken and such lands should be taken over as per provisions of the Delhi land Reforms Act. Action in this respect should be taken as soon as the plots are cut by the colonisers and construction done in the shape of boundary walls, etc. In other words, construction should be nipped in the bud. If it comes up, it should be demolished immediately.

Action in this respect should also be taken by the concerned local agencies/DDA as per the bye-laws pertaining to lay out/service plans, etc.

(viii) In all cases where party obtains stay/status quo orders, prompt action to get the stay order vacated should be taken and higher court moved, wherever necessary.

(ix) All Senior Field Officers should be asked to carry out physical inspection of the area under their charge and the Supervising Officer should also make surprise checks to ensure that the subordinate staff takes immediate action to check/demolish unauthorised construction. Deterrent action should also be taken against the subordinate staff such as Building Inspectors, Junior Engineers, Assistant Engineers, etc. who do not take prompt action.

(x) Field officers should be asked to maintain filed diaries and submit them to the Supervisory Officer regularly.

2. It is also requested that a monthly report should be sent to the Ministry of Urban Development by the 5th of each succeeding month.

3. In this connection, it may be noted that both the Parliament and the Parliament Consultative Committee have expressed deep concern, through questions and interpolations, over the rising menace of unauthorised constructions in Delhi and the suspected connivance of the staff of the different authorities in the matter. A Flying Squad has been constituted in the Ministry and if, as a result of findings of this Squad, it is found that the subordinate staff has not done its duty or not carried out the aforesaid

instructions, strict action against the Subordinate/Supervisory Staff would be taken by the Government.

Yours faithfully, Sd/- (Dr.Nivedita P.Haran) Joint Secretary to the Government of India Copy for information and necessary action to:

1. Deputy C.V.O., Ministry of UD&PA, Nirman Bhawan, New Delhi.

2. L&DO, Ministry of UD&PA, Nirman Bhawan, New Delhi

3. DG(W), CPWD, Nirman Bhawan, New Delhi Sd/- (N.L. Upadhyay)" The aforesaid letter has been considered by this Court while passing order dated 31st July, 2001, part whereof has been quoted earlier. Although the letter and also the observations made in the order are in the context of unauthorized constructions, the same would equally apply to the misuser as well. It would be useful to reproduce the entire order which reads as under:

"Order dated 31.7.2001 in W.P.(C) No.725/1994 We have seen two affidavits, one of the Chief Secretary as well as the affidavit on behalf of the M.C.D. We are sorry to note that the affidavits do not specifically deal with the points in issue. Vide our order dated 9th May, 2001 these authorities along with Vice-Chairman, D.D.A, Chairperson, N.D.M.C. and the Development Commissioner were required to file affidavit to indicate as to what measures they have taken in the implementation of the letter dated 28th August, 2000. At least ten measures were required to be taken in terms of the said letter dated 28th August, 2000. The affidavits in reply do not deal with them specifically and general averments have been made which are not satisfactory.

The perusal of the affidavits further shows that the parties concerned have not even touched the tip of the iceberg as far as demolition of unauthorised constructions is concerned. The number of unauthorised constructions which are said to have been demolished are a small fraction of what is required to be done. It is quite evident that there is now no fear of the law catching up at least with those persons who do not believe in adhering to following the rules and regulations laid down with respect to construction of property. Unauthorised encroachment and illegal construction even as per the affidavits are increasing. It is dangerous trend if the people do not have either respect for or fear of law primarily due to non-enforcement of the law. It is something which causes us some concern and it would be appropriate if serious thought is given to this aspect at the highest quarters.

We direct the Chief Secretary as well as the Commissioner, M.C.D. to file within four weeks specific affidavit dealing with each of the clauses of the letter dated 28th August, 2000. They will also indicate as to what is the total encroached area in Delhi as well as the number of unauthorised/illegal constructions which have been raised.

The affidavit of the Chief Secretary seems to give some indication of action taken for removing encroachment from some of these areas in Delhi. We would require the Union of India/Ministry of Urban Development to check and inform the Court whether what is stated in the annexures to the affidavit of the Chief Secretary from pages 43 to 63 is correct.

The Central Government will be at liberty to ask for information from the local authority in order to enable it to comply with the orders passed today.

The M.C.D. will also inform this Court in the affidavit to be filed as to why no requisite action has been taken for stopping the gross misuse of the buildings in the residential areas for commercial purposes and in the construction of commercial buildings in residential areas where only residential houses are permitted. To come up after four weeks." Now, we revert to the task of implementation. Despite its difficulty, this Court cannot remain a mute spectator when the violations also affect the environment and healthy living of law-abiders. The enormity of the problem which, to a great extent, is the doing of the authorities themselves, does not mean that a beginning should not be made to set things right.

If the entire misuser cannot be stopped at one point of time because of its extensive nature, then it has to be stopped in a phased manner, beginning with major violators. There has to be a will to do it. We have hereinbefore noted in brief, the orders made in the last so many years but it seems, the same has had no effect on the authorities. The things cannot be permitted to go on in this manner forever. On one hand, various laws are enacted, master plans are prepared by expert planners, provision is made in the plans also to tackle the problem of existing unauthorised constructions and misusers and, on the other hand, such illegal activities go on unabated openly under the gaze of everyone, without having any respect and regard for law and other citizens. We have noticed above the complaints of some of the residents in respect of such illegalities. For last number of years even the High Court has been expressing similar anguish in the orders made in large number of cases. We may briefly notice some of those orders.

More than fifteen years ago, on 17th May, 1990, a Division Bench of the Delhi High Court presided over by Justice B.N. Kirpal (as the former Chief Justice of India then was) in the case of Ahuja Property Developers (P) Ltd. v.

M.C.D. [1990 (42) Delhi Law Times 474], dealt with a writ petition in respect of a building in Kailash Colony, New Delhi and noticed the extent of illegalities and the massive construction made that could not be used for residential purposes since there was no kitchen or kitchen facilities.

Dealing with the argument put forth on behalf of builder that there is no power to seal any building under Section 345A, dismissing the writ petition, it was observed that the petitioner had admittedly violated the law and cannot now be permitted to cry wolf. The Court said that the petitioner had admittedly constructed a building not only at variance with the sanctioned plan but also at variance with the completion certificate and completion drawings.

Again on 22nd October, 1990, another Division Bench dealt with a property in Greater Kailash II, New Delhi in the case of DDA v. Rajinder Mittal, [1991(20) DRJ 65] and observed that the residential buildings can only be used for residential purposes. The use of premises for widespread commercial activities is prohibited. This was while dealing with a criminal matter arising out of prosecution under Section 29 of the Delhi Development Act.

On May 18, 1995, Justice R.C. Lahoti (as the former Chief Justice of India, then was) in the case of ANZ Grindlays Bank v. The Commissioner, M.C.D. & Ors. [1995(34)DRJ 492] echoed similar words and referred to decision of this Court, observing that the word 'environment' is of broad spectrum which brings within its ambit hygienic atmosphere and ecological balance. It is, therefore, not only the duty of the State but also the duty of every citizen to maintain hygienic environment. There is constitutional imperative on the State Government and the municipalities, not only to ensure and safeguard proper environment but also an imperative duty to take adequate measures to promote, protect and improve both the man-made and the natural environment. Dealing with the Municipal Laws providing for power of demolition, it was observed that while interpreting municipal legislation framed in public interest, a strict constitutional approach must be adopted. A perusal of the Master Plan shows that the public purpose behind it is based on historic facts guided by expert opinion.

The injurious effects on the health and well being of those living in the neighbourhood were also noticed. Further, notice was taken of the fact of the unscrupulous builders building properties in deviation of laws, master plan with the connivance or collusion of the authorities.

On 9th February, 1996 dealing with various properties at Pusa Road in the case of Anil Kumar Khurana v. MCD [1996 (36) DRJ 558] writing separate opinion as a member of Division Bench of Delhi High Court, one of us (Y.K.Sabharwal, CJ) noticed that the unauthorised constructions and unauthorised user of residential building for commercial purposes in Delhi had gained alarming proportions and crossed all limits. It was said that these activities are against the interests of the society at large and need to be dealt with firmly and that the public interest demands that the court should not come to the aid of those who break the law with immunity and put up commercial complexes on the land meant admittedly for residential use. These complexes are put up and spaces purchased for petty commercial consideration without any regard to the hardship and inconvenience of other citizens. It was further said that in respect of blatant unauthorised constructions and misuser, it cannot be said that the Commissioner of MCD has a discretion to order demolition or not and vesting of discretion in the circumstances would itself be arbitrary and illegal.

In the concluding paragraph it was stated that:

"In the end, I regret to notice that despite warning and caution given by the Apex Court and also this court, from time to time, that stern action will be taken against unauthorised constructions and misuse, these activities have gone on unabated, without any let or hindrance and all the warnings have fallen on deaf ears without any effect on the unscruplous builders and purchasers of these spaces. It is, therefore, necessary to once again send a message, loudly, clearly and firmly to all those who indulge in such illegal activities that courts will not come to the aid of persons who indulge in such blatant unauthorised constructions and misuser of the properties. It is also the duty of the courts to examine these matters carefully before granting injunction restraining demolition of such unauthorised constructions. Ordinarily the courts before issuing injunctions in such matters should insist upon filing of the sanctioned plans and details about the existing structures to prima facie find out whether the existing structures are in accordance with the sanctioned plan and building bye laws etc or not. The courts may also consider appointment of independent person to verify correctness of representations made about existing structures as in many cases unauthorised constructions are raised after issue of injunctions and in cover and garb of orders of injunction. The alarming nature of such illegal activities can be controlled only by due cooperation from all citizens including the Media and the Press. It is the duty of all to expose these law breakers. I hope the Media would bring to the notice of public in general that unauthorised constructions and misuser have been severely dealt with by this court and henceforth also no leniency would be shown in such matters. A copy of this judgment shall be sent forthwith to Delhi Doordarshan and All India Radio. Everyone has to be told that such unauthorised activities are against public interest. These activities have to be stopped forthwith. If in spite of this warning anyone indulges in such unauthorised construction or misuse or in purchase of these unauthorized constructions he would be doing it at his own risk and peril and would not be heard to say that he has made large investments. I hope that at least now this message would be taken with all seriousness.

In view of the above, in my opinion, all the petitions and appeals deserve dismissal with costs quantified at Rs.10,000/- in each case. These costs would be utilised by M.C.D. for creating in a Special Cell which should be set up to curb unauthorised construction and misuser of the immoveable properties so that at least a beginning is made now to promptly check these illegal activities.

The officials and officers manning this Cell will have to be informed that any dereliction of duty would be severely dealt with." It seems that in view of the aforesaid judgment attaining finality, some formal or cosmetic demolition had taken place.

What is the position of these properties now is evident from the affidavit dated 16th November, 2005 filed by Additional Commissioner, MCD placing on record the present status after conducting inspections in second week of November, 2005. A perusal of the status report in respect of properties referred in the aforesaid case shows large scale violations in the shape of show-rooms, commercial offices, shops, law institutes and gymnasiums. The report shows that even after a lapse of 10 years, commercial activity is in full swing. This also shows the urgent need to introduce stringent measures for fixing accountability.

Despite passing of the laws and repeated orders of the High Court and this Court, the enforcement of the laws and the implementation of the orders are utterly lacking. If the laws are not enforced and the orders of the courts to enforce and implement the laws are ignored, the result can only be total lawlessness. It is, therefore, necessary to also identify and take appropriate action against officers responsible for this state of affairs. Such blatant misuse of properties at large scale cannot take place without connivance of the concerned officers. It is also a source of corruption. Therefore, action is also necessary to check corruption, nepotism and total apathy towards the rights of the citizens. Those who own the properties that are misused have also implied responsibility towards the hardship, inconvenience, suffering caused to the residents of the locality and injuries to third parties. It is, therefore, not only the question of stopping the misuser but also making the owners at default accountable for the injuries caused to others. Similar would also be the accountability of errant officers as well since, prima facie, such large scale misuser, in violation of laws, cannot take place without the active connivance of the officers. It would be for the officers to show what effective steps were taken to stop the misuser.

We have perused the suggestions given by MCD. It has suggested four steps. MCD requires six months to complete the whole survey in 12 zones divided into 134 wards. As a second step, after initial survey of all the zones, notice of the proposed action/sealing and/or stopping misuse to be given to the concerned persons. The third step is grant of opportunity to them of being heard. The fourth step is the operations for sealing blatant and obvious cases of large scale misuse at the first instance. Further suggestion is that the major violations would be sealed first and simultaneously action in all 12 zones would be conducted after following the due process of law. It is stated that the success of operation would largely depend on the availability of the Police force. Recognising that the parties later tamper the seal, it is suggested that necessary directions be issued warning those who tamper the seal that they shall be punished for contempt of court.

Regarding the Ad hoc Trade Registration Scheme, 2004, the stand of the MCD is that, if allowed by the Court, it will be implemented in the same area as is permitted by the Master Plan for category 'A' household industry to the extent of 25% of the floor space or 30 sq. mt., whichever is less, and this will be the maximum space permissible. The minimum space having already been specified in the scheme as 30 sq. ft. We may note that the scheme for ad hoc registration itself provides that it is applicable to the following areas :

1. Walled city and other built up areas.

2. Schemes executed by the Delhi Improvement Colonies.

3. Schemes executed by the Ministry of Rehabilitation Colonies.

4. Resettlement Colonies.

5. Urban Villages 6. Unauthorised regularized colonies.

This scheme is not applicable to the following areas :

1. NDMC and Delhi Cantonment area.

2. Planned Colonies and housing schemes developed after 1957.

3. Unauthorised colonies not regularized.

4. J.J. Clusters.

5. Staff Housing colonies.

6. Rural Settlement (except household and rural industrial units Group A & A1-Annexure-II) The areas and the colonies above-referred themselves show that the so-

called Registration Scheme, 2004 can have no applicability to the nature of misuse under consideration.

It deserves to be noted that it is implicit in the scheme that a person to get benefit of the scheme has himself to be resident of such premises.

The introduction of the Ad hoc Registration Scheme would not only regularize the illegalities but further encourage more illegalities to take place by sending a wrong message underlying the press release. This ad hoc scheme has been stayed by this Court. A similar scheme was also sought to be introduced by DDA as well for grant of temporary permission for commercial use in industrial plots and for condonation of misuse of industrial premises for offices and other commercial purposes on payment of requisite charges. On learned Amicus Curiae filing IA 1816 of 2002 seeking stay of the said scheme, the scheme was given up and an affidavit filed that no action is being taken by DDA upon the scheme or the notice, subject matter of the application. The introduction of such schemes by MCD and DDA show the extent of the apathy and lack of concern of these bodies.

Mr. Ashwini Kumar, learned senior Advocate appearing for MCD, also contended that since there is a large scale misuse of residential premises for commercial purposes, it is a physical impossibility to remove the misuser. The contention deserves outright rejection. We have already noted how the misuser has attained such enormity. Despite repeated orders and directions, MCD took no action. Such a contention is not open to MCD. It is not merely a case of only lack of will to take action, it appears to be a case of predominance of extraneous considerations.

Rule of law is the essence of Democracy. It has to be preserved. Laws have to be enforced. In the case in hand, the implementation and enforcement of law to stop blatant misuse cannot be delayed further so as to await the so called proposed survey by MCD. The suggestions would only result in further postponement of action against illegalities. It may be noted that the MCD has filed zonewise/wardwise abstract of violations in terms of commercialisation as in November, 2005.

According to MCD, the major violation has been determined in respect of those roads where commercialisation of the buildings is more than 50%. According to it, the major violations in 12 zones are spread on 229 roads. Roads on which there are major violations are, thus, known. In respect of these, there is no need for any survey or individual notice.

Beginning must be made to stop misuser on main roads of width of 80 ft. or more. The names of these roads can be published in newspapers and adequate publicity given, granting violators some time to bring the user of the property in conformity with the permissible user, namely, for residential use if the plans have been sanctioned for construction of a residential house. In case owner/user fails to do so, how, in which manner and from which date, MCD will commence sealing operation shall be placed on record in the form of an affidavit of its Commissioner to be filed within two weeks. On consideration of this affidavit, we will issue further directions including constitution of a Monitoring Committee, if necessary. The issue of accountability of officers and also the exact manner of applicability of Polluter Pay Principle to owners and officers would be further taken up after misuser is stopped at least on main roads. Civil Appeal Nos.608/2003 above referred relates to Ring Road, Lajpat Nagar-II. The other cases relate to areas like Green Park Extn., Green Park Main, Greater Kailash, New Friends Colony, Defence Colony, West Patel Nagar, etc. These areas are illustrative. The activities include Big Furnishing Stores, Galleries, Sale of Diamond and Gold Jewellary, sale of Car Parts etc.

Having held that the Commissioner of MCD has power under the DMC Act to seal premises in case of its misuser, we issue the following directions for taking immediate steps to seal residential premises being used for commercial purpose :

1. MCD shall within 10 days give wide publicity in the leading newspapers directing major violations on main roads (some instances of such violators and roads have been noted hereinbefore) to stop misuser on their own, within the period of 30 days.

2. It shall be the responsibility of the owner/occupier to file within 30 days an affidavit with Commissioner of MCD stating that the misuser has been stopped.

3. In case misuser is not stopped, sealing of the premises shall commence after 30 days, from the date of public notice, first taking up the violations on roads which are 80 ft. wide and more. All authorities are directed to render full assistance and cooperation. After expiry of 30 days from the date of public notice, electricity and water supply shall be disconnected.

4. Details of the Roads and the violations shall also be placed on the website by the MCD and copies also sent to Resident Welfare Associations of the area which should be involved in the process of sealing of misuser. The Commissioner of MCD shall file an affidavit, within two weeks, in terms of directions contained in this judgment, whereafter directions for constitution of the Monitoring Committee would be issued. The sealing would be effected by the officers authorised by the Commissioner of MCD in consultation with the Monitoring Committee.

5. The appropriate directions for action, if any, against the officers responsible for the misuse and for payment of compensation by them and by violators would be issued after the misuser is stopped.

6. None will tamper with the seals. Any tampering with seal will be sternly dealt with. Tampering with seal will include opening another entrance for use of premises.

7. It would be open to the owner/occupier to approach the Commissioner for removal of the seal on giving undertaking that the premises would be put to only authorised use.

8. Particulars of cases where violators may have obtained orders of stay will be filed in this Court by MCD.

9. MCD shall file monthly status report as to action taken by 15th of each month commencing from 10th April, 2006.

10. In case misuser is not stopped in the premises involved in the civil appeals and special leave petitions, subject to what is stated in this judgment, the MCD will take immediate steps to seal those premises soon after expiry of 30 days.

Civil Appeals, Interlocutory Applications (except I.A.22) and Special Leave Petitions are disposed of but MCD is granted liberty to seek further directions from this Court from time to time.

S.N. CHANDRASHEKAR AND ANR V. STATE OF KARNATAKA & ORS [2006] INSC 57 (2 February 2006)

S.B. Sinha & P.K. Balasubramanyan

[Arising out of SLP (Civil) No.23815 of 2004] S.B. SINHA , J :

Leave granted.

The State of Karnataka enacted the Karnataka Town and Country Planning Act, 1961 (for short, 'the Act'). The Bangalore Development Authority (for short, 'the BDA') had been constituted under the said Act. A Comprehensive Development Plan was prepared by the BDA. In Jayanagar which is a residential area in the town of Bangalore, allotment of houses had been made to individuals for residential purpose only in terms of the said development plan. Whereas the Appellants were allotted houses bearing nos.

282D and 281D, one K.V. Ramachandra was allotted Plot No.585. A deed of sale was executed in his favour on 10.12.1994, inter alia, on the condition that the same would be exclusively used for residential purpose only. The Respondent No. 6 purchased the said premises from the said K.V.

Ramachandra by a registered deed of sale dated 24.08.1998. He intended to convert the land use from residential to commercial wherefor an application was made before the BDA. The said application was treated to be one under Section 14-A of the Act.

The Jayanagar 5th Block Residents' Welfare Association filed its objections thereto on 27.03.1999. It, however, later on issued a no objection certificate, stating :

"The Association has no objection for conversion of the site for commercial purpose for the use of a vegetarian restaurant. The premises is a corner site and you must arrange separate parking without obstructing the movement of vehicles." Inspections of the plot in question by two senior officers of BDA were made thereafter.

Upon completion of the requisite formalities, sanction for change of land use was issued on or about 07.10.1999. Pursuant to the order of sanction granted by the State of Karnataka, the BDA issued a confirmatory letter dated 10.12.1999 subject to the condition of obtaining necessary building plan approved by the Corporation and providing for parking of vehicles in the building.

An objection was raised by the residents of the locality when the said respondent started a restaurant without obtaining any licence therefor. An application for grant of licence was submitted by the Respondent No.6 on 17.01.2000. The Corporation informed the Respondent No.6 that his application would be considered only upon completion of construction of the building. However, he made another application on 25.02.2000 for grant of licence. He also filed a writ application before the Karnataka High Court, marked as W.P. No.11139 of 2000 wherein the Corporation was directed to consider his application for grant of licence within six weeks. A building licence was granted in his favour on 12.05.2000 and a modified plan was sanctioned on 19.08.2000. He was granted a licence to run the restaurant till 31.03.2000.

Questioning the legality and/or validity of the said notification dated 04.08.1999, some of the residents of the locality filed a public interest litigation being Writ Petition No.9078 of 2001. In the meanwhile a notice was issued to the Respondent No. 6 by the Corporation as to why, deviation having been made from the sanctioned plan, the same should not be directed to be removed. As the Respondent No.6 failed to remove the deviated portions, the Corporation by its notice dated 06.01.2002 authorized the Executive Engineer to give effect to the confirmatory order passed by it by removing the deviated portions. The Respondent No.6 thereupon approached the Standing Committee by way of appeal whereafter his hotel licence was renewed. As running of hotel allegedly caused nuisance, a representation was made by the Ladies Association of the locality on 12.01.2002. A further representation was made on 19.01.2002 by the general public.

As no response was made in relation thereto, the Appellants herein filed a writ petition before the Karnataka High Court, inter alia, praying for the following relief's :

"1) Issue a writ in the nature of mandamus or certiorari quashing Order No. UDD 194 BDA 99 Dt.

07.10.1999 passed by the Under Secretary to Government (Annexure-D);

2) Issue a writ in the nature of mandamus or certiorari quashing the confirmatory letter No.BDA/DUP/1349/99-2000 Dt. 10.12.1999 (Annexure "E") issued by the Bangalore Development Authority;

3) Declare that the proceedings of the Standing Committee Dt. 16.03.2002 in subject No. Aa. Stha.

Sa(Aa) 798-01-02 (produced as Annexure "N") to the extent the said proceedings grants renewal of hotel licence in favour of Respondent No.6 as null & void and beyond the competence of the Standing Committee;

4) Issue a writ in the nature of mandamus directing the Respondents 1 to 5 to take immediate steps to prevent Respondent No.6 from using the premises No.585, 10th Main Road, V Block, Jayanagar, Bangalore for running a hotel and to ensure that the said premises is used only for residential purposes;" In his counter affidavit, the Respondent No.6 herein, inter alia, contended that the Residential Welfare Association, gave its consent by letter dated 13.04.1999 for change of user of the property and for establishing a vegetarian restaurant at Plot No.585.

The High Court dismissed the writ petition filed by the Appellants herein holding, inter alia,: (i) when objections were called for, wherefor notices were published in several newspapers, only Jayanagar 5th Block Residents' Welfare Association filed an objection and later on withdrew the same; (ii) the BDA in its resolution dated 29.06.1999 held that conversion was in public interest and permitted the conversion of use from dwelling to commercial (restaurant); (iii) as the Appellants did not file any objection, they were not entitled to any relief; and (iv) number of permissions by the planning authorities had been accorded for change of land use by invoking Section 14-A of the Act and, thus, there was no reason, why such permission should not be granted to the Respondent No.1.

Mr. U.U. Lalit, learned Senior Counsel appearing on behalf of the Appellants, contended that having regard to the fact that Section 14-A was specifically introduced in the year 1991, the State of Karnataka as also the BDA acted illegally and without jurisdiction in granting such permission as the conditions precedent laid down therefor had not been fulfilled. It was submitted that while granting such permission, the basic issue that such change of land use is impermissible in law had not been taken into consideration and the impugned order was passed upon taking into consideration irrelevant factors and without considering the relevant ones.

Mr. S.S. Javali, learned Senior Counsel appearing on behalf of the Respondent No. 6, on the other hand, submitted : (i) From various provisions of the Act, it would appear that Sections 14 and 15 thereof provide for a separate scheme which is not governed by Section 14-A of the Act. (ii) As in terms of Sections 14 and 15 of the Act, the power as regard change in user vests in the Planning Authority, it was not necessary to invoke

Section 14-A of the Act. (iii) If the provisions of Section 14-A in a case of this nature is applied, Sections 14(2) and 15(2) would become otiose.

(iv) Having regard to the fact that the Association had given its consent, constructions were permitted to start a vegetarian restaurant by the Respondent No.6 and the said restaurant has been running for a period of more than three years; and (v) as the other persons similarly situated are operating in the area and as the Appellants or any other person had not taken any objection thereto, it is not a fit case where this Court should exercise its discretionary jurisdiction under Article 136 of the Constitution of India.

Mr. S.K. Kulkarni, learned counsel appearing for the BDA, would submit that Section 14, which provides for a prohibitory clause as regard change of user, must be held to be excluded by Section 14-A of the Act.

The learned counsel urged that Section 14-A interdicts the application of Section 14 in relation to change in the land user; as prior to Section 14-A, no power was vested in the BDA for grant of such permission in the change of Master Plan, and, thus, the same is required to conform to the provisions thereto. However, in view of the fact that the procedures have been followed in granting such permission upon taking into consideration the reports submitted by the two senior officers, even if any error has been committed, this Court should not exercise its discretionary jurisdiction under Article 136 of the Constitution of India.

STATUTORY PROVISIONS:

The Act was enacted to consolidate and amend the law relating to town planning, some of the relevant provisions of the Act are as under :

"2. In this Act, as it then stood, unless the context otherwise requires,- (1-c) "Development" with its grammatical variations, means the carrying out of building, engineering, mining, or other operations in, on, over or under land or the making of any material change in any building or land, or in the use of any building or land and includes sub-division of any land;

(1-d) "Development plan" means Outline Development Plan or Comprehensive Development Plan prepared under this Act (2) "Land" includes benefits arising out of land and things attached to the earth or permanently fastened to anything attached to the earth;

(3) "Land use" means the major use to which a plot of land is being used on any specified date;

(5) "Owner" includes any person for the time being receiving or entitled to receive, whether on his own account or as agent, trustee, guardian, manager, or receiver for another person, or for any religious or charitable purpose, the rents or profits of the property in connection with which it is used;

(7) "Planning Authority" means, - (a) in the case of (i) the local planning area comprising the City of Bangalore, the Bangalore Development Authority, and (i-a) the

local planning area comprising any urban area" defined in the Karnataka Urban Development Authorities Act, 1987, the Urban Development Authority of such urban area (ii) any other local planning area in respect of which the State Government may deem it expedient to constitute a separate Planning Authority, the Planning Authority constituted under this Act, (b) in the case of local planning area in respect of which a Planning Authority is not constituted under this Act, the Town Improvement Board constituted under any law for the time being in force having jurisdiction over such local planning area, and where there is no such Town Improvement Board, the local authority having jurisdiction over such local planning area;

(8) "Plot" mean a continuous portion of land held in one ownership;

Section 12 of the Act, as it then stood, which has since been substituted by Act 1 of 2005, dealt with the contents of Outline Development Plan in the following terms :

"12. Contents of Outline Development Plan.- (1) An Outline Development Plan shall generally indicate the manner in which the development and improvement of the entire planning area within the jurisdiction of the Planning Authority are to be carried out and regulated.

In particular it shall include, - (a) a general land use plan and zoning of land use for residential, commercial, industrial, agricultural, recreational, educational and other public purposes;

(b) proposals for road and highways; and widening of such roads and highways in congested areas;

(c) proposals for the reservation of land for the purposes of the Union, any State, any local authority or any other authority established by law in India;

(d) proposals for declaring certain areas as areas of special control, development in such areas being subject to such regulations as may be made in regard to building line, height of buildings, floor area ratio, architectural features and such other particulars as may be prescribed;

(e) such other proposal for public or other purposes as may from time to time be approved by the Planning Authority or directed by the State Government in this behalf.

Explanation.- "Building line" means the line up to which the plinth of a building adjoining a street may lawfully extend and includes the lines prescribed, if any, in any scheme.

(2) The following particulars shall be published and sent to the State Government through the Director along with the Outline Development Plan, namely :- (i) a report of the surveys carried out by the Planning Authority before the preparation of such plan;

(ii) a report explaining the provisions of such plan;

(iii) regulations in respect of each land use zone to enforce the provisions of such plan and explaining the manner in which necessary permission for developing any land can be obtained from the Planning Authority;

(iv) a report of the stages by which it is proposed to meet the obligations imposed on the Planning Authority by such plan;

(v) an approximate estimate of the cost involved in the acquisition of lands reserved for public purposes." Chapter III of the Act deals with preparation of Outline Development Plan.(now styled as preparation of Master Plan) Chapter IV deals with the Comprehensive Development Plan (now styled as "Enforcement of Master Plan"). Outline Development Plan is a one time plan. It could be superseded under Section 23 of the Act (since repealed). Once the Comprehensive Development Plan has been prepared for any area, Section 25 (as it then existed) provided for revision of the Comprehensive Development Plan in every ten years.

Section 14-A of the Act provides for change of land use from the Outline Development Plan. Section 14(1) thereof, as it then stood, provided that every development in the area covered by the plan subject to Section 14A shall conform to the provisions of the Act. Section 14(2), however, provides that no change in the land use or development shall be made except with the written permission of the Planning Authority which shall be contained in the commencement certificate granted by the Planning Authority in the form prescribed.

It is furthermore not in dispute that the first Comprehensive Development Plan was prepared in the year 1984, whereas the second Comprehensive Development Plan was prepared in the year 1995. The change contemplated thereby is only from one category of land use to another. The land use indisputably is categorized into six categories, details whereof would be noticed later.

Sub-section (2) of Section 15 of the Act, which provides for a deemed grant, refers only to the change of permitted category. It is furthermore not in dispute that by a notification dated 05.01.1995, the Comprehensive Development Plan was notified providing for Zoning of Land Use and Regulations of the BDA. Under the heading "Residential Zone", two sub clauses were made, viz. (a) uses that are permissible; (b) uses that are permissible under special circumstances by the Authority.

Restaurant does not come within the purview of Annexure II of the said Zoning Regulations i.e. in either of the aforementioned categories. Schedule I thereof sets out a list of service industries that are permissible in Residential Zone (as a part of Residential building)/Retails Business Zone.

The Regulations framed were approved by the Government under Section 13(1) of the Act.

ANALYSIS OF THE STATUTORY PROVISIONS:

The Act prior to coming into force of Section 14-A of the Act contained two provisions for enabling change in land use. The definition of 'land use' indisputably will have to be read with the Zoning Regulations.

Section 14(1), as it then stood, of the Act provided that every change in land use and every development in the area covered by the Plan subject to Section 14A shall conform to the provisions of the Act. Section 14(2), however, provides that no such change in land use or development shall be made except with the written permission of the Planning Authority which shall be contained in a commencement certificate in the form prescribed.

Section 15 provides for the procedure required to be followed where the Planning Authority is required to pass an order in terms of Section 14 of the Act. So far as changes of land use or development from the Outline Development Plan is concerned, the same would be subject to the procedure laid down in Section 14-A of the Act. Outline Development Plan being a one time Plan, evidently sub-section (2) of Section 14 had no application. It is only for that purpose Section 14-A had to be introduced. Section 14-A categorically states that change in the land use or development from the Outline Development Plan must be necessitated by : (i) topographical or cartographical or other errors and omissions; (ii) due to failure to fully indicate the details in the Plan or changes arising out of the implementation of the proposals in Outline Development Plan; and (iii) circumstances prevailing at any particular time by the enforcement of the Plan.

The proviso appended to Section 14-A enumerates that : (i) such changes should be one in public interest; (ii) the changes proposed should not contravene any of the provisions of the Act or any other law governing planning, development or use of land within the local planning area; and (iii) the proposal for all such changes are published in one or more daily newspapers, having circulation in the area, inviting objections from the public. Sub-sections (2) and (3) of Section 14 of the Act are applicable mutatis mutandis to the change in land use or development from the Outline Development Plan. Sub-section (1) of Section 15 provides that on receipt of the application for permission under Section 14, the Planning Authority shall cause an enquiry to be made whereupon it may either grant or refuse a commencement certificate. Sub-section (2) of Section 15 raises a legal fiction as regard failure on the part of the Planning Authority to issue such certificate, as by reason thereof such certificate would be deemed to have been granted. The proviso appended thereto, however, provides that such change in land use or development for which such permission was sought for must be in conformity with the Outline Development Plan and the regulation finally approved under sub-section (3) of Section 13. The said proviso applies to both sub-sections (1) and (2). By reason of the said proviso, it is, therefore, explicitly clear that all such changes in the land use must conform both with the Outline Development Plan and the regulation finally approved under sub-section (3) of Section 13, which would in turn mean the changes which are permissible for which no prior permission is required and the changes which are permissible upon obtaining the requisite sanction therefor.

CHANGES OF USER:

We have noticed hereinbefore that so far as running of a hotel in a residential zone is concerned, having regard to the Zoning Regulations, the same is not permissible.

The Zoning Regulations provide for use of land that are permitted and may be permitted under special circumstances by the authority in the local planning area of Bangalore. Thus, even for the purpose of invoking clause (b) of the Regulations affecting residential zone must be referable to the special circumstances which were obtaining. We may, at this stage take note of explanation appended to Section 15. In terms of the said explanation, the power to grant necessary permission under Section 15 for a change of user of land would include the power to grant permission for retention on land of any building or work constructed or carried out thereon before the date of the publication of the declaration of intention to prepare an Outline Development Plan under sub-section (1) of Section 10 or for the continuance of any use of land instituted before the said date.

JURISDICTION OF PLANNING AUTHORITY:

The submission of Mr. Javali that in terms of the explanation appended to Section 15, a power has been conferred upon the Planning Authority as regard change of user would mean that such a power can be exercised irrespective of the provisions of Section 14-A of the Act. The said submission cannot be accepted for more reasons than one.

We may notice that in Special Deputy Commissioner v. Bhargavi Madhavan [ILR 1987 Kar. 1260], a Division Bench of the Karnataka High Court held that only intra-category changes need not go to the Government.

However, in that case Section 14-A could not be noticed as the said provisions was brought out later.

Yet again in Sri Krishnapur Mutt, Udipi v. N. Vijayendra Shetty and Another [1992 (3) Kar. L.J. 326], S. Rajendra Babu, as the learned Chief Justice then was, held :

"In order to correctly comprehend the contentions advanced on either side, it is necessary to examine the scheme of the Act. Section 2(1b) defines 'commerce' and 'commercial' which mean carrying on any trade, business or profession, sale or exchange of goods of any type whatsoever, the running of, with a view to make profit, hospitals, nursing homes, infirmaries, sarais, educational institutions, hotels restaurants, boarding houses not attached to educational institutions. Section 2(1c) defines 'development' as carrying out of building, engineering, mining, or other operations in, or, over or under land or the making of any material change in any building or land, or in the use of any building, or land and includes sub-division of any land. Under sub-section (3) of Section 2 "land-use" is defined to mean the major use to which a plot of land is being used on any specified date. Under Section 10 of the Act the Planning Authority is required to publish a declaration in the Official Gazette of its intention to prepare an outline development plan of an area and in the present case such a plan has been published and the land in question has been shown to be a residential one. Section 12 sets out, inter alia, that such plan shall include a general land-use plan and zoning of land-use for residential, commercial, industrial, agricultural, recreational, educational and other public purposes. Thus, the outline development plan will only set out the nature of the use to which the land is put viz., residential, commercial or industrial or any other purpose. In the present case the same had been shown to be residential although on 19.9.1979 the nature of the land-use was allowed to be changed to commercial for construction of a shop. Section 14(2) requires that change in the land-use or development referred to in sub- section (1) thereof shall be made only with the permission of the Planning Authority. The expression 'development' in this context means the same as defined in Section 2(1c) of the Act referred to earlier. Inasmuch as in the present case there is no dispute as to the change of land-use permitted on 19.9.1979 the question to be considered now is whether the first respondent could have utilized the land for the purpose of construction of a restaurant and a lodging house by altering the building from a shop and an office premises and by putting up additional floors. The concept of development provided in the explanation to sub-section (2) of Section 14 does not refer to every change but refers only to building activity carried on or any material change in the use of building and other land. Therefore, attention will have to be revetted and confined to the concept of material change in the present case." It was further observed :

"The restrictions imposed in the planning law though in public interest should be strictly interpreted because they make an inroad into the rights of a private persons to carry on his business by construction of a suitable building for the purpose and incidentally may affect his fundamental right if too widely interpreted.

The building bye-laws while sanctioning a plan will take care of what parking space should be provided in the area and whether the building itself would have such facility" The Planning Authority has no power to permit change in the land use from the Outline Development Plan and the Regulations. Sub-section (1) of Section 14, as it then existed, categorically stated, that every change in the land use, inter alia, must conform to the Outline Development Plan and the Regulations which would indisputably mean that it must conform to the Zoning Regulations.

The provisions of the Act are to be read with the Regulations, and so read, the construction of Sections 14 and 15 will lead to only one conclusion, namely, such changes in the land use must be within the Outline Development Plan and the Zoning Regulations. If running of a hotel or a restaurant was not permissible both under clauses (a) and (b) of the Zoning Regulations in a residential area, such change in the land use could not have been permitted under Sections 14 read with 15 of the Act. It is precisely for that reason, Section 14-A was introduced.

The words "subject to" used in Section 14 are of some significance.

The said words must be given full effect to. The meaning of the said words had been noticed in Ashok Leyland Ltd. vs. State of T.N. and Another (2004) 3 SCC 1] in the following terms :

"92. Furthermore, the expression "subject to" must be given effect to.

93. In Black's Law Dictionary, 5th Edn., at p. 1278, the expression "subject to" has been defined as under:

"Liable, subordinate, subservient, inferior, obedient to; governed or affected by; provided that; provided; answerable for. Homan v.

Employers Reinsurance Corpn." IMPUGNED ORDER OF THE STATE:

The Comprehensive Development Plan of Bangalore comprises of six categories, namely, (i) residential; (ii) commercial; (iii) industrial; (iv) parks & open spaces; (v) public and semi public; and (vi) transportation. All the six categories of land have been distinctly delineated therein. Each category of the lands, however, contains several sub-categories. Change of user from one sub-category to another within the category is permitted in terms of regulations. Plot No.585 where the Respondent No.6 is running a restaurant is indisputably within a residential zone and abutting a park. The order issued by the State of Karnataka dated 11.10.1999 reads as under :

"After considering the proposal under Section 14A(1)(a) of the Karnataka Urban & Rural Planning Act, 1961, the Government has accorded permission for conversion of the land area measuring 2275 sft. Site No.585, 5th Block, 10th Main, Jayanagar, Bangalore from residential purposes to commercial (restaturant/complex) purposes, subject to the following conditions.

1) The revised land conversion charges shall be obtained by the Authority.

2) To make suitable conversion as required under Intensive Development Plan.

3) Conditions imposed by the Authority." The Respondent No.6, the Development Authority and the State of Karnataka, therefore, understood in no uncertain terms that the change in the land use from residential purpose to commercial purpose in respect of 2275 sq. ft., in Jayanagar must conform to the provisions of Section 14-A of the Act and not Sections 14 and 15 thereof. A bare perusal of the said order of sanction would demonstrate that the same did not disclose as to for what purpose and on what ground the same had been sanctioned. None of the ingredients contained in Section 14-A of the Act had been referred to. We have not been shown as to why the BDA recommended and sought the Government approval for conversion of land use of 2275 sq. ft. in Plot No.

585 from residential to commercial (restaurant complex). Admittedly, such a change in the land use was not occasioned owing to topographical, cartographic or other errors or omissions; or due to failure to fully indicate the details in the Plan or changes arising out of the implementation of the proposal in Outline Development Plan. The only submission made before us is that action on the part of the BDA and the State in granting sanction would come within the purview of the circumstances prevailing at any particular time. What was the circumstance necessitating such change of user has not been spelt out in the sanction order. Furthermore, none of the other requirements of law stated in the proviso appended thereto had been complied with. We do not know as to what was the public interest involved in directing such change of land use.

It is interesting to note that the Commissioner, BDA, while forwarding his recommendations to the Principal Secretary of Urban Development Department in terms of his letter dated 29.06.1999 mentioned that on 01.06.1999 the Commissioner and the Town Planning Member upon examination of the surrounding areas noticed that the site is located in a prominent place and opined that if the site is converted to commercial purposes, the volume of traffic may increase causing parking problem and obstructing the traffic and on the said premise stated that the application may have to be rejected. It is nowhere stated in the said letter as to how the Planning Authority intended to tackle the said problem. Paragraph 4 of the said letter did not reveal as to how the mind of the Authority was applied having regard to its earlier views that conversion of the said plot to commercial use may give rise to traffic problem. It is, therefore, apparent that the objections which were raised and the basic issues which were required to be dealt with by the said Authority did not receive serious consideration.

JUDICIAL REVIEW:

It is now well-known that the concept of error of law includes the giving of reasons that are bad in law or (where there is a duty to give reason) inconsistent, unintelligible or substantially inadequate. [See De Smith's Judicial Review of Administrative Action, 5th Edn. p. 286] The Authority, therefore, posed unto itself a wrong question. What, therefore, was necessary to be considered by the BDA was whether the ingredients contained in Section 14-A of the Act were fulfilled and whether the requirements of the proviso appended thereto are satisfied. If the same had not been satisfied, the requirements of the law must be held to have not been satisfied. If there had been no proper application of mind as regard the requirements of law, the State and the Planning Authority must be held to have misdirected themselves in law which would vitiate the impugned judgment.

In Hindustan Petroleum Corpn Ltd. v. Darius Shapur Chenai & Ors.

[(2005) 7 SCC 627 = 2005 (7) SCALE 386], this Court referring to Cholan Roadways Ltd. v. G. Thirugnanasambandam [(2005) 3 SCC 241], held :

"Even a judicial review on facts in certain situations may be available. In Cholan Roadways Ltd. v. G.

Thirugnanasambandam,, this Court observed:

"34. � It is now well settled that a quasi-judicial authority must pose unto itself a correct question so as to arrive at a correct finding of fact. A wrong question posed leads to a wrong answer. In this case, furthermore, the misdirection in law committed by the Industrial Tribunal was apparent insofar as it did not apply the principle of res ipsa loquitur which was relevant for the purpose of this case and, thus, failed to take into consideration a relevant factor and furthermore took into consideration an irrelevant fact not germane for determining the issue, namely, that the passengers of the bus were mandatorily required to be examined. The Industrial Tribunal further failed to apply the correct standard of proof in relation to a domestic enquiry, which is 'preponderance of probability' and applied the standard of proof required for a criminal trial. A case for judicial review was, thus, clearly made out.

35. Errors of fact can also be a subject-matter of judicial review. (See E. v. Secy. of State for the Home Deptt.14) Reference in this connection may also be made to an interesting article by Paul P.

Craig, Q.C. titled 'Judicial Review, Appeal and Factual Error' published in 2004 Public Law, p. 788." [See also Sonepat Cooperative Sugar Mills Ltd. v. Ajit Singh (2005) 3 SCC 232 paras 23 & 24] The order passed by the statutory authority, it is trite, must be judged on the basis of the contents thereof and not as explained in affidavit [See Bangalore Development Authority & Others v. R. Hanumaiah & Others [2005 (8) SCALE 80].

In Hanumaiah (supra), this Court has categorically held that BDA having been constituted for specific purposes, it may not take any action which would defeat such purpose. It was observed :

"Bangalore Development Authority has been constituted for specific purposes. It cannot take any action which would defeat such purpose. The State also ordinarily cannot interfere in the day to day functioning of a statutory authority. It can ordinarily exercise its power under Section 65 of the 1976 Act where a policy matter is involved. It has not been established that the Chief Minister had the requisite jurisdiction to issue such a direction. Section 65 of the 1976 Act contemplates an order by the State. Such an order must conform to the provisions of Article 166 of the Constitution of India." It was further observed :

"Directions issued by the Chief Minister in the present case would not be to carry out the purpose of the Act rather it would be to destroy the same. Such a direction would not have the sanctity of law. Directions to release the lands would be opposed to the statute as the purpose of the Act and object of constituting the BDA is for the development of the city and improve the lives of the persons living therein. The authority vested with the power has to act reasonably and rationally and in accordance with law to carry out the legislative intent and not to destroy it. Direction issued by the Chief Minister run counter to and are destructive of the purpose for which the BDA was created. It is opposed to the object of the Act and therefore, bad in law" CONCLUSION:

We are for the foregoing reasons unable to accept the submission of Mr. Javali that the Act provides for two different schemes, one contained in Sections 14 and 15 and another under Section 14-A of the Act. We are of the opinion that both the provisions are operating in different fields. It is no doubt true that Respondent No.6 herein applied for change of user from residential to commercial on 04.01.1999 whereafter a publication was made in three newspapers inviting objections from the local residents. It is also true that the Respondent No.6 herein acted on the basis of the plan sanctioned in this behalf.

It may furthermore be true that the Respondent No.6 was accorded permission as far back as on 20.12.1999, whereas the writ petition was filed on 15.07.2002. However, we have also noticed that in the meanwhile, the Respondent No.6 committed some other violations. Had the violation in the matter of change in user from residential to commercial been a minor one, probably, this Court might not have interfered but the State of Karnataka and the BDA having committed serious violation of the Zoning

Regulations as also Section 14-A of the Act, we are of the opinion that the same cannot be sustained.

It may further be true that the Respondent No.6 had invested a heavy amount but his investment in the matter of construction of a building would remain as it is. The Respondent No.6 can utilize the premises held by him within the purview of the permissible user as contained in the Zoning Regulations referred to hereinbefore. If he intends to use the same for such a purpose for which the permission of the BDA is necessary, there is no doubt in our mind, that the BDA will consider his request sympathetically.

For the reasons aforementioned, the impugned judgment of the High Court cannot be sustained. It is set aside accordingly. The appeal is allowed.

However, in the facts and circumstances of the case, there shall be no order as to costs.

NELSON FERNANDES AND ORS V. SPECIAL LAND ACQUISITION OFFICER,SOUTH GOA & ORS [2007] INSC 240 (2 March 2007)

Dr. AR. Lakshmanan & Altamas Kabir

(Arising Out of SLP (C) NOS. 16533-16534 OF 2005) WITH
CIVIL APPEAL NO.1137 OF 2007 (Arising Out of SLP (C) NOS. 16503-16504 OF 2005)
Dr. AR. Lakshmanan, J.

CIVIL APPEAL NO. OF 2007 (Arising Out of SLP (C) NOS. 16533-16534 OF 2005) Leave granted.

The above appeal was filed against the final judgment and order dated 01.03.2005 passed by the Division Bench of the Bombay High Court at Goa in First Appeal Nos. 66 of 2002 and 75 of 2002 arising out of Land Acquisition Case No. 58 of 1996 wherein the Division Bench rejected the claim of compensation of the appellants for acquisition of the land belonging to them of Rs.750/- per sq. metre and reduced the rate of compensation from Rs.192/- per sq. metre as awarded by the District Judge to Rs.38/- per sq. metre after re- appraising the evidence and substituting their own finding of facts in place of the findings of the District Judge.

In the above case, notification under Section 4 of the Land Acquisition Act, 1894 (hereinafter called the 'Act' for short) was published by the Special Land Acquisition Officer South Goa for acquisition of land for construction of new BG line for the Konkan Railways.

The notification was published in the local dailies on 5th and 6th August, 1994. Under Section 6 of the Act a declaration stating the government's intention to acquire the land for the purpose of construction of new broad gauge line of the Konkan Railways between Roha and Mangalore was made on 09.11.1994. An award was passed by the Special Land Acquisition Officer granting compensation to the appellant @ Rs.4/- per sq. metre and Rs.59,192/- for trees standing on the said land. The appellant on 06.12.1996 made an application before the Land Acquisition Officer to refer the matter for determination of compensation under Section 18 of the Act and claimed a sum of Rs.89,06,250/- for the acquired land and Rs.71,000/- for the trees standing thereon. Reference under Section 18 was made by the Special Land Acquisition Officer to District and Sessions Judge on 28.02.1996 and reference under Section 19 of the Act was made by the Special Land Acquisition Officer, Margao. Evidence was adduced by the appellant - Mr.

Nelson Fernandes before the Addl. District Judge. Two sale deeds dated 13.12.1993 are annexed and marked as Annexure-P5. Evidence was adduced by Government Approved Valuer - Pratima Kumar on the valuation report submitted by her before the Addl. District Judge, Margao on 15.12.2000. Evidence was adduced by Bartoleuma Gama on the sale of land by him @ Rs. 449/- per sq.

metre by sale deed being Ex.AW1/B was annexed and marked as Annexure-P7.

The Addl. District Judge passed an award increasing the rate of compensation from Rs. 4/- per sq.

metre to Rs.192/- per sq. metre, but did not give any compensation for the trees standing on the said land.

First Appeal Nos. 66 and 75 of 2002 were preferred by both the appellants and the respondents before the High Court against the judgment and award dated 29.08.2001 of the learned District Judge.

First Appeal Nos. 66 of 2002 and 75 of 2002 were disposed of by the Division Bench of the High Court by rejecting the appeal of the appellants and allowing the appeal of the respondents. The Division Bench rejected the report of the valuer and the findings of the District Judge and reduced the rate of compensation from Rs.

192/- per sq. metre as awarded by the District Judge to Rs. 38/- per sq. metre. Hence the above appeal.

CIVIL APPEAL NO. OF 2007 (Arising Out of SLP (C) NOS. 16503-16504 OF 2005) Leave granted.

The above appeal was filed against the final judgment and order dated 09.03.2005 passed by the Division Bench of the Bombay High Court at Goa in First Appeal Nos. 63 and 67 of 2002 arising out of Land Acquisition Case No. 391 of 1995 wherein the Division Bench rejected the claim of compensation of the appellants for acquisition of the land belonging to them of Rs.470/- per sq. metre and reduced the rate of compensation from Rs.108/- per sq. metre as awarded by the District Judge to Rs.27/- per sq. metre after re- appraising the evidence and substituting their own finding of facts in place of the findings of the District Judge.

In the above case, notification under Section 4 of the Act was published by the Special Land Acquisition Officer, for acquisition of land for construction of new BG line for the Konkan Railways. The notification was published in the local dailies. Declaration was made on 16.06.1992 and award was passed on 24.01.1995 granting compensation to the appellant @ Rs. 4/- per sq.

metre and Rs.82,282/- for trees standing on the land.

The appellant on 27.03.1995 made an application before the Land Acquisition Officer to refer the matter for determination of compensation under Section 18 of the Act and claimed a sum of Rs. 470/- per sq. metre for the acquired land and in support of their contention relied on 3 sale deeds of adjoining plots, one award and a report of a valuer. Reference under Section 18 was made by the Special Land Acquisition Officer to the District and Sessions Judge on 06.09.1995. Evidence was adduced by the appellant before the District Judge on 30.02.1999 and 24.09.1999. Evidence was adduced by Government Approved Valuer - Pratima Kumar on the valuation report submitted by her before the Addl. District Judge, Margao on 15.12.2000. Evidence was adduced by Antonio Rosario Rodrigues on the purchase of land by him at Rs.

480/- per sq. metre by sale deed being Ex.AW1/F was marked as Annexure-P7. Likewise, evidence adduced by Maria Piea Carvalho on the purchase of land by her at Rs.200/- per sq. metre by sale deed being AW1/E was marked as Annexure-P8.

The Addl. District Judge passed an award increasing the rate of compensation from Rs.4/- to Rs.108/- per sq. metre but did not give any compensation for the trees standing on the said land.

First Appeal No. 67 of 2002 was preferred by the appellants and 63 of 2002 was preferred by the respondents before the Bombay High Court at Goa against the judgment and award dated 29.08.2001 of the District Judge. Both the appeals were disposed of by the Division Bench by rejecting the appeal of the appellants and allowing the appeal of the respondents. The Division Bench rejected the report of the valuer and the findings of the District Judge and reduced the rate of compensation from Rs. 108/- per sq. metre as awarded by the District Judge to Rs. 27/- per sq. metre. Hence the above appeal.

We heard Mr. Dinesh Dwivedi, learned senior counsel for the appellant and Mr. Atul Y. Chitale, learned counsel for the Konkan Railways.

Though notice was served on the first respondent - Special Land Acquisition Officer South Goa and service of notice is complete, there is no representation on behalf of respondent No.1. However, Mr. Atul Y. Chitale, learned counsel appeared and made his submissions.

Mr. Dinesh Dwivedi, learned senior counsel appearing for the claimants submitted that the Division Bench was under the obligation to satisfy the conditions imposed under Section 23 of the Act for the purpose of determining the amount of compensation to be awarded to the appellants and that the Court is bound and obliged to ensure that its judgment is in conformity with the provisions of the statute. He further submitted that

Court cannot reject the opinion of an expert and substitute its own opinion in place instead of the same.

Likewise, the Court has committed an error in regard to the rate of compensation to be awarded for acquisition of land after rejecting all the evidence on record including the opinion of expert. It is also submitted that Court cannot fix separate rate of compensation for similarly placed lands and that the Court has to consider the sale of land in the locality and the facilities available thereon.

Mr. Dwivedi, learned senior counsel took us through the pleadings and the grounds alleged in the grounds of appeal and submitted that while fixing the rate of compensation, the District Judge did not consider that the land in question was situated at a place which is of high commercial value and is well connected to other cities and that the High Court has failed to appreciate that the compensation awarded by the Courts below has no basis whatsoever and was not supported by cogent reasons. Likewise, the Court did not consider the future prospect of development of the land in question and also failed to appreciate that the trees grown by the appellants on the land in question were of high value at the time of awarding the compensation. It is also submitted that the High Court has failed to appreciate the documentary evidence submitted in support of the claim made by the appellants. According to the learned senior counsel, the High Court ought to have enhanced the compensation awarded to the appellant in view of the evidence adduced by it. The High Court also did not assess the damages that the appellant is bound to sustain by such acquisition. The High Court also erred in passing the order impugned holding that the appellant was entitled to compensation @ Rs.38/- per sq. metre and that the Division Bench erred in passing the order impugned thereby reducing the rate of compensation from Rs.192/- to Rs.38/- without considering the prayer of the appellant to fix the rate of compensation at Rs.750/-.

Thus, it is argued that the High Court has erred in passing the order impugned in utter mis-interpretation of the evidence on record and that the High Court by the impugned order rejected the just and equitable claim of the appellant and acted in a flagrant error of law and facts which, according to the appellant, resulting in manifest injustice being caused to the appellant. The High Court also erred in holding that the appellant's land was hilly and deduction of 65% ought to have been made by the learned Judge and not 33% as done by him.

Likewise, the learned Judges of the Division Bench have also erred in holding that the acquired land had lost its significance after construction of a bridge over the Zuari River.

Similar argument was also advanced by the other counsel in the other connected appeals. It was submitted that the High Court failed to appreciate that the land in question was well developed and the construction thereon and the same was acquired and that the High Court has failed to appreciate that the compensation awarded by the Courts below had no basis whatsoever and was not supported by cogent reasons. It was further argued that the Court did not consider that the land in question was substituted at a place which is of high commercial value and well connected to other cities. Concluding his arguments, learned senior counsel submitted that the High Court at Goa has erred in passing the order impugned thereby reducing the rate of compensation from Rs.108/- as an order passed by the learned District Judge to Rs. 27/- without considering the prayer of the appellant to fix the rate of compensation at Rs. 470 per sq. metre. It was also submitted that the High Court has erred in passing the order impugned without any application of mind and also by rejecting the just and equitable claim of the appellant and acted in a flagrant error of law and facts. Therefore, it was submitted that the order passed by the High Court is erroneous and resulting in manifest injustice being caused to the appellant.

Mr. Atul Y. Chitale, learned counsel appearing for respondent No.2 - Konkan Railways submitted that the land acquired by the State Government for KRCL project in question is for public purpose and not for any commercial exploitation and for construction of new broad gauge line for Konkan Railway adjacent to the land already acquired for the same purpose earlier. He further submitted that the acquired land is 11,875 sq. metres, hilly area, about 30 metres from the road level and is undeveloped land as most of the area is a low lying area and that the topography of the acquired land in question are such that a major part of the land is of Bharad type with fess paddy fields cultivated for both the seasons, part of the land is under coconut cultivation and some portion is under water and to develop the land would be expensive, as the land would require to be filled up and then developed. According to learned counsel, the Land Acquisition Officer, in his award, took into consideration the following in fixing the rates:

1) prevailing conditions of the land;

2) rates awarded recently for such types of land and approved by the Government and;

3) restrictions under Goa, Daman and Diu Agricultural Tenancy Act, 1964.

He further submitted that the Land Acquisition Collector arrived at the valuation of the trees, after considering the fact that the valuation had been done by the technical staff of the Directorate of Agriculture and Deputy Conservator of Forests and, therefore, the appellant would be entitled to the market value of the land as on the date of publication of the notification under Section 4 of the Act i.e. on 01.08.1994 and that the rate of land approved by the Government under Section 11(1) of the Act in respect of untenanted Bharad/garden in orchard zone types of land in village Cortalim as on 17.01.1995 was Rs. 4/- per sq. metre. He then submitted that the valuation report of Mrs. Pratima Kumar cannot be relied upon by the appellant as she is not competent to value the land in question and that the valuation of Rs.500/- per sq. metre arrived at by the valuer is not based on any known method of valuation, but is solely on the basis of the facility available. Further no reasons have been given in support of the opinion arrived at by the valuer.

Learned counsel also submitted that the compensation payable to the appellant for the acquired land cannot be based on the average price of the two sale deeds dated 11.12.1993 relied upon by the appellant as the sale deed dated 11.12.1993 pertain to plots that are smaller in size i.e. Rs.365/- sq. metre and Rs.275/- sq.

metre. This apart, plots were not developed by making roads, drainages etc. as required under the planning law and sub-divisions made were also approved by the Town and Country Planning Department as well as the village panchayat. Hence, the price at which the plots were sold i.e. at Rs.250 per sq. metre cannot be considered for the purpose of valuation of the acquired land. Further, the price fetched for smaller plots cannot be applied to lands covering large area as held by this Court in various judgments and, in particular, 1977 (1) SCC 684 Prithvi Pradesh and Anr. It is further argued that the acquired land in question is located at a distance of 15 kms. from the airport, 20 kms. from Vasco city, 18 kms. from Panaji, 3 kms. from Cortalim market and there is no approach road to the location.

It was further submitted that the comparable sales method of valuation of land can be adopted in case where the acquired land in question is being compared to the similar type of acquired land, made pursuant to the same preliminary notification. But if any of the factors such as location, shape, size potentiality or tenure of the acquired land widely differs from the other plots then the market value of the acquired land has to be determined independently of the others as held by this Court in Printer House Pvt. Ltd. vs. Mst. Saiyadan (deceased) by LRs and Others, 1994 (2) SCC 133. It was also submitted that while determining the amount to be awarded for the acquired land in the year 1994, the LAO while passing the award dated 25.08.1995, in terms of the provisions of the Act had considered:

a) the area and the nature of the acquired land, b) the objects filed by the petitioner, c) damages sustained by the petitioner, d) inspected the land under acquisition to ascertain the advantages and disadvantages from the valuation point of view, e) the market value of trees, structure etc.

f) the provisions of the Goa, Daman and Diu Agricultural Tenancy Act, 1964 as applicable to the Acquired land, g) the rate of land approved by Government under section 11(1) of the said Act in respect of various types of land in the aforesaid villages which are as follows:

Letter of Dy.

Collector (L.A) of Collectorate of South Goa No.

Date Village Type of Land Rate per Sq.

Mtrs. Rs.

Ps.

2/4/94- CVS/57- LAR/418 19.09.1994 Sancoale Tenanted Double Cropped Paddy 9.00 Coconut Bharad Marshy/Under Water 4.00 2.00 2/4/94- CVS/90- LAR/474 24.10.1994 Sancoale (Addl.) Tenanted Double Cropped Paddy 9.00 2/4/94- CVS/65- LAR/12 17.01.1995 Cortalim Untenanted Bharad/ Garden in Orchard Zone 4.00 According to the learned counsel, the High Court, after considering all the above-mentioned facts, had correctly made the deduction, that the land in question is an undeveloped stretch of land which is held by the tenants and has no marketable title and cannot be used for any other purpose other than what it was being used for now and that no approvals to develop the land has been taken from the appropriate authority. It is also submitted that for laying of the track, respondent No.2 had to carry out the filling of the acquired land up to 6 metre of height. Concluding his argument, learned counsel for the Konkan Railways submitted that the High Court, after hearing both the parties and after considering the evidence on record had correctly reduced the compensation awarded by the ADJ from Rs. 192/- per sq. metre to Rs. 38/- per sq. metre for the acquired land by a well-reasoned judgment and order and that in view of the above, this Court should dismiss the civil appeal filed by the appellants with costs.

We have carefully considered the rival submissions with reference to the pleadings, documents and annexures filed in the instant case. In the instant case, no document whatsoever was filed by both the respondents.

In determining the amount of compensation to be awarded, the LAO shall be guided by the provisions of Sections 23 and 24 of the Act. As per Section 22 of the Act, the market value of the land has to be determined at the date of publication of notice under Section 4 of the Act i.e. 25.08.1994. As per Section 24, the LAO shall also exclude any increase in the value of land likely to accrue from use to which it will be put once acquired.

The market value of the land means the price of the land which a willing seller is reasonably expected to fetch in the open market from a willing purchaser. In other words, it is a price of the land in hypothetical market.

During the site inspection, it has been observed that the land under acquisition is situated in Sancoale and Cortalim village adjacent to the land already acquired for the same purpose earlier.

In the instant case, two sale deeds were relied upon dated 13.12.1993 which is 8 months before Section 4(1) notification. The property was sold at Rs. 250 per sq.

metre. We have perused the sale deed and the recitals in the document. The property is an extent of Rs. 385/- sq.

metre as shown in the plan attached. Thereafter, the owners as recited in the partition deed developed the said property by making roads, drainage etc. as required under the planning laws which were approved by the town and country planning authorities on 22.10.1993 and by the village panchayat by their license VPC/4 93- 94/754 dated 15.11.1993. The land in question is more particularly described in the second schedule. An extent admeasuring 385 sq. metre was sold for a total price of Rs. 96,250/- which was the then market value. Another sale deed was sold on the same date admeasuring around 257 sq. metres as shown in the plan attached. It is stated in the deed that all the co-owners have developed the property by making roads, drainage etc. as required under the standing laws. The total sale consideration is Rs.64,250/- The Government registered valuer Mrs. Pratiba Kumar was examined as witness AW

2. She is also a panel valuer for LIC, GIC and Bank of India. She has prepared the valuation report at the request of the appellants. According to the report, the acquired land admeasures 11,875/- sq. metres and the said property is a joint property of the applicants which is situated close to the ferry point at Cortalim and it is abutting the public road and that the acquired land aborts the acquired land of LAC 391/95 which touches the public road which was acquired for Konkan Railways broad gauge line. The

acquired land is situated in settlement zone S2 police station, petrol pump, salgaonkar ship yard, government warehouse within a range of about 200 metres and market, school, bank etc.

are within a range of 1 km and in the year 1994 and even prior to a point when electricity, telephone and water facility were available to the acquired land. After taking into consideration all the factors mentioned in her report, she has arrived at the market value of Rs. 500/- per sq.

metre. Nothing has been elicited from her in the cross- examination in regard to her statements made in the chief examination. It is thus seen from the above report that the approved valuer, taking into consideration the location of the property amenities available and also the cost of similar properties in the locality, has arrived at the present fair market rate of the land which was fixed at Rs. 500 per sq. metre.

The Addl. District Judge South Goa considered the 2 sale deeds relied upon by the appellants. Both the sale deeds are dated 13.12.1993 Ex AW1/B and Ex AW1/C.

The executants of the sale deed was examined as AW3 and AW1. According to them, the land was sold @ Rs.

250/- per sq. metre which is situated about 3 kms away from the acquired land and that the second sale deed is in respect of Rs. 257 sq. metres and also situated at a distance of about 3 kms. Both the sale deeds are about 8 months prior to the acquisition of the land. Both the lands were sold @ Rs. 250/- per sq. metre.

It was argued that small extent of land sold cannot be taken into account. According to the District Judge deduction has to be made where there is larger area of undeveloped land under acquisition provision has to be made for providing the minimum amenities of town line such as water connections, well laid out roads, drainage facility, electricity connections etc and that the process necessarily involves deduction of the cost of factors required to bring the undeveloped lands on par with the developed lands.

In the instant case, taking the average of both the sale deeds Ex. AW 1/B and AW 1/C the District Judge made a deduction @ 33% for the development charges and on deduction of 33% from Rs. 250/- per sq. metre the actual price of the acquired land would be approximately Rs. 192/- per sq. metre which, according to the opinion of the District Judge would be reasonable for the acquired land. By holding so, he passed the following Award.

"Award This compensation awarded by the Land Acquisition Officer is enhanced to Rs. 192/- per sq.mt. The respondents shall pay to the applicants the said compensation in addition to proportionate solatium charges on the amount thereof and the interest at the rate of 9% during the period of one year from the date of possession of the land delivered to the respondents in terms of section 28 of the Land Acquisition Act and thereafter at the rate of 15% per year under section 28 of the said Act from the date of expiry of the period of one year till the actual payment of the whole amount of compensation plus 12% interest over and above the market value of the land from the date of notification under section 4 of the Act up to the date of the award or taking possession whichever is earlier in terms of section 1A of section 23 of the LA Act. The amount already paid shall be adjusted against the compensation awarded and the applicants shall be entitled to the refund of the court fee paid by them and the costs of Rs. 1000/- to be paid by the respondents."

The High Court, in para 10 of its judgment, however, held that the District Judge was not justified in principle to take an average of the price of two sale deeds and apply the same for fixing the compensation payable to the claimants. The High Court held that the two sale deeds could be used as a guide for the purpose of fixing the compensation to the acquired land and the same could be used but by making further deductions.

According to them, to carry out the development of such land which was not at one level the applicant would have to spend a considerable amount towards the development, namely, level terracing roads etc. and, therefore, considering the nature of the land which was hilly at least a deduction of 65% ought to have been taken by the Addl. District Judge and not 33% as done by him. Again, the High Court was of the view that the District Judge ought to have made a further deduction of at least 10% since the distance between the acquired land and the plots was about 3 kms. Further, the High Court held that the prices fetched from small plots cannot be applied to the lands covering large area and, therefore, a further deduction ought to have been made on this ground of at least of 10%. The High Court, therefore, held that considering the location of the acquired land vis-`-vis its nature and the plot of the sale deeds, the District Judge ought to have made a deduction of at least 85% and in view of the said deduction, the price of the acquired land works out to Rs.

37.50 which is rounded of to Rs.38/- per sq. metre. A further direction was issued that the compensation paid towards the trees must be adjusted from the compensation fixed for the lands.

In our opinion, the High Court has adopted a rough and ready method for making deductions which is impermissible in law. We have already noticed the valuers report. No reason whatsoever was given by the Reference Court or by the High Court as to why the report of the valuer and her evidence cannot be relied on.

In our opinion, the compensation awarded by the High Court had no basis whatsoever and was not supported by cogent reasons and that it did not consider the future prospect of the development of the land in question. The High Court also did not assess the injury that the appellant is likely to sustain due to loss of his future earnings from the said land and also did not assess the damage already suffered due to diminution of the profits of the land between the time of publication of the notice and time of the collector taking possession. The Division Bench of the High Court has miserably erred in passing the order impugned thereby reducing the rate of compensation from Rs. 192/- to Rs. 38/- and in utter mis-reading of the evidence on record and acted in a flagrant error of law and facts. In our view, the orders passed by the Division Bench resulted in manifest injustice being caused to the appellants. The High Court also erred in passing the order by holding that the opinion of the government approved valuer was not based on any opinion method of valuation but solely on the basis of facilities available to the land. In our view, the High Court ought to have appreciated that the government approved valuer is an expert in her field and the opinion of such an expert ought not to have been rejected shabbily.

Both the Special Land Acquisition Officer, the District Judge and of the High Court have failed to notice that the purpose of acquisition is for Railways and that the purpose is a relevant factor to be taken into consideration for fixing the compensation. In this context, we may usefully refer the judgment of this Court Gujarat reported in JT 2005 (4) SC 282. This Court held that the purpose for which the land is acquired must also be taken into consideration in fixing the market value and the deduction of development charges. In the above case, the lands were acquired because they were submerged under water of a dam. Owners claimed compensation of Rs. 40/- per sq. ft. LAO awarded compensation ranging from Rs. 35/- to Rs. 60/- per sq.

mtr. Reference Court fixed the market value of the land at Rs. 200/- per sq. mtr. and after deduction of development charges, determined the compensation @ Rs. 134/- per sq. mtr. In arriving at the compensation, Reference court placed reliance on the comparative sale of a piece of land measuring 46.30 sq. metre @ Rs. 270 per sq. mtr. On appeal, the High Court awarded compensation of Rs. 180/- per sq. mtr. in respect of large plots and Rs. 200/- per sq. mtr. in respect of smaller plots. On further appeal, this Court held that since the lands were acquired for being submerged in water of dam and had no potential value and the sale instance relied was a small plot measuring 46.30 sq. mtr. whereas the acquisition in the present case was in respect of large area, interest of justice would be subserved by awarding compensation of Rs. 160/- per sq. mtr. in respect of larger plots and Rs.175/- per sq. mtr. for smaller plots.

reported in JT 1996 5 SC 580, this Court held that the purpose by which acquisition is made is also a relevant factor for determining the market value.

We are not, however, oblivious of the fact that normally 1/3 deduction of further amount of compensation has been directed in some cases.

However, the purpose for which the land acquired must also be taken into consideration. In the instant case, the land was acquired for the construction of new BG line for the Konkan Railways. This Court in Hasanali SCC 422 and L.A.O. vs. Nookala Rajamallu, 2003 (10) Scale 307 had noticed that where lands are acquired for specific purposes deduction by way of development charges is permissible. In the instant case, acquisition is for laying a railway line. Therefore, the question of development thereof would not arise. Therefore, the order passed by the High Court is liable to be set aside and in view of the availability of basic civic amenities such as school, bank, police station, water supply, electricity, high way, transport, post, petrol pump, industry, telecommunication and other businesses, the claim of compensation should reasonably be fixed @ Rs.

250/- per sq. mtr. with the deduction of 20%. The appellant shall be entitled to all other statutory benefits such as solatium, interest etc. etc. The appellants also will be entitled to compensation for the trees standing on the said land in a sum of Rs. 59,192 as fixed. I.A. No. 1 of 2006 for substitution is ordered as prayed for.

CIVIL APPEAL NO. OF 2007 (Arising Out of SLP (C) NOS. 16503-16504 OF 2005) In this case, the LAO awarded compensation to the appellant @ Rs 4/- per sq. mtr. and Rs.82,282/- for trees standing on the said land. The appellants claimed a sum of Rs. 470/- per sq. mtr. for the acquired land and in support of their contention relied on 3 sale deeds of adjoining plots, one award and a report of a valuer. The District Judge in accordance with the rate of compensation from Rs.4/- to Rs.108/- but did not give any compensation for the trees standing on the land. In the first appeal preferred by the appellant and the appeal preferred by the respondents, the High Court against the judgment and award dated 29.08.2001 of the District Judge rejected the appeal of the appellants and allowed the appeal of the respondents. The Division Bench rejected the report of the valuer and findings of the District Judge and reduced the rate of compensation from Rs. 108/- as awarded by the learned District Judge to Rs. 27/-. This case also stands on the same footing as that of the other appellant in SLP (C) Nos. 16533-16534 of 2005. Therefore, they are also entitled to compensation on par with the other appeal. In this case, the appellant adduced two sale deeds AW1F and AW1E on the purchase of land by him at Rs. 480 per sq. mtr.

and Rs. 200 per sq. mtr. respectively. The Government valued approver also submitted his report and also deposed before the Court. The land in question is also acquired for the same purpose. Therefore, the appellant in this case is also entitled to the same compensation at Rs. 250/- per sq. mtr. with deduction of 20%. The appellant will be entitled to compensation for the trees standing thereon at Rs. 82,232/- as justified by the L.A.O. The appellant will also entitled to all the other statutory benefits such as solatium, interest etc. Both the appeals are ordered accordingly. Since the acquisition was made under Section 4(1) notification and the matter was pending from the year 1996 the appellant shall be entitled for payment of compensation now fixed by this Court together with solatium, interest and other statutory benefits as permissible under law and that the compensation and other payment shall be made within 3 months from today after adjusting the payments which have already been made. No costs.

VILUBEN JHALEJAR CONTRACTOR V. STATE OF GUJARAT [2005] INSC 243 (13 April 2005)

B.P. Singh & S.B. Sinha

W I T H CIVIL APPEAL NO. 2486-2487 OF 2001 S.B. SINHA, J :

The Government of Gujarat issued a notification under Section 4(1) of the Land Acquisition Act (the Act) for acquisition of lands situated in the town Santrampur which would have come under submergence of water released from Kadana Jalagar Yojna due to water logging at Kadana Dam.

A declaration in terms of Section 6 was made on 13th October, 1980. In response to the notification issued to the claimants under Section 9 of the Act, compensation at the rate of Rs. 40/- per square feet for the acquired lands was claimed. Compensation ranging from Rs. 35/- to Rs. 60/- per square meter was offered by the Land Acquisition Officer in terms of an award dated 16th March, 1982 under Section 11 of the Act. An application for reference was filed by the claimants under Section 18 of the Act requiring the Land Acquisition Officer to refer the matter relating to determination of the market value of the acquired lands to the Civil Court.

Before the Reference Court, the claimants initially claimed compensation at the rate of Rs. 200 per square meter which was subsequently enhanced to Rs.

250/- per square meter. By a judgment and order dated 16th April, 1996, the learned District Judge allowed the reference application filed by the claimants determining the market value at the rate of Rs. 225/- per square meter. The State of Gujarat preferred an appeal thereagainst in the High Court of Gujarat which was marked as First Appeal No. 5041/96. A Division Bench of the High Court by a judgment and order dated 11th May, 1999 allowed the said appeal and remitted the matter to the Reference Court on the premise that the deed of sale whereupon the claimants relied upon had not been proved in accordance with law. Before the District Court, upon remand parties adduced evidence.

The Reference Court relying on or on the basis of a deed of sale dated 15th December, 1978 (Ex. 145), whereunder a piece of land measuring 46.30 square meters situated at Godhra Bhagal was sold and other evidences brought on records came to the conclusion that the lands under acquisition would have fetched at least Rs. 200/- per square meter. The Reference Court was further of the opinion that the claimants were furthermore to incur development charges which would have varied between 33% to 53% and on the basis thereof determined the market value at the rate of Rs. 134 per square meter.

Furthermore, the Reference Court extended the statutory benefits of solatium in terms of Section 23(2) of the Act as well as interest thereon in terms of Section 28 thereof. Both the parties preferred appeals thereagainst before the High Court of Gujarat.

A Division Bench of the High Court was of the view that the acquired lands were fully developed. The records of the case also indicated that after the acquired lands were submerged in the water of Kadana dam, the development of the area of Pratappura had shifted to the locality known as Godhra Bhagal. The basis for awarding compensation was the deed of sale dated 15th December, 1978 (Ex. 145), whereby approximately 46.30 square meters had been transferred at a consideration of Rs. 270/- per square meter, and upon making a deduction of 33% for the larger area and 25% for the smaller area, the claimants were held to be entitled to receive compensation at the rate of Rs. 180/- per square meter having large area and Rs. 200/- per square meter for the lands having small area.

The High Court, however, having regard to the decision of this Court India Limited and Others [(1996) 2 SCC 71] was of the opinion that the claimants were not entitled to interest on the amount of solatium. Aggrieved thereby, both the parties are before us.

Ms. Hemantika Wahi, learned counsel appearing on behalf of the State of Gujarat would contend that the High Court committed a manifest error in passing the impugned judgment relying on or on the basis of the deed of sale of Survey No. 1177 which measured only 46.30 square meters and situated in a different locality whereas the area under acquisition was approximately 30,000 square meters belonging to one family.

The learned counsel would contend that the High Court ought to have deducted 50% from the value of the land in Survey No. 1177, not only keeping in view of the fact the acquired lands have large area but also on the ground of future developments which were required to be made. It was submitted that keeping in view the fact that the claimants would be getting the amount of compensation in lump sum, the High Court erred in passing the impugned judgment. In support of the said proposition, strong reliance and Land Acquisition Officer, Visakhapatnam Municipality, Visakhapatnam [(1991) 4 SCC 506], Land Acquisition Officer Revenue Divisional Officer, 481].

Mr. Ranjit Kumar, learned senior counsel appearing on behalf of the Claimants-Appellants, on the other hand, would contend that the High Court failed to take into consideration the fact that the lands situated in village Pratappura were fully developed whereas lands situated in Godhra Bhagal were not so developed and in that view of the matter it was not a case where the amount of compensation should have been determined upon deduction to the extent of 33% and 25% respectively for the large and small area. It was further contended that deduction both for the largeness of the area as well as the development is not permissible. Reliance in this connection has been Balanagouda (Dead) By LRs. & Ors. [Civil Appeal Nos. 62-65 of 2000 disposed of on 10th December, 2003].

It was further contended that the High Court committed a manifest error in refusing to grant interest on solatium relying on or on the basis of the decision of this Court in Prem Nath Kapur (supra) which stands India [(2001) 7 SCC 211].

The land under acquisition consisted of 16 plots. Out of them two plots measured 18528 square meters and 10993 square meters respectively.

The area of the small plots which are 14 in number are as under:

"S.No. C.T.S. No. Area acquired (in sq.m)

1. 833 130.00

2. 838 46.20

3. 839 35.28

4. 834 365.56

5. 857 234.00

6. 858 47.77

7. 859 47.97

8. 860 47.97

9. 861 46.60

10. 862 63.18

11. 840 54.60

12. 841 42.00

13. 842 26.40

14. 843 28.38 Total 1215.91" The learned Land Acquisition Collector in his award noticed that the population of Santrampur town was 12000. The acquired lands were situated near an area known as Main market. It was held:

"Pucca residential houses, quarters of Government employees, rest house and open lands are there very near to the acquired lands. Acquired lands are of regular square shape having even level and is located in downwards about 4 feet from road level, surrounding lands are generally used for purpose other than agriculture purpose. These lands are more useful for residential purpose i.e. all lands are having N.A. potentialiaties. S.No. 25 is "Wada" land and this land is situated towards Godhra Lunawada road. Lunawada and on Northern side of road going towards Santrampur and near Chikhota river Santrampur is reserved for recreation place in implemented development map, whereas presently well and Bungalow of His Highness Maharaja Shri Krushnakumar Sinh is situated in the said land." The High Court as regard the question as to whether the area is a developed one or not noticed the deposition of Barjorbhai Jalejar Contractor who alleged:

"The acquired lands were having facilities of electricity, water and roads. It is borne out from his evidence that the claimants' ancestors were carrying on business of distillery till 1949 and thereafter they had started business of pulse and rice mills on the acquired lands. It is an admitted fact that the acquired lands were converted into non-agricultural use since many years prior to the acquisition." Before us, Ms. Wahi did not raise any contention that the sale instance relied upon by the Reference Court as also the High Court was improper.

She, however, drew our attention to the following observations made by the Reference Court:

"However, the fact remain that the lands under acquisition are situated in the area called as Pratappura in Santrampura town, whereas the sale deed, ex. 145, pertains to a property situated in Godhra Bhagol area The sale deed is not about the property situated in Pratappura area. Furthermore, though the amount of consideration of the entire land is Rs. 20,000/-, but there is no just and proper data about the valuation of the built up portion of the said plot. The L.A. Officer in his award dtd.

16.3.82 fixed the valuation of the built-up portion at Rs. 7,500/- but in the sale deed, ex. 145, nothing specific is mentioned about the separate valuation of the built-up portion in the land. The witness Giriraj Pandit, in his deposition, stated that when the property was purchased, at that time, construction work in the plot was only upto plinth level. However, in this connection, perusing the sale deed, ex. 145, it is, specifically, stated that in the land, a house was situated and even Santrampur Municipality issued a house no. 3484, to this house. Therefore, this part of the deposition of witness Giriraj Pandit, appears to be contrary to the averments made in the sale deed, ex. 145." Pratappura appears to be a small town. There is nothing on record to show that the area was fully urbanized. However, in the area, a distillery, a Rice Mill, a Pulse Mill and even an Ice Factory had been running.

Although, the Land Acquisition Collector referred to certain sale instances in his award, as indicated hereinbefore, we may assume that the sale deed dated 15th December, 1978 (Ex. 145) should be the basis for determination of compensation despite the fact that it relates to a very small piece of land.

While determining the amount of compensation, certain factors must be taken into consideration. When the amount of compensation is determined on yardage basis, at least one-third of the land acquired should be deducted towards development purposes, viz., providing roads, electricity, drainage facility and other betterment developments. Such development charges may be in between 33% to 53%.

The Reference Court was of the view that although the area was developed, there is nothing on record to show that there had been facilities of internal roads drainage and other facilities. The learned Reference Court, however, arrived at a finding of fact that nothing was brought on record to show that on the date on which the possession had been taken, a distillery, rice mill, pulse mill and ice factory had been functioning.

The Reference Court, as noticed hereinbefore, was of the opinion that keeping in view of the fact that the area of the land covered by Ex. 145 was a small piece of land, the market price for the acquired land should be determined at Rs. 200/- per square meters wherefrom 33% should be deducted towards development charges. The High Court, however, was of the opinion that 33% should be deducted from the total amount of consideration covered by Ex. 145 for the large area and 25% for the small area.

Section 23 of the Act specifies the matters required to be considered in determining the compensation; the principal among which is the determination of the market value of the land on the date of the publication of the notification under Sub-section (1) of Section 4.

One of the principles for determination of the amount of compensation for acquisition of land would be the willingness of an informed buyer to offer the price therefor. It is beyond any cavil that the price of the land which a willing and informed buyer would offer would be different in the cases where the owner is in possession and enjoyment of the property and in the cases where he is not.

Market value is ordinarily the price the property may fetch in the open market if sold by a willing seller unaffected by the special needs of a particular purchase. Where definite material is not forthcoming either in the shape of sales of similar lands in the neighbourhood at or about the date of notification under Section 4(1) or otherwise, other sale instances as well as other evidences have to be considered.

The amount of compensation cannot be ascertained with mathematical accuracy. A comparable instance has to be identified having regard to the proximity from time angle as well as proximity from situation angle. For determining the market value of the land under acquisition, suitable adjustment has to be made having regard to various positive and negative factors vis-`-vis the land under acquisition by placing the two in juxtaposition. The positive and negative factors are as under:

Positive factors Negative Factors (i) smallness of size (i) largeness of area (ii) proximity to a road (ii) situation in the interior at a distance from the road (iii) frontage on a road (iii) narrow strip of land with very small frontage compared to depth (iv) nearness to developed area (v) lower level requiring the depressed portion to be filled up (v) regular shape (v) remoteness from developed locality (vi) level vis-`-vis land under acquisition (vi) some special disadvantageous factors which would deter a purchaser (vii) special value for an owner of an adjoining property to whom it may have some very special advantage.

Whereas a smaller plot may be within the reach of many, a large block of land will have to be developed preparing a layout plan, carving out roads, leaving open spaces, plotting out smaller plots, waiting for purchasers and the hazards of an entrepreneur. Such development charges may range between 20% and 50% of the total price.

Certain peculiar features of this case may, at this juncture, be noticed.

Due to construction of Kadana Dam and due to water logging causing submergence, the development of Pratappura even according to the Claimants had practically stopped. Development shifted to the area known as Godhra Bhagal. The finding of the Reference Court to the effect that the acquired lands had potentiality for more development is, thus, not correct.

A river known as Suki intervened between the Santrampur town and Godhra Bhagal. In a case of this nature, it is difficult to evolve a principle which would apply to all situations. Some amount of rational guess work, in our opinion, is inevitable.

The purpose for which acquisition is made is also a relevant factor for Acquisition Officer and Others [(1996) 9 SCC 640], deduction to the extent of 65% was made towards development charges.

In Bhagwathula Samanna (supra), it has been held:

"11. The principle of deduction in the land value covered by the comparable sale is thus adopted in order to arrive at the market value of the acquired land. In applying the principle it is necessary to consider all relevant facts. It is not the extent of the area covered under the acquisition which is the only relevant factor. Even in the vast area there may be land which is fully developed having all amenities and situated in an advantageous position.

If smaller area within the large tract is already developed and suitable for building purposes and have in its vicinity roads, drainage, electricity, communications etc. then the principle of deduction simply for the reason that it is part of the large tract acquired, may not be justified.

In L. Kamalamma (supra), this Court held:

"Ext. B-30 is a sale deed dated 9-8-1976, the transaction having taken place prior to eight months from the issue of the preliminary notification for acquisition of land in the present case. Having found that the piece of land referred in Ext. B-30 is situated very close to the lands that are acquired under the notification in question the reference court and the High Court relied upon the said document and, in our view, rightly. Further when no sales of comparable land were available where large chunks of land had been sold, even land transactions in respect of smaller extent of land could be taken note of as indicating the price that it may fetch in respect of large tracts of land by making appropriate deductions such as for development of the land by providing enough space for roads, sewers, drains, expenses involved in formation of a layout, lump sum payment as also the waiting period required for selling the sites that would be formed.

[(1988) 2 SCC 150], deduction to the extent of 53% was allowed.

Land Acquisition Officer and Another [(1996) 2 SCC 62], it was held:

"10. It is then contended that 53% is not automatic but depends upon the nature of the development and the stage of development. We are inclined to agree with the learned counsel that the extent of deduction depends upon development need in each case. Under the Building Rules 53% of land is required to be left out. This Court has laid as a general rule that for laying the roads and other amenities 33-1/3% is required to be deducted.

Where the development has already taken place, appropriate deduction needs to be made. In this case, we do not find any development had taken place as on that date. When we are determining compensation under Section 23(1), as on the date of notification under Section 4(1), we have to consider the situation of the land development, if already made, and other relevant facts as on that date. No doubt, the land possessed potential value, but no development had taken place as on the date.

In view of the obligation on the part of the owner to hand over the land to the City Improvement Trust for roads and for other amenities and his requirement to expend money for laying the roads, water supply mains, electricity etc., the deduction of 53% and further deduction towards development charges @ 33-1/3%, as ordered by the High Court, was not illegal.

been noticed that where lands are acquired for specific purposes deduction by way of development charges is permissible.

We are not, however, oblivious of the fact that normally one-third deduction of further amount of compensation has been directed in some Acquisition Officer & Mandal R. Officer, (2003) 12 SCC 642, H.P. Housing In The Registrar, University of Agricultural Sciences, Dharwad (supra), whereupon Mr. Ranjit Kumar placed strong reliance, the Court noticed that if the acquisition is made for agricultural purpose, question of development thereof would not arise; but if the sale instance was in respect of small piece of land whereas the acquisition is for a large piece of land, although development cost may not be deducted, there has to be deduction for largeness of the land and also for the fact that these are agricultural lands.

In that view of the matter, deduction at the rate of 33% made by the High Court was upheld. It may not, therefore, be correct to contend, as has been submitted by Mr. Ranjit Kumar, that there cannot be different deductions, one for the largeness of the land and another for development costs.

We have noticed hereinbefore that the purpose for which the land is acquired must also be taken into consideration. In the instant case, the lands were acquired because they were to be submerged under water. The land would not have any potential value. The development of area where the land was situated had stopped. On the other hand, the development began on the other side of the river Suki. The parties were aware of the consequences of the project undertaken by the Government of Gujarat. The sale instances, for comparison, having regard to the nature and area of the land carves out a distinction, inasmuchas the area sold under Ex. 145 is 46.30 square meters while two plots under acquisition measured 18528 square meters and 10993 square meters respectively. We, therefore, are of the opinion, having regard to the entire facts and circumstances of this case that interest of justice would be subserved if compensation is determined at the rate of Rs. 160/- per square meter for the large plots and Rs. 175/- per square meter for the small plots.

The claimants � Appellants, however, would be entitled to interest on solatium as the said question is no longer res integra.

In Sunder (supra), this Court overruled Prem Nath Kapur (supra). The Constitution Bench held:

"24. The proviso to Section 34 of the Act makes the position further clear. The proviso says that "if such compensation" is not paid within one year from the date of taking possession of the land, interest shall stand escalated to 15% per annum from the date of expiry of the said period of one year "on the amount of compensation or part thereof which has not been paid or deposited before the date of such expiry". It is inconceivable that the solatium amount would attract only the escalated rate of interest from the expiry of one year and that there would be no interest on solatium during the preceding period. What the legislature intended was to make the aggregate amount under Section 23 of the Act to reach the hands of the person as and when the award is passed, at any rate as soon as he is deprived of the possession of his land. Any delay in making payment of the said sum should enable the party to have interest on the said sum until he receives the payment. Splitting up the compensation into different components for the purpose of payment of interest under Section 34 was not in the contemplation of the legislature when that section was framed or enacted.

These Appeals are disposed of with the aforementioned directions.

H.M.T. LTD. REP. BY ITS DEPUTY GENERAL MANAGER (HRM) AND ANR V. MUDAPPA & ORS [2007] INSC 110 (8 February 2007)

C.K. Thakker & Lokeshwar Singh Panta

C.K. Thakker, J.

These two appeals arise out of the judgment and order dated September 8, 1998 passed by learned Single Judge of the High Court of Karnataka in Writ Petition No. 5580 of 1998 and confirmed by the Division Bench in Writ Appeal Nos. 5051-5052 of 1998 on October 28, 1998.

By the impugned order, the High Court upheld the contention of the original petitioners and quashed notification dated November 13, 1997 issued by the State of Karnataka under sub-section (1) of Section 28 of the Karnataka Industrial Areas Development Act, 1966 (hereinafter referred to as "the Act").

To appreciate the controversy raised in the appeals, it is necessary to state relevant facts. The respondents are heirs and legal representatives of deceased Akkahonnamma who died somewhere in the year 1993.

She was the owner of land bearing Survey No. 113/3 admeasuring 2 acres, 37 gunthas situated in Devarayapatna, Tumkur Taluk. In the year 1978, the Industrial Area Development Board, Karnataka ('Board' for short) acquired 120 acres of land of different survey numbers situated in Devarayapatna for the purpose of establishing a Watch Factory, namely, H.M.T. Ltd.

(appellant herein). The land admeasuring 1 acre, 38 gunthas out of 2 acres, 37 gunthas of Survey No. 113/3 owned by the respondents was also acquired in the acquisition proceedings. The remaining land to the extent of 39 gunthas was not acquired. It was, however, the case of the respondents that the General Manager, H.M.T. took possession of the entire area of 2 acres, 37 gunthas even though he was entitled to take possession of land only of 1 acre, 38 gunthas. He thereby unauthorisedly took over possession of 39 gunthas of land. A request was, therefore, made to the General Manager, H.M.T. to return possession of 39 gunthas to the owners. He, however, refused to hand over possession. By a communication dated July 20, 1984, the Board called upon the owners of the land to show cause as to why the actual extent of acquired land should not be continued to be occupied by the H.M.T.

The owners did not oblige the Board and filed a suit against the authorities, being O.S. No. 341 of 1985 for declaration of title and also for possession of land. The suit was decreed by the Trial Court. An appeal filed against the said decree came to be dismissed by the First Appellate Court. The said order was not challenged and the decree became final. Execution proceedings had been initiated by the owners and by an order dated June 13, 1997, the Executing Court directed H.M.T. to hand over actual and peaceful possession of the land to the owners. The order passed by the Executing Court was challenged by the H.M.T. by filing a revision which came to be allowed and the matter was remanded to the Executing Court with a direction to the Executing Court to afford an opportunity to H.M.T. of hearing and to pass an appropriate order in accordance with law.

Meanwhile, however, H.M.T. appears to have requested the State Government to acquire land and a notification under sub-section (1) of Section 28 of the Act for proposed acquisition of land for public purpose, viz. for developing industry came to be issued on November 13, 1997 which was published in Official Gazette on December 11, 1997. The owners of the land came to know about the issuance of notification and they invoked the jurisdiction of the High Court of Karnataka under Article 226 of the Constitution by filing a Writ Petition.

It was alleged that the notification had been issued mala fide in order to deprive the owners of their rights to recover possession and to defeat the decree passed by a court of competent jurisdiction. A prayer was made for quashing and setting aside the notification, directing the authorities to hand over possession of 39 gunthas of land of Survey No. 113/3 to the owners in view of the decree passed by a competent court which had become final.

Before the learned Single Judge, it was contended on behalf of the appellants (respondents before the High Court) that the petition was premature and was liable to be rejected at the threshold as the Notification was merely a preliminary notification and final declaration was yet to be made after considering the objections, if any, to be filed by the owners of the land. It was also submitted that the owners had failed to even prima facie satisfy the Court that the action was mala fide and the power was exercised for colourable or collateral purpose.

The land was sought to be acquired for public purpose, namely, for developing industry through Board and allegation of legal mala fide was baseless. It was also urged that Civil

Court had reserved the liberty to acquire the land in accordance with law. But even otherwise, the decree passed by a court could not take away power of the State. Moreover, the land was covered by the provisions of the Official Secrets Act, 1923 having declared it as 'prohibited area'.

The learned Single Judge described the case as one of 'exploitation of statutory provisions to defeat the just rights of an individual decreed by the law Courts, in the name of public purpose' and held that the power had been exercised by the authorities mala fide and the action was liable to be quashed and set aside. The Court noted that the respondents had no right, title or interest in the land in question and yet it continued to retain possession of the land for about 18 years. It refused to vacate the property though request was made by the owners. When the suit was decreed, appeal was dismissed and no further action was taken, the decree had become final. In spite of decree in favour of the owners, possession was never returned to successful plaintiffs and they were constrained to take out execution proceedings. When warrant for possession was issued, instead of obeying the decree of the court and handing over possession of land, the Company requested the Board to initiate proceedings for acquisition of land under the Act and notification under Section 28(1) was issued. It was also observed that neither a notification under sub-section (3) of Section 1 nor under sub-section (1) of Section 3 was issued by the State in accordance with law and the land was sought to be acquired. The Court, no doubt, noted that such notifications were issued, but all the three notifications, i.e., notification under sub-section (3) of Section 1, sub- section (1) of Section 3 and sub-section (1) of Section 28 were issued on one and the same day. They were also published simultaneously on December 11, 1997 in the Official Gazette. Such an action, in the opinion of learned Single Judge, was in mala fide exercise of power to deprive the owners of the land who got decree for possession in their favour. The action was, therefore, bad in law. Accordingly, the petition was allowed and the notification under sub-section (1) of Section 28 was quashed.

Being aggrieved by the order passed by the Single Judge, intra-court appeals were filed by the appellants which were dismissed by a Division Bench of the Court by a cryptic order observing that the notification had been issued in violation of the provisions of the Act and to deprive the writ petitioners of fruits of the decree obtained by them.

When the matter came up before this Court, notice was issued on March 15, 1999. It appears that there was some talk of settlement. Record reflects that the matter was adjourned from time to time to explore possibility of settlement, if any, but settlement could not be arrived at and on December 1, 2000, leave was granted.

We have heard the learned advocates for the parties.

The learned counsel for the appellants strenuously contended that the High Court has committed an error of law in allowing the petition filed by the owners and in setting aside a statutory notification issued by the State of Karnataka in exercise of power under sub-section (1) of Section 28 of the Act. He submitted that it was within the power of the State Government to issue statutory notification for acquisition of land and the High Court was wrong in quashing it on the ground of mala fide exercise of power. So far as decree for possession is concerned, it was submitted by the counsel that irrespective of the decree of a court of law, statutory power could be exercised by the State under the Act.

The notification was preliminary in nature reflecting the intention of the State to acquire the land and the owners were to get an opportunity to raise objections, if any, and thereafter the final notification was to be issued. It was, therefore, urged that preliminary objection raised on behalf of the authorities that the petition was premature ought to have been upheld by granting liberty to the owners to raise all objections against the proposed action. It was also submitted that H.M.T. needed the land for expansion of the factory. Moreover, the land in question was covered by the provisions of the Official Secrets Act, 1923 having declared the land as 'prohibited area' and on that ground also, acquisition of land was necessary. The order passed by the learned Single Judge and confirmed by the Division Bench, therefore, deserves to be set aside.

The learned counsel for the owners, on the other hand, supported the order passed by the High Court. He submitted that initial action of the authorities was wrong inasmuch as though acquired land was 1 acre, 38 gunthas, they illegally took possession of the entire land of Survey No. 113/3 admeasuring 2 acres, 37 gunthas and thereby the owners were deprived of lawful ownership and possession of 39 gunthas of land. In spite of several requests, nothing was done by H.M.T.

and the owners were compelled to file a suit for declaration of title and possession which was decreed and the decree was confirmed in appeal. Even thereafter, possession was not handed over to the successful plaintiffs and execution proceedings were to be taken out. It was only when the direction was issued to the appellants herein to hand over possession that wheels were moved fast and a request was made to the State Government to issue notification for acquisition of 39 gunthas of land. The High Court was, therefore, right in holding that the action was mala fide and the notification was liable to be quashed. No exception can be made against such just and equitable order and no fault can be found. The appeals deserve to be dismissed with exemplary costs.

Ms. Kiran Suri, learned counsel for the State of Karnataka supported the case of the appellants. She submitted that power to issue notification under sub- section (1) of Section 28 is statutory and when it was a preliminary notification, the High Court should not have entertained a petition. It was only after the final notification that aggrieved party may approach a court of law. It was, therefore, submitted that the High Court was wrong in quashing the notification.

Having heard the learned counsel for the parties, in our opinion, the High Court was not right in quashing the notification issued under the Act, particularly, when it was a preliminary notification reflecting the intention of the State to acquire land for public purpose, i.e. for the purpose of developing industry. It is, no doubt, true that the land bearing Survey No. 113/3 comprises of 2 acres, 37 gunthas and the respondents are the owners thereof. It is equally true that by notification dated June 29, 1978, 1 acre, 38 gunthas had been acquired and award was passed in respect of the said area. It is also correct that instead of acquiring and taking over possession of 1 acre, 38 gunthas, the appellants took over possession of the entire land of Survey No. 113/3 admeasuring 2 acres, 37 gunthas thereby illegally and unauthorisedly taking possession of 0 acre, 39 gunthas.

Obviously, therefore, it was open to the owners to make complaint and also to take appropriate proceedings as they were illegally deprived of ownership and possession of 39 gunthas of land. When the request to return possession of the excess land was ignored by the appellants, they naturally approached a court of law and obtained a decree. It is not in dispute that the decree was confirmed in appeal and had become final.

Execution proceedings were taken out and at that stage, the appellants moved the State Authorities to acquire land under the Act. The question, however, is whether the action of the State Authorities in initiating acquisition proceedings under a valid law could be said to be illegal, unlawful or in mala fide exercise of power? So far as the High Court is concerned, it held that the course adopted by the authorities was contrary to law. It is reflected in the approach of the Court wherein the learned Single Judge observed that it was a case of exploitation of statutory provisions in the name of public purpose to defeat just rights of an individual who had obtained decree in his favour.

In our considered view, however, this approach is neither legal nor permissible. Passing of a decree by a competent court is one thing and exercise of statutory power by the authority is altogether a different thing. It is possible in a given case to come to a conclusion on the basis of evidence produced and materials placed on record to conclude that the action has been taken mala fide or for a collateral purpose or in colourable exercise of power. But, in our opinion, issuance of preliminary notification after a decree by a court of law would not ipso facto make it vulnerable and exercise of power mala fide. To us, therefore, the authorities were right in raising a preliminary objection that the petition was premature as by issuance of notification under sub-section (1) of Section 28 of the Act, an intention was declared by the State to acquire the land for public purpose i.e. for developing industry. To appreciate the contention of the appellants, we may reproduce the section which reads thus Bare reading of the above provision makes it abundantly clear that if in the opinion of the State Government any land is required for purpose of development by the Board, a notification of its 'intention to acquire' the land can be issued for acquisition of such land. The notification was accordingly issued on November 13, 1997. Sub-section (2) of Section 28 then requires the State Government to serve notice upon the owner or occupier of the land and all such persons known or believed to be interested therein to show cause why the land should not be acquired. Sub-section (3) casts an obligation on the State Government to consider the objections of the owner, occupier or other person interested in land and to pass such order as it deems fit after affording an 'opportunity of being heard'. If it is satisfied that any land should be acquired, a declaration can be made under sub-section (4) which shall be notified in Official Gazette.

The scheme of Section 28 is thus similar to the scheme of acquisition of land under the Land Acquisition Act, 1894 under which such preliminary notification is issued, opportunity of being heard is afforded to the persons interested in the land and only thereafter final notification can be issued. At the stage of raising objections against acquisition, it is open to the respondents herein to raise all contentions. In spite of such objections, if final notification is issued by the State, it is open to them to take appropriate proceedings or to invoke jurisdiction of the High Court under Article 226 of the Constitution. Unfortunately, however, the High Court entertained the petition and quashed the preliminary notification overruling well-founded objection as to maintainability of petition raised by the State and the appellants herein.

The High Court was also not right in coming to the conclusion that since a decree was passed by a competent court, no notification under the Act could have been issued by the State. The power exercised by the State was statutory in nature and irrespective of a decree in favour of the owners, such notification could be issued. A situation similar to one before us had arisen in State of Andhra Pradesh & Ors. v. Govardhanlal Pitti, (2003) 4 SCC 739. In Govardhanlal, a school building belonging to G was in the possession of the State as a tenant. An order of eviction was passed and the State was directed to hand over possession of property to G within a particular period. The State then took out proceedings under the Land Acquisition Act, 1894 for acquiring the property for public purpose, namely, for a school. G challenged the proceedings as mala fide. The High Court upheld the contention observing that there was 'malice in law' inasmuch as the proceedings were initiated to scuttle a valid decree passed by a competent court. The State approached this Court.

Allowing the appeal and setting aside the order of the High Court, this Court held that the school was there since 1954 and was catering to the educational needs of children residing in the heart of the city. It could not, therefore, be contended that there was no genuine public purpose. Exercise of power under the Act in the facts and circumstances, therefore, could not be held mala fide.

The Court also explained the concept of legal mala fide. By referring to Words and Phrases Legally Defined, 3rd Edn., London Butterworths, 1989, the Court stated;

"The legal meaning of malice is "ill-will or spite towards a party and any indirect or improper motive in taking an action". This is sometimes described as "malice in fact".

"Legal malice" or "malice in law" means 'something done without lawful excuse'. In other words, 'it is an act done wrongfully and willfully without reasonable or probable cause, and not necessarily an act done from ill feeling and spite'. It is a deliberate act in disregard of the rights of others'."

It was observed that where malice was attributed to the State, it could not be a case of malice in fact, or personal ill-will or spite on the part of the State. It could only be malice in law, i.e. legal mala fide. The State, if it wishes to acquire land, could exercise its power bona fide for statutory purpose and for none other. It was observed that it was only because of the decree passed in favour of the owner that the proceedings for acquisition were necessary and hence, notification was issued.

Such an action could not be held mala fide.

In the instant case also, the record reveals that in 1978 itself, the possession of the entire land of Survey No. 113/3 had been taken over by the appellants albeit part of it illegally (to the extent of 39 gunthas). It was only because of the decree passed in favour of the owners of the land that the appellants realized that an appropriate action in consonance with law was to acquire the land and hence, a request was made to the State to take an action under the Act and a notification was issued. Such act cannot be said to be illegal, particularly when the notification was preliminary in nature and opportunity under the Act was to be afforded to the owners 'of being heard'. The High Court, in our considered opinion, was wrong and had committed an error of law in entertaining the petition and in allowing it at the stage of issuance of notification under sub-section (1) of Section 28.

The learned Single Judge had also found fault with the State authorities in issuing simultaneous notifications under sub-section (3) of Section 1 and sub- section (1) of Section 3 of the Act. Sub-section (2) of Section 1 of the Act states that the Act 'extends to the whole of the State of Karnataka'. Sub-section (3) then reads (3) This Act except Chapter VII shall come into force at once: Chapter VII shall come into force in such area and from such date as the State Government may, from time to time, by notification, specify in this behalf.

It may be noted that Chapter VII relates to 'Acquisition and Disposal of Land'. Chapter II deals with 'Industrial Areas'. Section 3 provides for 'declaration of industrial areas' as defined in sub-section (6) of Section 2 of the Act. Sub-section (1) of Section 3 enables the State Government to declare any area as 'industrial area'. It reads;

(1) The State Government may, by notification, declare any area in the State to be an industrial area for the purposes of this Act.

It is on record that notifications under sub-section (3) of Section 1 and sub-section (1) of Section 3 were issued by the State. The learned Single Judge, however, observed that it is only after the Executing Court directed the judgment-debtors to deliver possession of the property that the latter persuaded the State to issue such notifications. He also found fault with the State Authorities in not producing material for the perusal of the Court for the alleged expansion of the industry. The learned Judge noted that it was not the case of the judgment-debtors in execution proceedings that the land was needed for development of industry and, therefore, a decision was taken to acquire the land. According to the learned Single Judge, the land was situated in one corner of the area and was lying vacant.

In our opinion, the approach of the learned Single Judge could not be said to be legal or in consonance with law. The State authorities were not required to produce material for 'perusal' of the Court as to expansion of industrial area or development of industry.

It was also not expected of the judgment-debtors to contend before the Executing Court that the land was required for expansion of the industry. The reason weighed with the learned Single Judge, therefore, in our opinion, could not be made basis for quashing the notification. The learned Single Judge also observed that issuance of simultaneous notifications under Section 1(3), Section 3(1) and Section 28(1) was illegal.

In this connection, the learned Single Judge noted "10. It is seen from the impugned notification that they have been issued by the first respondent and not by the second respondent. It is not the case of the first respondent that any representation of the 5th respondent to acquire any land to expand their factory was pending consideration before the decree was made by the Court. On the other hand, it is contended by the second respondent that the land in question has been sought to be acquired for expansion of the fifth respondent factory. It is not the case of the second respondent that they recommended to the Government to acquire this land for the expansion of the fifth respondent as no material was produced for perusal regarding the declaration of 'industrial area' to expand the industry. It is further material to see that the first respondent in exercise of its power under sub-section (3) of the Act issued a composite notification declaring the industrial area and the application of Chapter VII to such area. It is further material to see that such notifications have been issued only in respect of the lands in question and no other lands have been included. The notification issued under Section 3(1) of the Act has been published in page No.253 of the Karnataka Gazette dated December 11, 1997 without mentioning the lands in respect of which such notification was issued. The notification issued under Section 1(3) of the Act has been published in page No.254 of the same Gazette and the lands in respect of which the said notification was issued has been published in page 255. In page No. 256 also the same schedule is published the purpose of which is not known.

11. Section 3(1) of the Act requires that the State Government shall declare any area as an industrial area by a notification and a notification under sub-section (3) of Section 1 of the Act is required to be issued to extend the provisions of Chapter VII in respect of the area declared as an industrial area under Sub-section (1) of Section 3 of the Act by the notification. It is, therefore, clear that there shall be two different and independent notifications issued under two different provisions of the Act. The composite notification issued as per Annexure-D under sub-section (1) of Section 3 without mentioning the particulars of the land, and sub-section (3) of Section 1 of the Act is impermissible in law, consequently the notification issued under Section 28(1) of the Act is illegal, void and invalid".

The learned Single Judge was conscious of the fact that notification under Section 28(1) was merely a preliminary notification and in the nature of proposal.

He, however, negatived preliminary objection raised by the authorities and observed;

"12. It was contended by the respondent that the petition is premature and hence liable to be dismissed as the notification issued under Section 28(1) of the Act is only a proposal, which may or may not be perused after considering the objections is filed by the petitioners. In the normal course the objection of the respondents would have been tenable.

But, in the facts and circumstances of this case, where respondents 4 and 5 have hell bent upon retainingthe land which they have illegally occupied and the first respondent acceded to their request to acquire the same without considering the past history, within a span of one month from the date of disposal of CRP by this Court, their contention s untenable as the procedure under Section 28(2) & (3) of the Act would be an empty formality. The respondents did not produce any material to show that the land in question is covered by the provisions of Official Secrets Act. Mere prohibition of entry to the general public is not sufficient to hold that the land in question is declared as a 'prohibited area' under the provisions of Official Secrets Act. The conduct of the respondents particularly of respondents 4 and 5 for whose benefit the land is sought to be acquired, clearly demonstrates their mala fide intention to defeat the decree of a court of competent jurisdiction".

According to the learned Judge, therefore, giving of opportunity of being heard was merely an 'empty formality' and since it was mala fide exercise of power by the State to deprive the owners of the fruits of the decree obtained by them, they were entitled to relief of quashing of notification at that stage without further delay.

In our judgment, the learned Single Judge was wholly in error in taking such view and quashing the notification. Upholding of such view would make statutory provisions under the Act or similar provisions in other laws, (for example, the Land Acquisition Act, 1894) nugatory and otiose. We are also of the view that the learned Single Judge was not right in finding fault with the State Authorities in issuing notifications under Section 1(3), Section 3(1) and Section 28(1) simultaneously. There is no bar in issuing such notifications as has been done and no provision has been shown to us by the learned counsel for the contesting respondents which prevented the State from doing so. Even that ground, therefore, cannot help the land-owners.

The order passed by the learned Single Judge could not have been upheld by the Division Bench.

Unfortunately however, the Division Bench confirmed the order of the Single Judge without considering all aspects of the matter. The said order also, therefore, deserves to be set aside.

For the foregoing reasons, the appeals deserve to be allowed and are, accordingly, allowed. The order passed by the learned Single Judge and confirmed by the Division Bench is set aside. The authorities are at liberty to take appropriate proceedings in accordance with law on the basis of notification under sub-section (1) of Section 28 of the Act. It goes without saying that all proceedings will have to be undertaken in accordance with Section 28 of the Act and it is open to the owners to raise all contentions that under the notification of 1978, the acquisition was to the extent of 1 acre, 38 gunthas of land but the appellants took over possession of additional 39 gunthas of land; that in spite of request and prayer, possession of 39 gunthas of land was never restored to them; that they were required to file suit for possession; that a decree was passed in their favour which was confirmed by the appellate court which had become final; that even thereafter, execution proceedings were taken out wherein direction was issued to the appellants to hand over possession of the land to them, and at that stage, the notification under Section 28(1) was issued. As and when such objections will be taken, an appropriate order would be passed by the authorities in accordance with law. All contentions of the parties are kept open. We may clarify that we may not be understood to have expressed any opinion one way or the other and all parties are at liberty to put forward their pleas before the authorities.

The appeals are disposed of accordingly. There shall be no order as to costs.

PRATIBHA NEMA & ORS V. STATE OF M.P. & ORS [2003] INSC 325 (30 July 2003)

K.G. BALAKRISHNAN & P. VENKATARAMA REDDI.

WITH
Civil Appeal Nos. 7134, 7135, 7136 & 7138 of 1999 P. VENKATARAMA REDDI, J.

Facts and Contentions :

The acquisition of 73.3 hectares of dry land situate in Rangwasa village of Indore District and Tehsil belonging to the appellants and others is the subject-matter of challenge in these appeals filed by the landholders. The said extent of land was notified for acquisition under Section 4(1) of the Land Acquisition Act (hereinafter referred to as 'Act') for the alleged public purpose of 'establishment of diamond park'. This parcel of land together with an extent of 44.8 hectares of Government land was meant to be placed at the disposal of the Industries Department and/or Madhya Pradesh Audyogik Kendra Vikas Nigam Ltd. (hereinafter referred to as 'the Nigam') for the purpose of allotting the same to various industrial units-the foremost among them being the 9th respondent-Company, for setting up diamond cutting and polishing units with modern technology. The proposal in this regard emanated from the General Manager of District Industries Centre, on the initiative taken by the 9th Respondent. After the land was located by a joint inspection committee of officials, the Government of Madhya Pradesh (Commerce & Industries Department) had given sanction 'in principle' for the acquisition. The District Collector, Indore through his letter dated 24.1.1996 sought the approval of the Commissioner, Indore Division to invoke Section 17(1) of the Act in order to expedite the process of acquisition. In that letter, the Collector mentioned that prestigious exporters from India as well as foreign countries were likely to establish their units in this park which would generate good deal of foreign exchange and create employment potential.

The Commissioner accorded his approval by a communication dated 29.1.1996. This resulted in the issuance of the notification under Section 4(1) of the Act on 30th June, 1996 by the Collector & Ex-officio Deputy Secretary to Government, to whom it appears the powers were delegated. By the same Notification, the enquiry under Section 5A was dispensed with. It was indicated in the Notification that the land map could be inspected in the office of the SDO, Indore and General Manager, District Industries Centre. A few days later i.e., on 9.2.1996, the declaration under Section 6 of the Act was published. The Collector (Land Acquisition) was directed to take possession after the expiry of 15 days from the date of issuance of notice under Section 9(2) of the Act. Before the possession was taken, the writ petitions under Article 226 of the Constitution were filed and an order of status quo was granted. The writ petitions and the Letters Patent Appeals were dismissed. In the meanwhile, it appears that an interim award was made for a sum of Rs.2,14,91,115 representing 80% of the estimated compensation amount. The SLPs filed in this Court were disposed of on 11.10.1996 on the basis of the representation made by the learned counsel for the State of Madhya Pradesh that the Notification under Section 6 will be withdrawn and the procedure under Section 5A will be followed. Accordingly, the Collector, Indore District published a Notification on 15.10.1996 withdrawing the declaration under Section 6. After due enquiry, the Land Acquisition Officer submitted a report under Section 5A overruling the objections put forward by the appellants. On a perusal of the report, the Collector as well as the Commissioner decided to go ahead with the acquisition. Accordingly, a fresh Notification under Section 6 was issued on 3.1.1997. As in the earlier Notification, the public purpose was mentioned as 'establishment of a diamond park'.

This was again challenged by the aggrieved landholders including the appellants. A Division Bench of the High Court dismissed the writ petitions which were filed by the present appellants having interest in about 63 acres in Survey No. 684. Against that judgment, these appeals by special leave have come up. This Court, while taking note of certain additional facts disclosed in I.A.No. 2/2001, passed an order on 29.8.2001 formulating four questions in respect of which the findings of the High Court were called for. The following are the four questions:

1) Whether M/s. B. Arun Kumar International Ltd. deposited a sum of Rs.3 crores for payment of compensation to the land holders for acquisition of land for them.

2) Whether in view of the facts stated in I.A.No.2/2001 and the counter affidavit and further affidavits the acquisition of land was for the Company and not for public purpose.

3) If the findings on question No.1 & 2 are in the affirmative, whether any subsequent withdrawal of compensation amount by M/s. Arun Kumar International Ltd. would not affect the invalidity of notification issued under Section 4 of the Act.

4) If the findings on issues Nos. 1 & 2 are in the affirmative, whether the State Government also contributed partly towards compensation to be paid to the land holders and in its absence the acquisition of land for public purpose is invalid.

The questions were framed in the light of the appellants' contention that the acquisition was not for a public purpose and it was only meant to benefit the 9th Respondent-Company and its associates which contributed its own funds for facilitating the acquisition.

The matters were directed to be listed on receipt of the findings of the High Court with a further direction not to treat the cases as part-heard.

The High Court has, by its order dated 5-7-2002 recorded its findings on the four points and transmitted the same to this Court. All the findings are against the appellants and naturally, therefore, they are being challenged.

Broadly, four contentions have been urged before us. They are:

1. Acquisition is not for a public purpose. The entire acquisition is a subterfuge to hand over the acquired land to the Company in the guise of acquisition for a public purpose. Even the amount paid towards compensation was not out of public revenues, but out of the money provided by the Company for the specific purpose of compensation. 2. The public purpose stated in the Notifications under Sections 4 & 6 is vague. 3. The area of the land proposed to be acquired is far in excess of reasonable requirements and

4. Environmental considerations were not kept in view while taking a decision to acquire the land for industrial purpose.

Analysis of relevant provisions and the settled legal position :

In order to appreciate the contentions set out above in proper perspective, it would be appropriate to advert to certain basic provisions of the Act and recapitulate the well settled principles relating to public purpose and acquisition of land under Part II and Part VII of the Act. Section 4(1) which occurs in Part II of the Act contemplates a notification to be published in the official gazette etc., whenever it appears to the appropriate Government that land in any locality is needed for any public purpose or for a company.

Thereupon, various steps enumerated in sub-Section (2) could be undertaken by the authorized officer. There is an inclusive definition of 'public purpose' in clause (f) of Section 3. This clause was inserted by Central Act 68 of 1984. Many instances of public purpose specified therein would have perhaps been embraced within the fold of public purpose as generally understood. May be, by way of abundant caution or to give quietus to legal controversies, the inclusive definition has been added. One thing which deserves particular notice is the rider at the end of clause (f) by which the acquisition of land for Companies is excluded from the purview of the expression 'public purpose'. However, notwithstanding this dichotomy. speaking from the point of view of public purpose, the provisions of Part II and Part VII are not mutually exclusive as elaborated later.

The concept of public purpose (sans inclusive definition) was succinctly set out by Batchelor, J. in a vintage decision of Bombay [AIR (1914) PC 20], the Privy Council quoted with approval the following passage from the judgment of Batchelor J:

"General definitions are, I think, rather to be avoided where the avoidance is possible, and I make no attempt to define precisely the extent of the phrase 'public purpose' in the lease; it is enough to say that in my opinion, the phrase, whatever else it may mean, must include a purpose, that is, an object or aim in which the general interest of the community, as opposed to the particular interest of individuals, is directly and vitally concerned." The Privy Council then proceeded to observe that prima facie the Government are good judges to determine the purpose of acquisition i.e., whether the purpose is such that the general interest of the community is served. At the same time, it was aptly said that they are not absolute Judges. This decision of the Privy Council and the words of Batchelor, J. were referred to with approval by a SC 151] and various other decisions of this Court.

We may now advert to Section 6. It provides for a declaration to be made by the Government or its duly authorized officer that a particular land is needed for a public purpose or for a Company when the Government is satisfied after considering the report if any made under Section 5A(2). It is explicitly made clear that such declaration shall be subject to the provisions of Part VII of the Act which bears the chapter heading 'Acquisition of Land for Companies'. Thus, Section 6 reiterates the apparent distinction between acquisition for a public purpose and acquisition for a Company. There is an important and crucial proviso to Section 6 which has a bearing on the question whether the acquisition is for a public purpose or for a Company. The second proviso lays down that "no such declaration shall be made unless the compensation to be awarded for such property is to be paid by a Company, wholly or partly, out of public revenues or some fund controlled or managed by local authority". Explanation 2 then makes it clear that where the compensation to be awarded is to be paid out of the funds of a Corporation owned or controlled by the State, such compensation shall be deemed to be compensation paid out of public revenues. Thus, a provision for payment of compensation, wholly or partly, out of public revenues or some fund controlled or managed by a local authority is sine qua non for making a declaration to the effect that a particular land is needed for a public purpose. Even if the public purpose is behind the acquisition for a Company, it shall not be deemed to be an acquisition for a public purpose unless at least part of the compensation is payable out of public revenues which includes the fund of a local authority or the funds of a Corporation owned or controlled by the State. However, it was laid down in Somavanti's case that the notification under Section 6(1) need not explicitly set out the fact that the Government had decided to pay a part of the expenses of the acquisition or even to state that the Government is prepared to make a part of contribution to the cost of acquisition. It was further clarified that the absence of a provision in the budget in respect of the cost of acquisition, whole or part, cannot affect the validity of the declaration. The majority Judges of the Constitution Bench also clarified that a contribution to be made by the State need not be substantial and even the token contribution of Rs.100 which was made in that case satisfied the requirements of the proviso to Section 6(1). The contribution of a small fraction of the total probable cost of the acquisition does not necessarily vitiate the declaration on the ground of colourable exercise of power, according to the ruling in the said case. Following Somavathi, the same SCC 671]. The question, whether the contribution of a nominal amount from the public exchequer would meet the requirements of the proviso to Section 6, had again came up for consideration in 553]. D.A. Desai, J. after referring to Somvanti's, speaking for the three Judge Bench observed thus:

"It is not correct to determine the validity of acquisition keeping in view the amount of contribution but the motivation for making the contribution would help in determining the bona fides of acquisition. Further in Malimabu case [AIR (1978) SC 515] contribution of Re 1 from the State revenue was held adequate to hold that acquisition was for public purpose with State fund.

Therefore, the contribution of Re 1 from public exchequer cannot be dubbed as illusory so as to invalidate the acquisition." In Somavanti's case, the following note of caution was sounded:

"We would, however, guard ourselves against being understood to say that a token contribution by the State towards the cost of acquisition will be sufficient compliance with the law in each and every case. Whether such contribution meets the requirements of the law would depend upon the facts of every case. Indeed the fact that the State's contribution is nominal may well indicate, in particular circumstances, that the action of the State was a colourable exercise of power. In our opinion 'part' does not necessarily mean a substantial part and that it will be open to the Court in every case which comes up before it to examine whether the contribution made by the State satisfies the requirement of the law. In this case we are satisfied that it satisfies the requirement of law." State of Gujarat [(1975) 1 SCC 824], without much of elaboration, relegated the observations in the above passage to a very narrow confines by stating thus:

"In view of the decision in this case that a nominal contribution out of public revenues would satisfy the requirement of the proviso to Section 6(1) the observation "whether such contribution meets the requirement of the law would depend upon the facts of every case" must necessarily be taken to refer to the requirement of some law other than the proviso to Section 6(1). No such law was pointed out to us; and it is not necessary for the purposes of this appeal to enter on a discussion as to what such other law could be." Another important provision is Sub-Section (3) of Section 6 which enjoins that the declaration (required to be published in the official gazette etc.) shall be conclusive evidence that the land is needed for a public purpose or for a Company and on publication of declaration, the appropriate Government is enabled to acquire the land in accordance with the other provisions of the Act. This sub- Section came up for interpretation of this Court in Somawanti's case (supra). The Court emphasised that the conclusiveness contemplated by sub-Section (3) is not merely regarding the satisfaction of the Government on the question of need but also with regard to the question that the land is needed for a public purpose or for a Company, as the case may be. However, the learned Judges highlighted an important exception to the finality or conclusiveness of the declaration under Section 6(1). It was observed thus:

"That exception is that if there is a colourable exercise of power the declaration will be open to challenge at the instance of the aggrieved party. The power committed to the Government by the Act is a limited power in the sense that it can be exercised only where there is a public purpose, leaving aside for a moment the purpose of a company. If it appears that what the Government is satisfied about is not a public purpose but a private purpose or no purpose at all the action of the Government would be colourable as not being relatable to the power conferred upon it by the Act and its declaration will be a nullity. Subject to this exception, the declaration of the Government will be final." The main contention of the learned senior counsel for the appellant, as already noticed, rests on the plea of colourable exercise of power.

Colourable exercise of power or mala fides in the province of Gurdial Singh [AIR (1980) SC Page 319]. In the words of Krishna Iyer, J.- "Pithily put, bad faith which invalidates the exercise of power-sometimes called colourable exercise or fraud on power and oftentimes overlaps motives, passions and satisfactions-is the attainment of ends beyond the sanctioned purposes of power by simulation or pretension of gaining a legitimate goal....................................

When the custodian of power is influenced in its exercise by considerations outside those for promotion of which the power is vested the Court calls it a colourable exercise and is undeceived by illusion.........................

Fraud on power voids the order if it is not exercised bona fide for the end designed. Fraud in this context is not equal to moral turpitude and embraces all cases in which the action impugned is to affect some object which is beyond the purpose and intent of the power, whether this be malice-laden or even benign. If the purpose is corrupt the resultant act is bad. If considerations, foreign to the scope of the power or extraneous to the statute, enter the verdict or impels the action mala fides or fraud on power vitiates the acquisition or other official act." The above exposition of law unfolds the right direction or the line of enquiry which the Court has to pursue to test the validity of declaration made under Section 6(1) exalted by the legal protection accorded to it under sub-Section (3).

In order to proceed on these lines, the ambit and contours of public purpose as understood by this Court in certain decided cases has to be taken note of. We have already noticed the broad and general meaning of the expression 'public purpose' as stated by Batchelor, J. nearly a century back. In the particular context of setting up industries by private enterprise, this Court's perspective of public purpose is discernible from certain decided cases to which we shall make reference.

In Jage Ram's case (supra) the public purpose mentioned in the notifications under Sections 4 & 6 was "the setting up a factory for the manufacture of China-ware and Porcelain-ware". The State Government had contributed a sum of Rs.100 as was done in the case of Somavanti (supra) towards the cost of the land. The question arose whether it was necessary for the Government to proceed with the acquisition under Part VII of the Act. Holding that acquisition under Part VII need not have been resorted to, this Court proceeded to discuss the question whether the acquisition was intended for a public purpose. K.S. Hegde, J. speaking for the Court observed thus:

"There is no denying the fact that starting of a new industry is in public interest. It is stated in the affidavit filed on behalf of the State Government that the new State of Haryana was lacking in industries and consequently it had become difficult to tackle the problem of unemployment.

There is also no denying the fact that the industrialization of an area is in public interest. That apart, the question whether the starting of an industry is in public interest or not is essentially a question that has to be decided by the Government. That is a socio-economic question. This Court is not in a position to go into that question. So long as it is not established that the acquisition is sought to be made for some collateral purpose, the declaration of the Government that it is made for a public purpose is not open to challenge. Section 6(3) says that the declaration of the Government that the acquisition made is for public purpose shall be conclusive evidence that the land is needed for a public purpose. Unless it is shown that there was a colourable exercise of power, it is not open to this Court to go behind that declaration and find out whether in a particular case the purpose for which the land was needed was a public purpose or not : see Smt. Somavanti there can be hardly any doubt that the purpose for which the land was acquired is a public purpose." In Somavanti's case, setting up a factory for the manufacture of refrigeration compressors and ancillary equipment, was held to subserve public purpose. The importance of such industry to a State such as Punjab which had surplus food and dairy products, the possible generation of foreign exchange resources and employment opportunities were all taken into account to hold that public purpose was involved in establishing the industry. It was observed "on the face of it, therefore, bringing into existence a factory of this kind would be a purpose beneficial to the public even though, that is a private venture." The decision in Jageram's case Uttar Pradesh [AIR (1964) SC Page 1230] a Constitution Bench of this Court observed that there was definite public purpose behind the acquisition of land for taking up works in connection with the setting up of a factory for production of textile machinery parts.

However, that was in the context of a case of acquisition under Part VII.

These decisions establish that a public purpose is involved in the acquisition of land for setting up an industry in private sector as it would ultimately benefit the people.

However, we would like to add that any and every industry need not necessarily promote public purpose and there could be exceptions which negate the public purpose. But, it must be borne in mind that the satisfaction of the Government as to the existence of public purpose cannot be lightly faulted and it must remain uppermost in the mind of the Court.

Having noted the salient provisions and the settled principles governing the acquisition for a public purpose, it is time to turn to part VII dealing with acquisition of land for Companies. The important point which we would like to highlight at the outset is that the acquisition under Part VII is not divorced from the element of public purpose. The concept of public purpose runs through the gamut of Part VII as well.

'Company' is defined to mean by Section 3(e) as (i) a Company within the meaning of Section 3 of the Companies Act other than Government Company, (ii) a Society registered under the Societies Registration Act other than a Co-operative Society referred to in clause (cc) and (iii) a Co-operative Society governed by the law relating to the Co-operative Societies in force in any State other than a Co-operative Society referred to in clause (cc). An industrial concern employing not less than 100 workmen and conforming to the other requirements specified in Section 38-A is also deemed to be a Company for the purposes of Part VII. In order to acquire land for a Company as defined above, the previous consent of the appropriate Government is the first requirement and secondly the execution of agreement by the Company conforming to the requirements of Section 41 is another essential formality. Section 40 enjoins that consent should not be given by the appropriate Government unless it is satisfied that (1) the purpose of the acquisition is to obtain land for erection of dwelling houses for workmen or for the provision of amenities connected therewith; (2) that the acquisition is needed for construction of some building or work for a Company which is engaged or about to engage itself in any industry or work which is for a public purpose; and (3) that the proposed acquisition is for the construction of some work that is likely to be useful to the public. The agreement contemplated by Section 41 is meant to ensure the compliance with these essentialities. It is also meant to ensure that the entire cost of acquisition is borne by and paid to the Government by the Company concerned. Thus, it is seen that even in a case of acquisition for a Company, public purpose is not eschewed. It follows, therefore, that the existence or non-existence of a public purpose is not a primary distinguishing factor between the acquisition under Part II and acquisition under Part VII. The real point of distinction seems to be the source of funds to cover the cost of acquisition. In other words, the second proviso to Section 6(1) is the main dividing ground for the two types of acquisition. This point has been stressed by this Madam G. Sastry [(1994) 4 SCC Page 675] at paragraph 12:

"...In the case of an acquisition for a company simpliciter, the declaration cannot be made without satisfying the requirements of Part VII. But that does not necessarily mean that an acquisition for a company for a public purpose cannot be made otherwise than under the provisions of Part VII, if the cost or a portion of the cost of the acquisition is to come out of public funds. In other words, the essential condition for acquisition is for a public purpose and that the cost of acquisition should be borne, wholly or in part, out of public funds..." The legal position has been neatly and succinctly stated by State of Uttar Pradesh [AIR (1962) SC Page 764]. This is what has been said:

"Therefore, though the words 'public purpose' in Sections 4 & 6 have the same meaning, they have to be read in the restricted sense in accordance with Section 40 when the acquisition is for a company under Section 6. In one case, the notification under Section 6 will say that the acquisition is for a public purpose, in the other case the notification will say that it is for a company. The proviso to Section 6(1) shows that where the acquisition is for a public purpose, the compensation has to be paid wholly or partly out of public revenues or some fund controlled or managed by a local authority. Where however the acquisition is for a company, the compensation would be paid wholly by the company. Though, therefore, this distinction is there where the acquisition is either for a public purpose or for a company, there is not a complete dichotomy between acquisitions for the two purposes and it cannot be maintained that where the acquisition is primarily for a company it must always be preceded by action under Part VII and compensation must always be paid wholly by the company. A third class of cases is possible where the acquisition may be primarily for a company but it may also be at the same time for a public purpose and the whole or part of compensation may be paid out of public revenues or some fund controlled or managed by a local authority. In such a case though the acquisiton may look as if it is primarily for a company it will be covered by that part of Section 6 which lays down that acquisition may be made for a public purpose if the whole part of the compensation is to be paid out of the public revenues or some fund controlled or managed by a local authority. Such was the case in Pandit Jhandu Lal .....It is only where the acquisition is for a company and its cost is to be met entirely by the company itself that the provisions of Part VII apply." Thus the distinction between public purpose acquisition and Part VII acquisition has got blurred under the impact of judicial interpretation of relevant provisions. The main and perhaps the decisive distinction lies in the fact whether cost of acquisition comes out of public funds wholly or partly. Here again, even a token or nominal contribution by the Government was held to be sufficient compliance with the second proviso to Section 6 as held in a catena of decisions. The net result is that by contributing even a trifling sum, the character and pattern of acquisition could be changed by the Government. In ultimate analysis, what is considered to be an acquisition for facilitating the setting up of an industry in private sector could get imbued with the character of public purpose acquisition if only the Government comes forward to sanction the payment of a nominal sum towards compensation. In the present state of law, that seems to be the real position.

Whether 2nd proviso to Section 6(1) has been complied with Now, we come back to the facts of the present case and test the validity of acquisition, keeping in view the principles discussed supra. First, we shall address the question argued at length-viz., whether there was compliance with the second proviso to Section 6(1). Obviously, if no part of compensation amount is to be paid out of the public revenues, then, the declaration that the land was needed for a public purpose could not have been validly made and the acquisition cannot be considered to be for a public purpose. As already noticed, it was held in Somawanti's case that the notification under Section 6(1) need not on the face of it contain a recital that the Government had decided to bear a part of the cost of acquisition or it was prepared to make a part of contribution. Even the absence of budgetary provision shall not affect the validity of declaration, it was observed. Nevertheless, there should be definite indication to the effect that the Government is going to bear at least a part of the cost of acquisition. Naturally, the Court has to look into the record including pleadings and it is not impermissible to take into account the events prior to and subsequent to the declaration. The High Court in the findings submitted to this Court noted the statement made on behalf of the Government that it was prepared to make necessary budgetary allotment for the amount of compensation payable. However, no record has been produced either before the High Court or before this Court reflecting the Government's decision to meet a part of the expenses of acquisition. But, that is really immaterial as there is sufficient material to hold that the Nigam which is undisputedly owned and controlled by the State has itself proceeded to make payment of substantial amount towards compensation even at the initial stages in anticipation of the interim award that was made on 7.6.1996. Payment of Rs. 1.5 crores was made by Respondent No. 6 (Nigam) through the General Manager, District Industries Centre by means of a cheque dated 26.2.1996.

This gives an unequivocal pointer that the State owned Corporation, namely the Nigam, had to bear the cost of acquisition and as a first step, it made the payment of Rs.1.5 crores. The assurance on the part of the State Government to sanction the funds, would indicate that in case of deficit, the Government is prepared to make the necessary financial provision to enable the Nigam to meet the cost of acquisition. In the document entitled "Industrial Policy and Action Plan, 1994" it is stated at para 7.19 that "the Nigam will work as the nodal agency for the development of large and medium industries in the State".

According to the appellants, the amount paid by Nigam to the Land Acquisition Collector was out of the money received from M/s. Arun Kumar International Limited (hereinafter referred to as 'AKI Ltd.') towards the advance payment of the compensation amount and it was merely passed on to the Land Acquisition Officer. It is submitted that but for the amount provided by AKI Ltd., no funds were available with the Nigam for making such payment. The sequence of events coupled with the fact that the respondents have not produced the covering letter that would have accompanied the Cheque gives rise to a presumption of fact that the Cheque issued by the Company towards the compensation amount was simply made over to the Land Acquisition Officer by the Nigam. Therefore, it is stressed that the source of funds was not public revenue, but, it was the private fund of the beneficiary Company. On the other hand, it has been the stand of the respondents that the Cheque issued by the Company was towards advance lease premium and such payment was made in terms of the Memorandum of Understanding (MOU). The High Court found sufficient support for the plea taken by the Nigam and the State Government from the documentary evidence viz., the receipt dated 20.2.1996 passed on to AKI Ltd., and the entries in the cash book. In fact, the original receipt book was placed before us in the course of hearing. There is absolutely no basis to infer that the particular receipt was prepared at a later stage after the dispute cropped up.

Moreover, the MOU entered into between the Nigam and the two Companies, namely, M/s B. Arun Kumar Group of Companies and Rosy Blue of Antwerp, Belgium makes it clear that the said Companies were willing to deposit the amount of lease premium with the Nigam in advance. It is made clear in the sur-rejoinder affidavit filed in the High Court and it has not been disputed that the Nigam has been vested with the power to allot land to the industrial units, execute lease deeds and charge premium. True, there is nothing on record to show that the lease premium or the advance amount payable was determined by the time the Cheque was issued by the Company. The payment of any amount at that stage on account of lease premium was rather premature, but, the fact remains that under the terms of MOU, the Companies which were parties to the MOU did express their willingness to deposit the amount of lease premium in advance. Viewed from another angle, no interim compensation was determined by the time the payment was made by the Company and there was no reference in the MOU to the compensation amount at all and if so, there is no reason to presume that the amount was deposited by the Company as advance compensation amount. In this state of affairs, the High Court was well justified in relying on the documents/books maintained in the ordinary course of business and recording a conclusion that the Cheque for Rs.3 crores was issued by AKI Ltd., towards advance lease premium. The non-production of covering letter which according to the sixth respondent is not on its record, does not clinch the issue in favour of the appellants. Taking an overall picture, we are unable to hold that the conclusion of the High Court in this regard is perverse or unsustainable.

It seems to be fairly clear, as contended by the learned counsel for the appellant, that the amount paid by the Company was utilized towards payment of a part of interim compensation amount determined by the Land Acquisition Officer on 7.6.1996 and in the absence of this amount, the Nigam was not having sufficient cash balance to make such payment. We may even go to the extent of inferring that in all probability, the Nigam would have advised or persuaded the Company to make advance payment towards lease amount as per the terms of MOU on a rough and ready basis, so that the said amount could be utilized by the Nigam for making payment on account of interim compensation. Therefore, it could have been within the contemplation of both the parties that the amount paid by the Company will go towards the discharge of the obligation of the Nigam to make payment towards interim compensation. Even then, it does not in any way support the appellants' stand that the compensation amount had not come out of public revenues. Once the amount paid towards advance lease premium, may be on a rough and ready basis, is credited to the account of the Nigam, obviously, it becomes the fund of the Nigam. Such fund, when utilized for the purpose of payment of compensation, wholly or in part, satisfies the requirements of the second proviso to Section 6(1) read with Explanation 2. The genesis of the fund is not the determinative factor, but its ownership in praesenti that matters.

Whether acquisition is for private purpose and vitated by colourable exercise of power
We should now take up for consideration the next important facet of the appellants' argument turning on the question of public purpose and colourable exercise of power. The proposed acquisition, it is contended, is primarily and predominantly meant to cater to the interests of the respondent Company and another Company by name Rosy Blue of Antwerp which together entered into the Memorandum Of Understanding (MOU) with the State-owned Corporation.

However, a twist was given to the acquisition as if it were for a public purpose, bypassing the requirements of Part VII of the Act. The entire exercise is an instance of colourable exercise of power and is, therefore, ultra vires the powers of the State Government. The money for the payment of advance compensation amount came from the source of respondent Company to whom the Government committed itself to allot the major chunk of land. This last point has already been dealt with by us and therefore the attention will be focused to the other factors that have been highlighted by the learned senior counsel for the appellants.

According to the learned senior counsel, the following facts and circumstances (apart from the source of payment of compensation), leads to a natural and logical inference that the acquisition, though styled as a public purpose acquisition, was in reality meant to subserve a private purpose.

It all started with the personal and written representation on behalf of AKI Ltd. (R-9/R-10) on 13.9.1995. The very next day, the Additional Secretary in the Industries Department conveyed to the Commissioner, Indore Division the assurance given by the Chief Minister that suitable land of an extent of 150-200 acres near Indore will be allotted for starting a new ultra modern unit for diamond polishing and processing. It was indicated in the letter that the Company proposed to lay foundation stone for its proposed unit on 1st November, 1995. The Additional Secretary, therefore, requested the Commissioner to ensure prompt and early administrative action so as to fulfill the assurance given by the Chief Minister to the Company's representatives. Within a week, i.e., on 22.9.1995, there was joint inspection by various State Government officials on the basis of which the appellants' land was selected despite the objection by the Zonal Pollution Officer. On 1.11.1995, a Memorandum Of Understanding was signed by the representatives of the Nigam on the one hand and M/s B. Arun Kumar Group of Companies and Rosy Blue of Antwerp, Belgium on the other. According to that MOU, 200- 260 acres will be acquired and will be made available among others to the said two Companies who were willing to deposit lease premium in advance. The Nigam agreed to provide water and power facilities and assist the signatory Companies to obtain necessary sanctions. It also agreed to provide equity share capital if requested by the Company. On 22.1.1996, a letter was addressed by the General Manager, District Industries Centre requesting the Collector, Indore for acquisition of 73.304 hectares of private land apart from transferring the Government land of an extent of 44.816 hectares.

According to the synopsis furnished by the appellants' counsel, this letter clearly shows that the acquisition was for a Company registered under the Companies Act. However, it may be clarified at this juncture that the letter dated 22.1.1996 which finds its place at Page No. 114 of the Paper-book in C.A.No. 7135 of 1999 is something different and it does not bear testimony to the fact alleged by the appellants. On 24.1.1996, the Collector requested the Commissioner's sanction for invoking Section 17(1). The Commissioner by his communication dated 29.1.1996, gave his approval to invoke emergency clause under Section 17(1) of the Act.

The Collector issued the Notification under Section 4(1) for the acquisition of the appellants' land as well as other adjoining lands for the public purpose, to wit, 'for establishment of diamond park'.

Section 17(1) was invoked in order to dispense with the enquiry under Section 5A. On 9.2.1996, a Notification under Section 6 was issued and the Collector was directed to take possession within stipulated time.

The above facts, according to the learned counsel for the appellants, would reveal that the machinery under the Land Acquisition Act was set in motion in record time to comply with the request of 9th/10th Respondent and the formalities were completed in post-haste solely with a view to enable the Company to go ahead with its proposed project.

The learned Advocate-General appearing for the State of Madhya Pradesh and also for the sixth respondent Corporation (Nigam) countered the above arguments by placing reliance inter alia on the findings of the High Court. He stressed on the policy of the State Government and the genuine effort made by the State Government and its agencies to develop the notified land to facilitate the establishment of diamond cutting and processing units with modern technology. He submitted that public purpose is writ large on the face of the acquisition and the Government is committed to pursue the project in public interest notwithstanding the disinterestedness of the respondent-Company owing to the delay that occurred.

On a deep consideration of the respective contentions in the light of the documents and events relied upon and the settled principles adverted to supra, we have no doubt in our mind that the acquisition was thought of with the earnest objective to achieve industrial growth of the State in public interest. Quite apart from the view taken by this Court that acquisition in order to enable a Company in private sector to set up an industry could promote public purpose, we have enough material in the instant case to conclude that the proposed acquisition will serve larger public purpose. It is fairly clear that the State's goal to bring into existence a huge industrial complex housing a good number of diamond cutting and polishing units has led to the present acquisition. Such industrial complex is compendiously termed as 'diamond park'. The State Government and its agencies including the Nigam acted within the framework of the 'Industrial Policy and Action Plan, 1994' in taking the decision to develop diamond park complex. Para 2.22 of the Industrial Policy specifically states that "the diamond park will be developed in the State for industries based on diamond cutting".

Mineral based industries have been brought within the scope of 'thrust sector'. Export oriented units will be specially encouraged, according to the policy. The policy further states that the Nigam will work as a nodal agency for the development of large and medium industries in the State and will play the role of a coordinator for the development of industrial infrastructure in growth sectors in partnership with the private sector and Industrialists' associations.

The reference to Industrial Policy is found in the resolution passed at the meeting of Nigam on 23.11.1995 and the letter of the General Manager, District Industries Centre while forwarding the proposal for acquisition to the District Collector, Indore. The District Collector while seeking the approval of the Commissioner stressed that prestigious exporters from India as well as other foreign countries were likely to establish their units in the diamond park which would generate good deal of foreign exchange and create employment potential. The State Government by its communication dated 18.1.1996 accorded sanction in principle for acquiring the private land measuring 73 hectares in Rangwasa village 'for industrial purpose' in order to set up a diamond park. Thus, the considerations of industrial policy and development weighed prominently with all the concerned authorities while processing the proposals. It is clear from the stand taken by the Nigam in the counter-affidavit and the enquiry report of the Land Acquisition Collector that AKI Ltd., and Rosy Blue of Antwerp are not the only entrepreneurs who would get the land in the proposed diamond park area. In the report of the Land Acquisition Officer, it is specifically mentioned that the land is proposed to be allotted to 12 industrial units after being satisfied about their capacity and bona fides. Our attention has been drawn by the learned Advocate-General to the lay out plan in which 12 plots covering an area of 57 hectares are laid out. The remaining area is earmarked for green belt, housing, common facilities and other amenities. Even the MOU entered into between the Nigam and the two Companies do not give us a different picture. It is specifically stated therein that the Commerce and Industries Department will handover the land to Nigam for the development of diamond park and the Nigam in its turn will allot the land required for setting up the units for cutting and polishing diamonds on leasehold basis to the two Companies as well as other Companies. The site has been selected by a team of Government officials after visiting various places. The fact that AKI Ltd., also requested for allotment of suitable land near Indore and ultimately the land close to Indore was selected, does not necessarily mean that the official team was acting at the dictates of the said Company. Having regard to the strategic location and importance of Indore city, the choice of site near Indore cannot be said to be vitiated by any extraneous considerations. Entering into MOU with the two Companies and thereafter initiating requisite steps for the acquisition of the land does not, in our view, detract from the public purpose chara cter of acquisition. MOU, in ultimate analysis, is in the mutual interest of both the parties and was only directed towards the end of setting up of an industrial complex under the name of 'diamond park' which benefits the public at large and incidentally benefits the private entrepreneurs. One cannot view the planning process in the abstract and there should be a realistic approach. Industrial projects and industrial development is possible only when there is initiative, coordination and participation on the part of both the private entrepreneurs as well as the Governmental agencies. The active role and initiative shown by AKI Ltd., cannot give a different colour to the acquisition which otherwise promotes public purpose. The expression 'foreign collaboration' used in some of the letters which the learned Advocate-General states, is somewhat inappropriate, does not negative the existence of public purpose.

Much of support has been drawn by the learned counsel for the appellant from the letter dated 14.9.1995 addressed by the Additional Secretary, Industries Department, to the Commissioner, Indore soon after the meeting of the representatives of AKI Ltd., with the Chief Minister and other senior officials. Much of the argument has been built up on it to characterize the acquisition as one for private purpose. We find no legal basis for such comment. The wording of the letter read in isolation may convey the impression that the Chief Minister assured allotment of 150 to 200 acres of land to AKI Ltd., for starting its modern diamond unit. But, it is fairly clear from the subsequent acts and correspondence including MOU that the land sought for was in connection with the proposal for a diamond park project in which not only AKI Ltd., but also other Companies or firms are to set up the diamond cutting and polishing industries with modern technology. Pursuant to the alleged assurance, no offer was made nor any steps taken to handover 150 acres of land to AKI Ltd.

The said letter may be the starting point for action, but, as already noticed the authorities concerned proceeded to acquire the land for the public purpose within the framework of Land Acquisition Act. The contents of the letter, literally read, were not translated into action.

But, it only provided a starting point to proceed with the acquisition for industrial purpose.

We are of the view that none of the factors pointed out by the learned counsel for the appellants make any dent on the orientation towards public purpose nor do they establish that the acquisition was resorted to by the Government to achieve oblique ends. The speed at which the proposal was pursued should be appreciated rather than condemning it, though the overzealousness on the part of authorities concerned to short-circuit the procedure has turned out to be counter- productive. True, the tardy progress of acquisition would have sent wrong signals to the prospective investors, as contended by the learned Advocate-General. However, due attention should have been given to the legal formalities such as holding of enquiry, specification of public purpose in clear terms and giving sufficient indication of State meeting the cost of acquisition wholly or in part. At the same time, we cannot read mala fides in between the lines; in fact, no personal malice or ulterior motives have been attributed to the Chief Minister or to any other official. The material placed before us do not lead to the necessary or even reasonable conclusion that the Government machinery identified itself with the private interests of the Company, forsaking public interest. Public purpose does not cease to be so merely because the acquisition facilitates the setting up of industry by a private enterprise and benefits it to that extent. Nor the existence or otherwise of public purpose be judged by the lead and initiative taken by the entrepreneurs desirous of setting up the industry and the measure of coordination between them and various state agencies. The fact that despite the unwillingness expressed by AKI Ltd., to go ahead with the project, the Government is still interested in acquisition is yet another pointer that the acquisition was motivated by public purpose.

Whether notifications should be struck down on the ground of vagueness of public purpose The vagueness of notified public purpose is the next ground of attack against the notifications issued under Sections 4(1) and 6.

According to the learned counsel for the appellant, the expression "establishment of diamond park" is vague and unintelligible and therefore deprives the landholders and the general public of the valuable right to object to the acquisition on relevant grounds. It is further contended that the elaboration of the public purpose in the notice of enquiry issued under Section 5-A by the Land Acquisition Officer does not cure the vital defect in the notification under Section 4(1) which is an essential prerequisite for all further action under the Act. Hence it is contended that the notification under Section 4 together with the subsequent proceedings become null and void. The sheet-anchor of this argument rests on the decision of this Court in There, the public purpose was described as 'residential' without even giving definite indication of the exact location of the lands sought to be acquired. What is more, in the declaration under Section 6(1), the public purpose was stated differently as 'housing scheme of Housing Board'. This Court, inter alia, held that the impugned notification was vitiated on account of being vague. The Court observed:

"Apart from the defect in the impugned notifiation, as noticed above, we find that even the "public purpose" which has been mentioned in the schedule to the notification as 'residential' is hopelessly vague and conveys no idea about the purpose of acquisition rendering the notification as invalid in law. There is no indication as to what type of residential accommodation was proposed or for whom or any other details. The State cannot acquire the land of a citizen for building some residence for another, unless the same is in 'public interest' or for the benefit of the 'public' or an identifiable section thereof. In the absence of the details about the alleged 'public purpose' for which the land was sought to be acquired, no one could comprehend as to why the land was being acquired and therefore was prevented from taking any further steps in the matter." India [(1973) 1 SCR Page 973] to the effect that the public purpose "needs to be particularized" to satisfy the requirements of law.

We do not think that the ratio of the decision in M.P. Housing Board's case would come to the rescue o the appellants. Though the State Government could have discreetly avoided to use sophisticated industrial jargon, we do not think that the specified public purpose is so vague and indefinite that the public will not be in a position to understand its nature and purpose. That such terminology has gained currency is evident from the fact that the same expression was used in the Industrial Policy document. It may not be out of place to mention that in the recent times, the terminology such as Industrial Park, Information Technology Park is widely in circulation. Moreover, against the column 'authorised officer under Section 4(2)' (close to the column 'public purpose'), the designation of Manager, District Industries Centre, Indore is specified. This is a pointer to the fact that the land was being acquired for industrial purpose. We are therefore of the view that in the instant case, the alleged vagueness is not of such a degree as to defy sense and understanding.

the public purpose mentioned in the notification under Section 4 was "planned development of Delhi". The challenge on the ground of vagueness of the notification was repelled on several grounds. The approach of the Court and the crucial consideration to be kept in view in dealing with this question was highlighted by Mathew, J. speaking for the Constitution Bench in the following words:

"...According to the Section (Section 4), therefore, it is only necessary to state in the notification that the land is needed for a public purpose. The wording of Section 5A would make it further clear that all that is necessary to be specified in a notification under Section 4 is that the land is needed for a public purpose. One reason for specification of the particular public purpose in the notification is to enable the person whose land is sought to be acquired to file objection under Section 5A. Unless a person is told about the specific purpose of the acquisition, it may not be possible for him to file a meaningful objection against the acquisition under Section 5A. ....

We think that the question whether the purpose specified in a notification under Section 4 is sufficient to enable an objection to be filed under Section 5A would depend upon the facts and circumstances of each case." Absence of prejudice was highlighted in Paragraph 10 thus:

"That apart, the appellants did not contend before the High Court that as the particulars of the public purpose were not specified in the notification issued under Section 4, they were prejudiced in that they could not effectively exercise their right under Section 5A." On the facts of the case, it is not possible to draw the conclusion that the appellants have suffered any prejudice or handicap on account of the alleged vagueness in the description of public purpose. First of all, the appellants did not, in the pleadings before the High Court, point out as to how the alleged ambiguity or vagueness had resulted in prejudice in the sense that they could not effectively object to the acquisition. On the other hand, the appellants filed detailed objections before the Land Acquisition Officer covering each and every aspect. The objections and representations filed from time to time would unequivocally indicate that they were fully aware of the exact purpose of acquisition. Raising the bogey of vagueness in public purpose is evidently a result of after-thought.

Moreover, by virtue of what is stated in the notices issued by the Land Acquisition Officer under Section 5A of the Act, no one could possibly have any doubt about the exact purpose of acquisition. True, it is not open to the Land Acquisition Officer to alter or expand the scope of public purpose as it is within the exclusive domain of the Government. But the Land Acquisition Officer by elaborating and making explicit what is really implicit in the notification under Section 4(1), had only dispelled the possible doubts in this regard so that no one will be handicapped in filing objections. It is in that light the step taken by the Land Acquisition Officer has to be viewed. We cannot countenance the contention that in doing so, the Land Acquisition Officer outstepped his jurisdiction.

When no prejudice has been demonstrated nor could be reasonably inferred, it would be unjust and inappropriate to strike down the notification under Section 4(1) on the basis of a nebulous plea, in exercise of writ jurisdiction under Article 226. Even assuming that there is some ambiguity in particularizing the public purpose and the possibility of doubt cannot be ruled out, the Constitutional Courts in exercise of jurisdiction under Article 226 or 136 should not, as a matter of course, deal a lethal blow to the entire proceedings based on the theoretical or hypothetical grievance of the petitioner. It would be sound exercise of discretion to intervene when a real and substantial grievance is made out, the non redressal of which would cause prejudice and injustice to the aggrieved party. Vagueness of the public purpose, especially, in a matter like this where it is possible to take two views, is not something which affects the jurisdiction and it would therefore be proper to bear in mind the considerations of prejudice and injustice.

Objection on the ground of ecological and security considerations The last contention is that the proposed diamond park complex will be objectionable from the point of view of ecology and national security. Reliance is placed on some of the guidelines spelt out in the "Policy Statement for Abatement of Pollution" issued by Government of India, Ministry of Environment and Forests in the year 1992. At the outset, we must take note of the undisputed fact that the diamond cutting and polishing equipment and the operations connected therewith does not give rise to any pollution caused by emission of fumes, noise or discharge of effluents. The problem of air, water or soil pollution excepting to a minimal extent, caused on account of inhabitation and transportation, will not arise. The appellants, however, relied on the guidelines in order to contend that in locating the industries, a distance of 25 KMs from ecologically and/or otherwise sensitive areas should be maintained. It is submitted that the MHOW-a Defence establishment is within 10 KMs distance and the Centre for Advanced Technology (Department of Atomic Energy) is 3 kilo meters from the proposed site of diamond park. However, it is on record that the Army Headquarters expressed no objection from military security point of view for setting up the diamond park. So also, the Centre for the Advanced Technology in its letter addressed to the Managing Director of the Nigam made it clear that the establishment of diamond park would not cause any security problems to the said Centre. The Union Minister of State in the Ministry of Defence also stated on the floor of the Rajya Sabha on 11.9.1996 that there were no direct national security implications involved in the setting up of the proposed project. It is also pertinent to note that in the guidelines themselves, the need to strike a balance between economic and environmental considerations has been stressed. One of the guidelines is that no prime agricultural lands shall be converted into industrial site. But, there is no material on record to show that the lands in question are prime agricultural lands which were being utilized for growing crops. The guidelines enunciated in the policy statement have to be viewed realistically.

The topography of the area and the development around the area are some of the factors that could be legitimately taken into account. On the basis of the materials placed before the Court it is not possible to hold that the proposed diamond park project will be detrimental to public health, safety or security so as to override the public interest that is served by setting up export-oriented industries. We have, therefore, no hesitation in rejecting this contention.

Objection regarding acquisition of excess land Before parting with the case, we may advert to one more contention advanced by the learned counsel for the appellant which is really a facet of the argument on the question of public purpose. It is contended that such a vast extent of land is in fact not required by any reasonable standards and there was total non application of mind as regards the extent of the land required. In reply to this, the learned Advocate-General has drawn our attention to the Lay Out Plan and pointed out that it was only on the basis of an assessment of the requirements, the extent of land to be acquired has been arrived at.

Excepting oral assertions and bald averments, there is no material before us to reach the conclusion that the requirements were not properly assessed by the concerned authorities. It is primarily within the domain of State Government to decide how much extent of land has to be acquired keeping in view the present and future needs.

Though, we are not inclined to find fault with the notification on this ground, we would only like to observe that it is desirable that the State Government makes a fresh assessment in the light of the latest situation and exclude any part of the land which may be found to be in excess.

For the reasons aforesaid, the appeals are dismissed with no order as to costs.

State of Karnataka & Anr v. Sangappa Dyavappa Biradar & Ors [2005] INSC 198 (30 March 2005)

Appeal (civil) 2266-2268 of 2005

N. Santosh Hegde & S.B. Sinha

[Arising out of S.L.P. (Civil) Nos.5216-5218 of 2004]

S.B. SINHA, J :

Leave granted.

These appeals are directed against the judgment and order dated

18.2.2003 passed by a Division Bench of the High Court of Karnataka, Bangalore in Writ Appeal Nos. 1677, 2500 and 2501 of 2000 whereby and whereunder the writ appeals filed by the Respondents herein were allowed, reversing the judgment and order passed by a learned Single Judge of the said court dismissing the writ petitions filed by the Respondents herein.

Keeping in view the point involved in these appeals, it is not

necessary to state the fact of the matter in great details. Suffice it to point out that for the purpose of submergence and construction of canal for the Upper Krishna Project, the Appellant State intended to acquire some lands including the lands belonging to the Respondents herein. The parties entered into negotiations as regard the price of the lands; pursuant whereto and in furtherance whereof consent awards were passed by the Special Land Acquisition Officer. The amount of compensation awarded in terms of the consent award was also received by the Respondents in full satisfaction of their claim. The Respondents, however, filed applications for reference to the Civil Court in terms of Section 18 of the Land Acquisition Act, 1894

(hereinafter referred to as "the Act") claiming enhanced compensation. The said prayer was rejected by the Collector by an order dated 23.8.1999. The Respondents thereafter filed writ petitions before the High Court which were marked as Writ Petition Nos. 41354, 36840 and 36748 of 1999 praying therein for quashing of the said order as also for a direction upon the Respondent No.2 to refer the applications filed by them to the Civil Court for determining the amount of compensation in respect of the acquired lands.

By reason of judgments and orders dated 6.1.2000 and 19.1.2000, the said writ petitions were dismissed on the ground that the parties having entered into settlement as regard the price of the lands acquired and as a consent award had been passed pursuant thereto, recourse to Section 18 of the Act was impermissible. The Respondents herein filed writ appeals against the said judgments. The Division Bench of the High Court rejected the contention of the Respondents herein to the effect that the agreement between the parties had not been drawn up in terms of the form prescribed under Rule 10(b) of the Land Acquisition Rules and furthermore did not conform to the requirements of Article 299 of the Constitution of India. It, however, allowed the said writ appeals on the premise that the amount of compensation was not paid to the Respondents herein in terms of the agreement entered into by and between the parties and in any event, the Respondents could not have been deprived of their statutory right of obtaining solatium and interest in terms of the Act, directing :

"We direct the respondents to compute the balance amounts payable to the claimants within an outer limit of twelve weeks from today and to disburse the same to the claimants immediately thereafter. With these directions, the appeals to stand disposed of. Parties to bear their own costs.

We clarify, that the claimants would be entitled to

not only the statutory benefits but whatever interest that they are lawfully entitled to."

The Appellants are, thus, before us.

Mr. Sanjay R. Hegde, the learned Counsel appearing on behalf of the

Appellants, would submit that the Division Bench of the High Court committed a gross error in passing the impugned judgment insofar as it failed to take into consideration the scope, object and purport of Section 18 of the Act. Relying on the judgments of this Court in State of Gujarat and Others vs. Daya Shamji Bhai and Others [(1995) 5 SCC 746] and Ishwarlal Premchand Shah and Others vs. State of Gujarat and Others [(1996) 4 SCC 174], the learned counsel would contend that as the awards passed by the Land Acquisition Officer were consent awards, reference to the Civil Court in terms of Section 18 thereof was impermissible.

Ms. Kiran Suri, the learned counsel appearing on behalf the

Respondents, on the other hand, would contend that the reference in terms of Section 18 of the Act was maintainable as the Respondents were made to sign certain forms which contained blank columns as regard the amount of compensation payable to them. The learned counsel would submit that the Respondents were, in any event, entitled to the amount of solatium as also interest on the awarded amount. Even in relation to a consent award, it was argued, the Land Acquisition Officer is required to exercise a statutory power in terms of the provisions of the Act and the same having not been done, the Appellant was entitled to obtain an order of reference to the Civil Court. Reliance, in this connection, has been placed on Assam Railways & Trading Co. Ltd. vs. The Collector of Lakhimpur and Another [(1976) 3 SCC 24].

By reason of the Government Order No. Kam.E.140 AKW 98 dated

19.6.1998, it was directed that the lands should be classified mainly into two categories i.e. dry land and wet land, the amount of compensation payable therefor were specified therein. The parties thereafter entered into agreements culminating in passing of the consent awards, the relevant stipulations whereof are as under :

"Whereas the S.L.A.O. has negotiated the market

price of the land to be acquired with the owner of the above land and the owner has agreed to the rate of Rs.1,14,000/- per acre for the land in question, including the other statutory benefits of 30% solatium and 12% additional market value which rate fixed as above and it does not include the compensation payable to the owner for the structures, trees and other improvements made on the land in question. Which compensation would be subsequently assessed by the competent technical authority and the value so arrived at would be added to the price of the land determined through this consent.

The above compensation has been arrived at by

mutual consent and as a consequence the owner hereby agrees to execute an indemnity bond and also agrees with the Government as follows :

1. The owner is agreeable to the rate of

Rs.1,14,000/- inclusive of 30% Solatium and 12% Additional Market Value per acre which is fixed by mutual consent between the Government and the owner. The owner binds himself to this compensation and undertakes not to seek any enhancements hereafter."

After the said consent awards were passed, statements were also

made by the respective villagers declaring that they would not approach 'any court for enhancement of the compensation for any other reason'.

It is not in dispute that in terms of the said consent awards, the

amount of compensation included solatium and additional market value. The landholders, as noticed hereinbefore, also waived their right to file any application for enhancement of the amount of compensation.

The sole question, thus, which arose for consideration before the High Court was as to whether the applications filed by the Respondents herein in terms of Section 18 of the Act before the Special Land Acquisition Officer seeking reference to the Civil Court for determination of quantum of compensation, were maintainable.

Section 18 of the Act reads as under :

"18. Reference to Court .(1) Any person interested who has not accepted the award may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Court, whether his objection be to the measurement of the land, the amount of compensation, the persons to whom it is payable, or the apportionment of the compensation among the persons interested.

(2) The application shall state the grounds on which objection to the award is taken :

Provided that every such application shall be made

(a) if the person making it was present or

represented before the Collector at the time when he made his award, within six weeks from the date of the Collector's award;

(b) in other cases, within six weeks of the receipt

of the notice from the Collector under section 12, sub- section (2); or within six months from the date of the Collector's award, whichever period shall first expire."

A right of a landholder to obtain an order of reference would arise

only when he has not accepted the award. Once such award is accepted, no legal right in him survives for claiming a reference to the Civil Court. An agreement between the parties as regard the value of the lands acquired by the State is binding on the parties. So long as such agreement and consequently the consent awards are not set aside in an appropriate proceeding by a court of law having jurisdiction in relation thereto, the same remain binding. It is one thing to say that agreements are void or voidable in terms of the provisions of the Indian Contract Act having been obtained by fraud, collusion, etc, or are against public policy but it is another thing to say that without questioning the validity thereof, the Respondents could have maintained their writ petitions. We have noticed hereinbefore that even in the writ petitions, the prayers made by the Respondents were for quashing the order dated 23.8.1999 passed by the Special Land Acquisition Officer and for issuance of a direction upon him to refer the matter to the Civil Court. The High Court while exercising its jurisdiction under Article 226 of the Constitution of India, thus, could not have substituted the award passed by the Land Acquisition Officer by reason of the impugned judgment. Furthermore, the question as regard the validity of the agreements had not been raised before the High Court. As indicated hereinbefore, the Division Bench of the High Court had also rejected the contention raised on behalf of the Respondents herein to the effect that the agreements did not conform to the requirements of Article 299 of the Constitution of India or had not been drawn up in the prescribed proforma.

An award under the Act is passed either on consent of the parties or on adjudication of rival claims. For the purpose of passing a consent award, it was not necessary to comply with the provisions of Article 299 of the Constitution of India. An agreement between the parties need not furthermore be strictly in terms of a prescribed format.

The Respondents having accepted the award without any demur were

estopped and precluded from maintaining an application for reference in terms of Section 18 of the Act. It is also trite that by reason of such agreement, the right to receive amount by way of solatium or interest etc. can be waived.

In Daya Shamji Bhai (supra), this Court held :

"The right and entitlement to seek reference

would, therefore, arise when amount of compensation was received under protest in writing which would manifest the intention of the owner of non-acceptance of the award. Section 11(2) opens with a non-obstante clause "notwithstanding anything contained in sub- section (1)" and provides that "if at any stage of the proceedings, the Collector is satisfied that all the persons interested in the land who appeared before him have agreed in writing on the matters to be included in the award of the collector in the form prescribed by rules made by the appropriate Government, he may, without making further enquiry, make an award according to the terms of such agreement. By virtue of sub-section (4), "notwithstanding anything contained in the Registration Act, 1908, no agreement made under sub-section (2) shall be liable to registration under that Act". The award made under Section 11(2) in terms of the agreement is, therefore, an award with consent obviating the necessity of reference under Sectin 18."

In Ishwarlal Premchand Shah (supra), it was held :

"8. It is true that on determination of compensation under sub-section (1) for the land acquired, Section 23(2) enjoins to award, in addition to the market value, 30% solatium in consideration of compulsory nature of acquisition. Equally, Parliament having taken notice of the inordinate delay in making the award by the Land Acquisition Officer from the date of notification published under Section 4(1) till passing the award under Section 11, to offset the price pegged during the interregnum, Section 23(1-A) was introduced to award an amount calculated @ 12% per annum on such market value, in addition to the market value of the land, for the period commencing on and from the date of the publication of Section 4(1) notification to the date of award of the Collector or date of taking possession of the land whichever is earlier. Under Section 28, interest was directed to be paid on the excess compensation at the rate specified therein from the date of taking possession of the land to the date of deposit into court of such excess compensation. These three components are in addition to the compensation determined under sub-section (1) of Section 23. They intended to operate in different perspectives. One for compulsory acquisition, the other for the delay on the part of the Land Acquisition Officer in making the award and the third one for deprivation of the enjoyment of the land from the date of taking possession till determination of the compensation. The three components are in addition to the determination of market value under sub-section (1) of Section 23. They are not integral to determination of compensation under sub-section (1) of Section 23 but in addition to, for the circumstances enumerated hereinbefore. In a private sale between a willing vendor and a willing vendee, parties would arrive at consensus to pay and receive consolidated consideration which would form the market value of the land conveyed to the vendee. For public purpose, compulsory acquisition under the Act gives absolute title under Section 16 free from all encumbrances. Determination of the compensation would be done under Section 23(1) on the basis of market value prevailing as on the date of the publication of the notification under Section 4(1). It would, therefore, be open to the parties to enter into a contract under Section 11(2), without the necessity to determine compensation under Section 23(1) and would receive market value at the rates incorporated in the contract signed under Section 11(2) in which event the award need not be in Form 14.

9. This Court in State of Gujarat v. Daya Shamji Bhai1 had considered the similar contentions and held that once the parties have agreed under Section 11(2) of the Act, the Land Acquisition Officer has power under Section 11(2) to pass the award in terms thereof and that the award need not contain payment of interest, solatium and additional amount unless it is also part of the contract between the parties. The same ratio applies to the facts in this case. In view of the above clauses in the agreements the appellants are not entitled to the payment of additional amounts by way of solatium, interest and additional amount under the provisions of the Act."

Assam Railways & Trading Co. Ltd. (supra) whereupon Ms. Suri

placed reliance is not applicable to the fact of the present case. Therein negotiations had taken place between the parties whereupon the Railway Administration became prepared to pay Rs.2500/- per bigha towards the sale price of the land but the transaction was not completed, having regard to the fact that under the State Railway Rules, land from private parties could be acquired only by taking recourse to acquisition proceedings. Thereafter, in the land acquisition proceedings, an award was made by the Land Acquisition Collector allowing compensation at the rate of Rs.1000/- per bigha. It is in that situation, the negotiation between the parties was highlighted stating that although the same did not fructify into a binding contract, there was at least a "gentleman's agreement" regarding the price which indicated what a willing purchaser was ready to pay for the land. In the factual backdrop of that case this Court observed :

"Assuming this was an agreement which bound the parties, the Collector had still the jurisdiction to determine the market value of the land..."

Keeping in view the fact that the condition precedent for maintaining

application for reference under Section 18 is non-acceptance of the award by the awardee, in our considered opinion, the Division Bench acted illegally and without jurisdiction in passing the impugned judgment. The learned Single Judge was right in concluding that the writ petitions were not maintainable.

For the reasons aforementioned, the impugned judgments cannot be

sustained which are set aside accordingly. The appeals are allowed. However, in the facts and circumstances of the case, there shall be no order as to costs.

CASE NO.:
Appeal (civil) 2558-2559 of 2004

PETITIONER:
Ram Krishan Mahajan

RESPONDENT:
Union Territory of Chandigarh and others

DATE OF JUDGMENT: 03/07/2007

BENCH:
B.P. SINGH & ALTAMAS KABIR

JUDGMENT:
J U D G M E N T

WITH
CIVIL APPEAL NO.2564 OF 2004
Inderjeet Behal (Dead) ?.Appellant
through Lrs.
Versus
Union Territory of Chandigarh and another ?.Respondents
WITH
CIVIL APPEAL NO.2585 OF 2004
Paramjit Singh Bhatti ?.Appellant
Versus
Union Territory of Chandigarh and others ?.Respondents
WITH
CIVIL APPEAL NO.2588 OF 2004
Anu Jagga ?.Appellant
Versus

Union Territory of Chandigarh and another …Respondents.

WITH

CIVIL APPEAL NO.2567 OF 2004

Rameshwar Dass Kaushal ….Appellant

Versus

Union Territory of Chandigarh and others ...Respondents.

WITH

CIVIL APPEAL NO.2586 OF 2004

Brij Bhushan and others. ….Appellants

Versus

Union Territory of Chandigarh and others ….Respondents

WITH

CIVIL APPEAL NO.2561 OF 2004

Gurdeep Kaur ….Appellant

Versus

Union Territory of Chandigarh and others ….Respondents

WITH

CIVIL APPEAL NOS.2562-2563 OF 2004

Amit Singh and another ….Appellants

Versus

Union Territory of Chandigarh and another ….Respondents

WITH

CIVIL APPEAL NO.2560 OF 2004

Naurang Singh ….Appellant

Versus

Union Territory of Chandigarh and others ….Respondents

WITH

CIVIL APPEAL NO.2565-2566 OF 2004

Vishkarma Furniture and Pahwa Industries
and others …Appellants

Versus

Union Territory of Chandigarh and others …Respondents

WITH

CIVIL APPEAL NO.2555-2556 OF 2004

Hakam Singh …Appellant

Versus

Union Territory of Chandigarh …Respondent

WITH

CIVIL APPEAL NO.2569 OF 2004

Shadi Lal Tayal (Dead)
through Lrs. and others …Appellants

Versus

Union Territory of Chandigarh and another …Respondents

WITH

CIVIL APPEAL NO.2587 OF 2004

Jagir Singh and another …Appellants

Versus

Chandigarh Administration and others …Respondents

WITH

CIVIL APPEAL NO.2570 OF 2004

Ashwani Kumar ….Appellant

Versus

Union Territory of Chandigarh ad others ….Respondents

AND

CIVIL APPEAL NO.4070 OF 2004

Gagandeep Kang and others ….Appellants

Versus

Union Territory of Chandigarh and another ….Respondents

B.P.SINGH, J.

1. In this batch of appeals the common judgment and order of the High Court of Punjab and Haryana dated April 28, 2003 disposing of the Writ Petitions has been assailed. In the Writ Petitions before the High Court, the acquisition proceedings under the Land Acquisition Act (for short 'the Act') by issuance of Notifications by the Chandigarh Administration under Section 4 thereof had been challenged which has been rejected by the High Court by its impugned judgment and order. The lands were sought to be acquired for Scheme Nos.2 and 3 and were spread over eleven Pockets within the Notified Area of Mani Majra, which has since vested in the Municipal Corporation of Chandigarh. Pockets 1 to 6 related to Scheme No.2, while Pockets 9 to 11 related to Scheme No.3.

2. It is not disputed that so far as Pocket Nos.1 to 6 are concerned, the Notifications under Section 4 of the Act were issued on different dates between May 25, 1989 and October 12, 1989. It is also not disputed that several awards have been made and many of the land owners have received the compensation awarded, but the appellants herein have challenged the acquisition proceedings,

mainly on two grounds, namely that in the absence of a 'building scheme' framed under Section 192 of the Punjab Municipal Act, 1911 no land could be acquired under the provisions of the Act for the purposes of the Scheme. Secondly, the appellants challenged the proceedings on the ground that the Notification under Section 4 of the Act was not published in the manner required, and in particular on the ground that there was no publication of the substance of the Notification under Section 4 of the Act in the locality. A few background facts may be noticed at the threshold:

3. The Mani Majra Gram Panchayat was declared a Notified Area under Section 241 of the Punjab Municipal Act, 1911 on August 19, 1973. By Notification dated June 11, 1976, issued under Section 242 of the Act of 1911 certain provisions of the Act of 1911 such as Sections 3, 53, 58, and 192 were extended to the Mani Majra Notified Area. Section 243 of the Act of 1911 provides as follows:-

"243. Application of Act to notified area. - For the purposes of any section of this Act which may be extended to a notified area the committee appointed for such area under section 242 shall be deemed to be a municipal committee under this Act and the area to be a municipality".

It was urged before the High Court that without framing building scheme under Section 192 of the Act of 1911, the acquisition of the land for residential-cum-commercial complex (Scheme No.2 of the Notified Area Committee) could not be said to be for a public purpose and was contrary to law. It was argued that though the definition of "public purpose" under the Act included, under Section 3(f)(vii), the provision of land for any other scheme or development sponsored by Government, or with the prior approval of the appropriate government, by a local authority, in the context of the Act of 1911 it must mean a "building plan" contemplated by Section 192 of the Act of 1911. Since such a plan was never prepared by the Notified Area under Section 192, in the absence of a valid "building Scheme", no land could be acquired for that purpose.

4. Section 58 of the Act of 1911 provides for acquisition of land under the Act at the request of the Committee. It reads as under:-

"58. Acquisition of land - When any land, whether within or without the limits of a municipality, is required for the purposes of this Act, the [State] Government may, at the request of the committee, proceed to acquire it under the provisions of the Land Acquisition Act, 1894, and on payment by the committee of the compensation awarded under that Act, and of any other charges incurred in acquiring the land, the land shall vest in the committee.

Explanation. ― When any land is required for a new street or for the improvement of an existing street, the committee may proceed to acquire, in addition to the land to be occupied by the street, the land necessary for the sites of the buildings to be erected on both sides of the street and such land shall be deemed to be required for the purposes of this Act".

5. It was, therefore, argued before the High Court that the municipal fund could be utilized only for the purposes contemplated by Section 52 of the Municipal Act of 1911. Since the Scheme was not a "building scheme" under Section 192 of the Act of 1911, the Mani Majra Notified Area could not be burdened with the cost of acquisition of land.

6. On the contrary, the respondents submitted that the Scheme in question was not a 'building scheme' under Section 192 of the Act of 1911. It was a development scheme with a view to provide facilities to the general public by providing for residential and commercial accommodation, and multi ― speciality hospital, and was therefore clearly covered by Section 52(2)(c) of the Act of 1911. It was clearly a public purpose under Section 3(f)(vii) of the Act.

7. The High Court rejected the contention of the petitioners. It noticed that earlier similar Writ Petitions involving identical questions had been dismissed. It observed:-

"It is further pointed out that identical questions were raised in respect of acquisition of pocket Nos.9, 10 and 11 which was sought to be made by publication of notification under Section 4 of 1894 Act on 24.6.1990. The said acquisition was the subject matter in C.W.P. No.12936 of 1991 whereas acquisition of land in pursuance of notification dated 9/10.8.1990 was the subject matter of challenge in C.W.P. No.14898 of 1991. The writ petitions challenging these acquisition proceedings were dismissed by the learned Single Judge of this Court on 20.1.1992 in Prem Singh and others Vs. Union Territory, Chandigarh 1992(2) PLR 370, and Letters Patent Appeal against the said judgment was also dismissed by the Division Bench on 11.3.1998. Another bunch of 30 writ petitions wherein notifications dated 28.6.1990, 31.1.1992 etc. under section 4 was dismissed by the Division Bench on 22.9.1995. The detailed order was passed in C.W.P. 2126 of 1993, Partap Chand and others Vs. Union Territory, Chandigarh and others. It was thus contended that since identical questions of law and fact have already been adjudicated upon by a Division Bench of this Court in respect of the similar acquisition proceedings, therefore, the present writ petitions are liable to be dismissed".

8. The High Court also noticed the finding of the Division Bench in Prem Singh's case which is as follows:-

"The final argument of Mr. Ram Swaroop is purely a legal submission. It has been argued that as no scheme had been framed as envisaged under Section 192 of the Punjab Municipal Act, 1976 (hereinafter called the Punjab Act) the land could not be acquired for the purpose. It has also been contended that the land could be acquired only for the purpose of the NAC and Union Territory, Administration could not notify the same. We have considered these arguments in the light of the averments in the reply. It is the conceded case that no building scheme has been framed as per the provisions of Section 192 of the Punjab Act, but the respondents have categorically stated that the scheme for which the land had been acquired, is not a scheme within the meaning of Section 192 of the Punjab Act and the land is being acquired under the Act for the purpose of a Development Scheme for providing facilities to the residents of 'the area'. We are further of the opinion that Section 58 of the Punjab Act specifically provides that the State Government which in this case would be the Union Territory Administration, is fully competent to acquire land for the public purposes. In the light of these averments, the judgments cited by the learned counsel, in fact, have no bearing in the case in hand".

9. The core issue therefore is whether the acquisition is for a "building scheme" as contemplated under Section 192 of the Act of 1911, or whether it is only a development plan for providing better facilities to the inhabitants of the area by way of residential,

commercial and medical facilities which are within the contemplation of Section 52(2)(c) of the Act of 1911.

10. This takes us to Section 192 of the Act of 1911, the relevant part whereof is reproduced below:-

"192. Building scheme. (1) The committee may, and if so required by the [Deputy Commissioner] shall, within six months of the date of such requisition, draw up a building scheme for built areas, and a town planning scheme for unbuilt areas, which may among other things provide for the following matters, namely :-

(a) the restriction of the erection or re-erection of buildings or any class of buildings in the whole or any part of the municipality, and of the use to which they may be put :

(b) the prescription of a building line on either side or both sides of any street existing or proposed ; and

(c) the amount of land in such unbuilt area which shall be transferred to the committee for public purposes including use as public streets by owners of land either on payment of compensation or otherwise, provided that the total amount so transferred shall not exceed [thirty-five percent] and the amount transferred without payment shall not exceed [seventy-five per cent], of any one owner's land within [such unbuilt area].

(2) When a scheme has been drawn up under the provisions of sub-section (1) the committee shall given public notice of such scheme and shall at the same time intimate a date not less than thirty days from the date of such notice by which any person may submit to the committee in writing any objection or suggestion with regard to such schemes which he may wish to make.

(3) The committee shall consider every objection or suggestion with regard to the scheme which may be received by the date intimated under the provisions of sub-section (2) and may modify the scheme in consequence of any such objection or suggestion and shall then forward such scheme as originally drawn up or as modified to the [Deputy

Commissioner], who may, if he thinks fit, return it to the committee for reconsideration and resubmission by a specified date; and the [Deputy Commissioner], shall submit the plans as forwarded, or as resubmitted, as the case may be, with his opinion to the [State] Government, who may sanction such scheme or may refuse to sanction it, or may return it to the committee for reconsideration and resubmission by a specified date".

11. We have no doubt that if the lands were being acquired for a "building scheme" as contemplated by Section 192, the acquisition could not be made under the provisions of the Act unless such a scheme was validly framed after following the prescribed procedure, and was duly sanctioned by the State Government. But it appears to us that the High Court was right in coming to the conclusion that this was not a "building scheme" under Section 192, but merely a development plan to provide facilities to the public, such as those within the contemplation of Section 52(2)(c) of the Act of 1911, to which the municipal fund could be applied. It was, therefore, not required to follow the procedure under Section 192 of the Act of 1911.

12. The relevant part of Section 52 reads as follows:-

"52. .… …. ….

…. …. ….

(1) …. …. ….

…. …. ….

(2) Subject to the charges specified in sub-section (1) and to such rules as the [State] Government may make with respect to the priority to be given to the several duties of the committee, the municipal fund shall be applicable to the payment in whole or in part, of the charges and expenses incidental to the following matters within the municipality, and with the sanction of the [State Government] outside the municipality, namely:-

…. .... ….

…. …. ….

(c) the construction, establishment and maintenance of schools, hospitals and dispensaries, and other institutions for the promotion of education or for the benefit of the public health, and of rest-houses, sarais, poor-houses, markets, [stalls], encamping grounds, pounds, and others works of public utility, and the control and administration of public institutions of any of these descriptions :

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(l) all acts and things which are likely to promote the safety, health, welfare or convenience of the inhabitants or expenditure whereon may be declared by the committee, with the sanction of the [State] Government to be an appropriate charge on the municipal fund".

13. The objection that the municipal fund could not be applied for providing residential, commercial and medical facilities must be rejected. The facilities that a municipality is empowered to provide under the Act may involve acquisition of land as it is required for the purpose of the Act and therefore, it may make a request to the State Government to acquire the lands required for the purpose, and bear the cost of acquisition.

14. In view of our above finding the submission urged before us on the basis of the provisions of the Punjab Periphery Act, 1952 must also be rejected. It was submitted that the Punjab Periphery Act, 1952 was enacted with a view to prevent growth of slums and ramshackle construction on the lands lying on the periphery of the new city of Chandigarh. This was considered necessary to ensure healthy and planned development of the new city. The Periphery Act, therefore, empowered the State Government to declare the whole or the part of the area to which the Act extended to be a "controlled area" for the purpose of the Act. Once the "controlled area" was declared, no person could erect or re-erect any building or make or extend any excavation etc. in the "controlled area" save in accordance with the plans and restrictions and with the previous permission of the Deputy Commissioner in writing. It is not disputed before us that the necessary permission under the Periphery Act, 1952 has been granted for raising the structures in question. It was, however, argued before us that permission could not be granted to the Notified Area Committee, which is deemed to be a Municipality, for a purpose which cannot be undertaken by the Notified Area Committee. Since the Municipality cannot develop a residential, commercial or institutional area, and spend municipal funds over them, the permission could not have been granted. We find no substance in the argument in view of our finding that the

development work undertaken by the Notified Area Committee could be undertaken by it under the provisions of the Punjab Municipal Act and, therefore, the permission granted under the Punjab Periphery Act, 1952 is not tainted with illegality.

15. It was argued in Civil Appeal Nos. 2558-2559 of 2004 arising out of Writ Petition) No. 3125 of 1990 that the permission granted on January 2, 1989 under Section 11 of the Punjab Periphery Act, 1952 referred to only Pockets I to III and there was no reference to Pocket No.5. Therefore, so far as the lands falling in Pocket No.5 are concerned, there was no valid permission to raise the impugned structures. This point does not appear to have been raised before the High Court. However, there is material on record to support the contention of respondents that originally the area was divided into three pockets, namely Pocket numbers I, II and III. It was only later that three Pockets were converted into six Pockets. In this connection we may refer to the affidavit filed before this Court by the Land Acquisition Collector wherein it was stated that Pocket Nos. I, II and III were later on converted into six Pockets vide Memo No.5641-UTFI(I)-88/34 dated January 2, 1989 and Memo No.3/117/88/UTFI(4)-88/245 dated January 6, 1989. Thus, even though six Pockets are not mentioned in the permission, the three Pockets for which the permission was granted included the land of the appellant. The appellant himself in his writ petition has reproduced the proposal made by the Notified Area Committee for acquisition of land wherein it was stated that the land measuring 21 acres, 57 acres and 67 acres respectively in Pocket Nos. I, II, and III should be acquired. The appellant has also referred to the Resolution of the Notified Area Committee wherein it is stated that according to the actual measurement and Akash Shajra, the total area under Pocket No.I was found to be 30-21 acres, Pocket No.II, 54-91 acres and Pocket No.III, 75-67 acres. Thus the total area acquired was 160-87 acres instead of 145 acres and accordingly the Committee unanimously accorded its sanction for acquisition of land measuring 160-67 acres. The contemporaneous documents, therefore, substantiate the plea of the respondents that the grant of permission under Section 11 of the Periphery Act, 1952 related to the lands ultimately acquired and though, originally there were only three Pockets they were subsequently converted into six Pockets, but the lands remained the same, though on actual measurement it was found that there was a difference of about 15 acres. The appellant has not produced any material to satisfy the Court that his land was not included in the original three Pockets in respect of which the permission had been granted by the competent authority under the Punjab Periphery Act, 1952. We, therefore, find no merit in the submission that no permission had been granted under Section 11 of the Punjab Periphery Act, 1952 relating to the land of the appellant.

16. This takes us to the next question urged by some of the appellants that the Notification under Section 4 of the Land Acquisition Act, 1894 was not published in the manner prescribed by Section 4 of the Act. The grievance of the appellants in particular is that the substance of the Notification had not been given at convenient places in the locality. There is no dispute with regard to the issuance of the Notifications in the official gazette and the publication of the Notifications in two daily newspapers circulating in the area. The case of the respondents is that the Notification was given due publicity in the locality by beat of drums on June 3 and June 4, 1989. The assertion of the respondents was challenged by the appellants and C.M. No. 4235 filed on March 30, 1990 with the prayer that the respondents be directed to produce the entire record, specially the documents evidencing the publicity by beat of drums in the locality. However, the said application was ordered to be heard with the main case which unfortunately came up for hearing many years later in the year 2003.

17. An affidavit of the Land Acquisition Officer dated March 23, 2003 was filed before the High Court wherein it was admitted that the original record pertaining to the acquisition of land in various pockets of the revenue estate of Mani Majra was not traceable and an inquiry had been initiated in the matter. Some officials of the Administration as well as the Municipal Corporation had been suspended. It was explained that when an application was filed for early hearing of the writ petitions and a search was made for the original record pertaining to the acquisition of lands in various pockets, it was found that the record was not traceable despite concerted efforts. The following records in particular could not be traced out :-

"i) Original record regarding publication in the official gazette and newspapers in respect to Pocket No.2, 9, 10 and 11. The record regarding publication in the locality with regard to Pocket No.1-6 and 9-11 is also not available.

ii) The original Rapat Roznamachas pertaining to the above are not traceable.

iii) The original objections and notices under section 5-A are not available except Pocket No.11.

iv) Original record pertaining to the presence of the objectors at the time of hearing of objections under section 5-A is also missing".

However, one file pertaining to the said acquisition was traced out in the office of the Finance Secretary, UT containing 1 to 518 pages of which pages 1 to 83 contained the notings. Paragraph 6 to 12 of the affidavit of the Land Acquisition Officer are significant and we reproduce them below :-

"6. That the above mentioned file contains two reports dated 22.8.1989 and 11.9.1989 by the Assistant Estate Officer (exercising the powers of the Land Acquisition Officer, Notified Area Committee, Mani Majra), Chandigarh. In these reports pertaining to Pocket Nos.1-6, it is clearly mentioned that opportunity of hearing as envisaged in the Land Acquisition Act had been given to the interested persons on 10.8.1989 and 23.8.1989, respectively. These reports are available in the file at Page No.71 and 113 and the list of objections filed by 18 objectors and 90 objectors respectively are available from Page 87 to 90 and 123 to 129. Photocopy of these two reports is annexed as Annexure 'I' and 'II'.

7. That report dated 15.1.1990 pertaining to Pocket No.3 to 5 sent by the Assistant Estate Officer, exercising the powers of the Land Acquisition Officer, Notified Area Committee, Mani Majra is available in the file on page No.246-247 and the details of the objections filed are available at page 254-255. As per his report, hearing was given on 9.1.1990. Photocopy of this report alongwith its enclosures is annexed as Annexure 'III'.

8. That the officer who had submitted the report i.e. Shri D.V. Bhatia who has since retired has been contacted and inquiries made from him. An affidavit of Shri D.V. Bhatia, wherein he has stated that opportunity of personal hearing was given by him to the interested persons and proper procedure as envisaged in the Land Acquisition Act was followed is annexed as Annexure 'IV'.

9. That the Patwari, Notified Area, Mani Majra at the relevant time namely Shri Som Nath (since retired) was also contacted. He has revealed that he was posted as Patwari, Notified Area Committee, Mani Majra from July 1989 till November, 1993. During this period, notifications under section 4 and 6 of the Land Acquisition Act pertaining to

Pockets No.1-6 and Pocket No.9-11 were issued. The record pertaining to the publication (original information) and entries in the Rapat Roznamchas remains with the revenue Patwari.

10. That as submitted above, the only record pertaining to this acquisition is in the shape of file mentioned above. The report dated 15.1.1990 clearly shows that the objections were heard by the then Land Acquisition Officer and opportunity of personal hearing was given on 9.1.1990. The original objections filed by the Petitioner is also on the record of this file at page No.272-285. The affidavit of Shri D.V. Bhatia also shows that an opportunity of personal hearing had been given to the Petitioners. On the very file at page 286, a notice dated 2.1.1990 is there, wherein the Petitioner Ram Krishan Mahajan has been asked to appear before the Land Acquisition Officer on 9.1.1990 at 11.00 a.m. in the Estate Office Building, Sector 17, Chandigarh for personal hearing. Photocopy of the notice dated 2.1.1990 is annexed as Annexure 'V'.

11. That the award files pertaining to the Pocket No.1-6 and 9-11 which are subject matter of the case and connected cases except the file pertaining to Pocket No.3 are available.

12. That in respect of Pocket No.1, the available record includes the award file and the report by the then Land Acquisition Officer dated 22.8.1989 in respect to the objections under section 5-A of the Land Acquisition Act, 1894 on Page 75 of the file received from the office of the Finance Secretary, UT, Chandigarh. The record pertaining to the publication in the official gazettee and publication in the newspapers is also available in this file".

18. The High Court has taken notice of the fact that the relevant files were missing when the matter came up for hearing before the Court. The High Court however, found that no case for interference was made out by the appellants. It recorded its conclusion in the following words :-

" However, dispute in the present case is, whether the substance of the notification under Section 4 of the Act was published in the locality and, whether such publication satisfies the requirement of Section 4 of 1894

Act? The counsel for the petitioners have relied upon noting sheet dated 1.6.1989 whereby Secretary, Notified Area Committee, Mani Majra had directed Sanitary Inspector to cause wide publicity of the notification in the locality through beat of drum on 1.6.1989. The Sanitary inspector has endorsed that wide publicity in respect of notification had been given through beat of drum by Banarsi Dass, Catsman on 3.6.1989 & 4.6,1989. The said noting sheet has been seen by the Secretary Notification Area Committee and placed to file. The grievance to such manner of publication is that there is no valid authorisation by the Collector to cause the substance of the notification published through Secretary, Notified Area Committee, Mani Majra or by Sanitary Inspector. Still further, the publication is allegedly made by a Cartsman who is neither a public servant nor shown to be competent to carry out the requirement of the publication by beat of drum.

The reliance of the counsel for the petitioners on the provisions of Section 4 of 1894 Act that "the Collector shall cause public notice of the substance or said notification to be given at the convenient places of the locality" is not tenable. The Collector contemplated under Section 9 of 1894 Act is one defined under Section 3(c) of 1894 Act which means that the Collector of the District and includes the Deputy Commissioner and any officer specially appointed by the Appropriate Government to perform the functions of the Collector under the said Act. The Collector is the agent of the State Government competent to acquire land for the State Government. One or other official can cause the publication of the substance of the notification in the locality. It is not necessary that the Collector has to personally authorise the publication by beat of drum. It is the publication of the substance in the locality which is a material factor so as to invite the attention of the interested persons towards the intention of the Government to acquire the land. No rule, provision or instructions were brought to our notice that the procedure of beat of drum has to be carried out only by a public servant. As a matter of fact, such ministerial functions can be performed by any one authorised by the competent authority. The beat of drum is not a process requiring special skill and, thus, the arguments raised by the counsel for the petitioners are misconceived, in any case, the defects pointed out by the petitioners can at best be called an irregularity which does not vitiate the publication of the notification.

Thus, we are of the opinion that the substance of the notification was published in the locality in accordance with the provisions of Section 4 of 1894 Act. In CWP No. 2126 of 1983, Partap Chand's case (supra) an argument was raised on the basis of the affidavit filed by Dayal Singh who, as per the State, carried out the process of beat of drum. Dayal Singh having denied any such process by way of filing affidavit, the Court negatived the contentions of the writ petitioners on the ground that it was the positive stand of the petitioners that notifications under Section 4 & 6 of 1894 Act had not been published in the newspaper."

19. It will thus appear that the finding recorded by the High Court is based on the documents relied upon by the appellants themselves. The note sheet dated June 1, 1989 clearly stated that the Sanitary Inspector had been directed to cause wide publicity of the Notification by beat of drums on June 1, 1989 and had later endorsed that wide publicity had been given by Banarsi Dass, cartsman on June 3, 1989 and June 4, 1989. The High Court rightly rejected the submission that there was no valid authorization since the cartsman was not a public servant. The High Court has rightly observed that the fact that the cartsman was not a public servant was not relevant. What was relevant was that due publicity had been given in the locality by beat of drums on two dates, namely on 3rd June and 4th June, 1989. There is no reason for us to doubt the notings in the file made contemporaneously many years ago. We, therefore, affirm the finding of the High Court that the substance of the Notification issued under Section 4 of the Land Acquisition Act had been duly published in the locality in accordance with the provisions of the Act.

20. The next submission urged on behalf of the appellants before the High Court was with regard to their not being given an opportunity to file their objections under Section 5-A of the Land Acquisition Act and/or failure to give an opportunity to the parties who had filed objections to represent their cases before the competent authority. The High Court has considered in detail the facts of each case. We have also heard the parties at length only to satisfy ourselves about the reasonableness of the findings of fact recorded by the High Court on consideration of the evidence on record. We find ourselves in agreement with the High Court that the grounds urged on behalf of the appellants are untenable. The High Court has noticed the fact that the material on record did indicate that in many cases notices were given to the parties concerned, objections were filed and heard and awards declared. The report of the Land Acquisition Collector in some cases is also on record. The objections filed by some of the appellants were also before the High Court. Ms. Kamini Jaiswal appearing on behalf of the Union Territory of Chandigarh and the Notified Area Committee also took us to the evidence on record and we are satisfied that this is not a case which requires interference by this

Court on a pure question of fact. The High Court has elaborately dealt with the submissions urged before it, has critically scrutinized the evidence on record and recorded its findings. Having heard counsel for the parties at length, we are satisfied that no interference is called for by this Court.

21. It was urged by the appellant in Civil Appeal No.2567 of 2004 that the High Court failed to consider the question raised by him in the special facts of his case. He submitted that the State had not notified for acquisition lands over which buildings had been erected and, therefore, in accordance with the said policy his land should also have been kept out of acquisition.

21. In the writ petition the petitioners (there were three petitioners before the High Court) averred that they were the owners in possession of the land in question. They were running their business of lime and limestone on the said land for the last more than 25 years. Sales tax number, telephone connection and house number had been allotted to them. It was also averred that some similar shops which had been constructed on Khasra Nos. 100/29/30/31/32/34 were left out of acquisition, which showed that a pick and choose method had been adopted by the Government. According to the petitioners those shops were like that of the petitioners and similarly situated.

22. In the objections filed under Section 5-A of the Act the appellant had stated that he had constructed a house and a building in which he was running a business of lime and limestone and that the structure on the land had been given a number by the N.A.C., namely No.1989. It does, therefore, appear from the averments made in the writ petition read with the objections under Section 5-A of the Act that over the land in question the appellant had been carrying on lime and limestone business. His grievance is that some other similar shops located on similar land were not acquired.

23. In the reply filed on behalf of the respondents before the High Court it was denied that any pick and choose method had been adopted. It was asserted that on Khasra Numbers in question construction had been raised prior to the issuance of Notifications under Sections 4 and 6 of the Act. In fact those constructions existed even prior to the formation of the Notified Area Committee, Mani Majra. The constructions were raised after getting building plans sanctioned from the erstwhile Panchayat Committee. It was in these circumstances that those Khasra Numbers were kept out of acquisition.

24. We find that the respondents had good reasons for not acquiring lands over which there stood permanent structures which had been raised after getting building plans sanctioned from the concerned authority. The appellant has no where averred that he had raised the structure after getting a building plan duly sanctioned by the concerned authority. The mere fact that the shop was given a number is not at all relevant in the facts of the case.

25. Learned counsel then argued that some lands which had been earlier notified for acquisition have been released by the Government as late as on 9th January, 2004 exercising its powers under Section 48 of the Act. This fact by itself does not justify the conclusion that there was discrimination in the matter of acquisition of land. It appears from the Notification produced before us that some of the lands in Darshani Bagh had to be released in the peculiar facts of the case. It appears that the Notification for acquisition had been earlier quashed by the High Court on August 11, 1997 but on a review petition being filed by the Chandigarh Administration, the earlier order allowing the writ petition was recalled on January 31, 2003 and thereafter an award was pronounced by the Land Acquisition Officer on March 5, 2003. During the interregnum of about 10 years from the date of issuance of Notification under Section 4 of the Act many constructions had come up on a portion of the acquired land. It was under these circumstances that those lands were exempted from acquisition in exercise of powers conferred by Section 48 of the Act.

26. We have considered the facts of the case and the material placed before us, since the issue raised before us was not argued before the High Court in the manner it was argued before us. That is why we find no categoric finding of the High Court on this issue. However, after considering the material on record we are satisfied that the appellant's plea that in the facts and circumstances his land should also have been exempted from acquisition has no merit.

27. We, therefore, find no merit in these appeals and they are accordingly dismissed. There shall be no order as to costs.

28. I.A. Nos.2 and 3 in Civil Appeal No.2567 of 2004 are dismissed. I.A. No.4 in Civil Appeal No.2569 of 2004 is rejected but without prejudice to the right of the applicant to seek remedy, if any, in accordance with law before the appropriate forum.

CASE NO.:
Appeal (civil) 5721-5725 of 2001

PETITIONER:
State of Punjab and others

RESPONDENT:
Sanjeet Singh Grewal and others

DATE OF JUDGMENT: 03/07/2007

BENCH:
B.P. SINGH & ALTAMAS KABIR

JUDGMENT:

J U D G M E N T

CIVIL APPEAL NOS. 5721-5725 OF 2001
State of Punjab and others ?.Appellants
Versus
Sanjeet Singh Grewal and others ?.Respondents
WITH
CIVIL APPEAL NOS. 5727-5731 OF 2001
New Town Planning and Development
Authority for Anandgarh through
Chief Administrator ?.Appellant
Versus
The Securities and Exchange
Board of India and others ?.Respondents
AND
SPECIAL LEAVE PETITION (C) NO.7946 OF 2002
State of Punjab and others ?.Petitioners
Versus
Jasmer Singh and others ?.Respondents

B.P.SINGH, J.

1. In this batch of Civil Appeals by Special Leave the common judgment and order of the High Court of Punjab and Haryana at Chandigarh dated March 28, 2001 in Civil Writ Petition Nos. 7291, 8708, 9047, 9143 and 16738 of 2000 has been impugned. Civil Appeal Nos.5721 - 5725 of 2001 have been preferred by the State of Punjab while Civil Appeal Nos.5727- 5731 of 2001 have been preferred by the New Town Planning and Development Authority for Anandgarh. Special Leave Petition No.7946 of 2000 has been preferred against the order of the High Court dated September 10, 2001 in Civil Writ Petition No.7050 of 2001 adjourning the writ petition sine die awaiting the judgment of this Court in the aforesaid Civil Appeals. By this common judgment and order we proceed to dispose of all the appeals before us as also the Special Leave Petition.

2. The facts of the case are not in dispute. The State of Punjab issued Notifications Exhibits P-1 to P-29 dated March 13, 2000 under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as 'the Act') for acquisition of about 9354 acres of land in 29 villages of the district of Ropar. The acquisition was proposed to be made for "a public purpose namely for setting up of new town, Anandgarh". Objections were invited against the proposed acquisition. Several writ petitions were filed before the High Court challenging the aforesaid Notifications alleging that the Notifications had been issued in derogation of the provisions of the Punjab

Regional and Town Planning and Development Act, 1995 (hereinafter referred to as 'the Act of 1995'). It was stated that to set up a new town, the site had first to be selected by the Board constituted under the Act of 1995. The Board was thereafter required to designate a planning agency. This was not done. The provisions of Sections 56, 57, 58 and 59 of the Act of 1995 were completely ignored. Though the New Town Planning and Development Authority for Anandgarh was constituted by the Government on May 20, 1999 under Section 31 of the Act of 1995, in the absence of a decision of the Board under Sections 56 and 57 of the Act of 1995, the aforesaid Special Town Planning Authority for Anandgarh could not take up the planning and development of the new township. It was alleged that a large number of influential persons including senior bureaucrats had bought land in the area with a view to earn profit since the Government had announced compensation at an exorbitant rate. It was also submitted that the provisions of the Punjab New Capital (Periphery) Control Act, 1952 (hereinafter referred to as 'the Periphery Act') and the rules framed thereunder have been violated. Apart from these legal submissions it was also urged that the site was not suitable for a new town.

3. The appellants (respondents in the writ petitions) contested the writ petitions and submitted that the State Government having taken a decision to set up a new township Anandgarh, and having appointed a Special Planning Authority under Section 31 of the Act, the Board had no role to play in the matter and it was not necessary that the Board should have first selected a site and designated a planning agency before the Special Planning Authority could take any action for planning and development of the new township. It was also submitted that the Periphery Act did not inhibit the State of Punjab from acquiring land in the controlled area under the Periphery Act for the purpose of setting up a township.

4. Having regard to the submissions urged before it the High Court formulated the following questions which fell for its consideration:-

"(i) Are the provisions of the Punjab Regional and Town Planning and Development Act, 1995 applicable to and attracted in the facts and circumstances of the present case?

(ii) If yes, have the provisions of the 1995 Act been followed in the present case? Does the selection of the site for setting up the city of Anandgarh conform to the requirements of the statute?

(iii) Have the respondents acted in violation of the provisions of the Punjab New Capital (Periphery) Control Act, 1952 and the Rules framed thereunder?

(iv) Is the action of the respondents based on extraneous considerations and vitiated by malafides?

(v) Have the petitioners made out a case for interference by this court under article 226 of the Constitution of India?

5. The High Court rejected the submission urged on behalf of the State that the Act of 1995, particularly Section 56 thereof, was not applicable when acquisition was made under the Land Acquisition Act, since the two acts operated in two distinct and separate fields, and that the provisions of the Act of 1995 were applicable only when the Master Plan was sought to be implemented without acquisition of land. The High Court held that admittedly the Board under Section 56 of the Act had not selected the site for the new township after considering the objections and suggestionsas provided therein, nor did the Government ever consult the Board in the matter. It rejected the argument of the State that the Act of 1995 was applicable only when compensation was not payable. It further held that the Government itself proceeded on the basis that the Act of 1995 was applicable inasmuch as it proceeded to implement its scheme through The New Town Planning and Development Authority for Anandgarh constituted under Section 31 of the Act of 1995 and it was on the recommendation of the aforesaid authority that land was sought to be acquired under Section 42 of the Act of 1995. It therefore held that the Act of 1995 was applicable.

6. Considering the question whether the provisions of the 1995 Act were followed, it noticed the concession made by the State that the matter with regard to the selection of site for the new township was never referred to the Board. The New Town Planning and Development Authority for Anandgarh constituted under Section 31 of the Act had considered three sites and forwarded its recommendation to the Chief Town Planner who after examination of the matter selected the site in question. The matter was placed before the State Cabinet for its approval which was granted on January 12, 2000. On February 24, 2000 the aforesaid development authority requested the State Government to acquire the lands in question and accordingly the impugned Notifications were issued on March 13, 2000 under Section 4 of the Land Acquisition Act. The High Court after considering the Scheme of the Act upheld the contention urged on behalf of the writ petitioners that only the Board constituted under Section 3 of the Act of 1995 could, in exercise of its authority under Sections 14 and 56 of the Act read with Rule 22, take a decision regarding the selection of the site for a new town. Only thereafter further action could be taken by the State for constituting a Special Agency for the planning and development of the new town under

Section 31 of the Act and which Agency could take further action for the said purpose as was considered necessary. The High Court recorded its findings as under:-

"On a cumulative consideration of the provisions of the Act, it appears clear to us that the act entrusts the task of selecting the site for a new town to the Board. Thereafter, a Master Plan has to be prepared in accordance with the prescribed procedure. After the Master Plan is ready, the government is competent to constitute a special agency for the planning and development of the new town. At the asking of this authority, the government can proceed to acquire the land. Thus despite the provision for the constitution of a Special Authority, the Board cannot be by-passed. The selection of site is the job assigned to the Board. This is so obviously because it has and can associate experts. It can get assistance from others".

7. Accordingly, the High Court held that the State action did not conform to the requirements of the Act of 1995 and thus could not be sustained.

8. The High Court held that the provisions of the Periphery Act, 1952 had also been violated. It concluded that though Section 10 did not affect the power of the Government or any other authority to acquire land in the controlled area under any other law for the time being in force, yet the bar contained in Section 5 prohibited the erection or buildings or making of roads even under the garb of establishing a new town without permission of the competent authority under the Periphery Act. No such permission had been taken by the Government and yet the land was sought to be acquired for the purpose of setting up a new town. On the question of mala fide the High Court did not record a categoric finding and gave to the State the benefit of doubt.

9. Lastly, the High Court held that in the facts and circumstances of the case the writ petitioners were entitled to relief under Article 226 of the Constitution of India.

10. In the end the High Court recorded its conclusions in the following words:-

"(i) Nature is beautiful. But it demands obedience to its ordinances. When violated, the earth erupts and we have earthquakes. Man cannot continue to 'pick nature's pocket'. He cannot raise multi-storeyed monsters of steel and cement at every place. All places cannot be suitable for a new city.

(ii) Recognising the need for a multi-disciplinary consideration, the legislature had enacted the "Punjab Regional and Town Planning and Development Act, 1995" and provided for the constitution of the Board and other Authorities. The Board consists of persons who have knowledge or experience in the fields of engineering, housing, town planning and urban development. It can associate others for the efficient performance of its onerous functions.

(iii) While embarking upon the project of the new town 'Anandgarh', the State has not shown even a scant regard for the salutary provisions of the statute. It has acted against the express letter and spirit of the Act. It has not allowed the Board to perform its functions. In particular, it has not let the Board 'select the site' for the new city. It has acted in contravention of the statute.

(iv) In the process, the government has deprived the citizen of the opportunity to put forth the objections/ suggestions and denied itself the benefit of good advice.

(v) The mere fact that the government finds the procedure prescribed by the Act and the Rules to be lengthy or cumbersome and such as can result in delay cannot be a ground to avoid obedience to the provisions of law. The courts cannot allow 'time' taken in complying with the provisions to become the graveyard of good laws or peoples' rights.

(vi) The State government has also failed to consider the objections raised and the relevant suggestions made by the Union Ministries of Defence and Urban Development. Its action is likely to finish the farms and farmers who live in the periphery of Chandigarh.

(vii) The State government has proceeded to acquire land without obtaining permission from the competent authority under the provisions of the Punjab New Capital (Periphery) Control Act, 1952 and the Rules. Thus, it has proceeded to acquire land without being entitled to raise any construction or even lay any roads. The entire proceedings can prove to be an exercise in futility.

(viii) The courts do not count heads. The mere fact that the petitioners are few in number or that their holdings are small is no ground to deny them the relief as prayed for in these petitions. Even the poor are the God's children.

(ix) There is a suspicion surrounding the action of the State Government in acquiring the land. There is a smell. But not a stink. Suspicion is not enough to uphold the plea of mala fides. Thus, the respondents are entitled to a benefit of doubt when the entire acquisition is challenged on the ground of extraneous considerations.

(x) The State is undoubtedly trying to keep its head up and the expenses down. However, its ability to gather the resources to pay for the land and to develop it, is extremely suspect and it's wisdom doubtful".

11. The High Court therefore struck down the impugned Notifications issued under Section 4 of the Land Acquisition Act and allowed the writ petitions.

12. The learned Advocate General for the State of Punjab assailing the impugned judgment and order of the High Court submitted that the High Court committed a basic error in coming to the conclusion that it was only the Board constituted under Section 3 of the Act of 1995 which could select the site for a new town and take all necessary action in connection therewith, and further that the selection of a site could be challenged by any person not necessarily an owner of land sought to be acquired. He took us to the scheme of the Act of 1995 as also some provisions of the Periphery Act. He described the Act of 1995 as a futuristic legislation providing for modern planning and urban development with multi level institutions. According to him Section 14 of the Act which laid down the functions of the Board did not mandate that the site of a new town must be selected by the Board. In fact there was no other provision in the Act of 1995 to this effect. Sections 56, 57 and 61 of the Act permitted the Government to decide where the new township should be located and the State Government was not compelled to confine its choice to locations selected by any other authority under the Act. The State Government is not required mandatorily to entrust the duty of selection of the site of a new town to the Board. In fact under Section 28 of the Act the State Government or the Board may entrust any of the authorities to do any work for carrying out the purposes of the Act. The powers that could be entrusted to the PUDA under Section 28 of the Act by the State Government and the Board could also be entrusted to the New Town Planning and Development Authority

constituted under Section 31 of the Act. Indeed the State Government had constituted the New Town Planning and Development Authority for Anandgarh under Section 31 of the Act and therefore it was for the said Town Planning and Development Authority to select the site and to plan and develop the new township. For this purpose it could request the State Government to acquire lands as provided in Section 42 of the Act. He further emphasized that the power of the Board was only advisory in nature. The State Government could entrust any work to any of the authorities under the Act. Power of the State was not fettered even in the matter of selection of site and planning and development of a new township. The Town Planning and Development Authority for Anandgarh was actually entrusted to do all this and there was, therefore, no need for the Board to be called upon to select the site and take other steps. In fact the New Town Planning and Development Authority for Anandgarh was constituted under Section 31 of the Act of 1995 on May 20, 1999 which recommended the acquisition of the lands in question pursuant to which Notifications were issued under Section 4 of the Land Acquisition Act on March 13, 2000.

13. Shri Sanjiv Sharma, learned Additional Advocate General, in his supplementing arguments submitted that since the functions of PUDA under Section 28 of the Act could be entrusted to the Special Urban Planning and Development Authority constituted under Section 29 and the New Town Planning and Development Authority under Section 31 of the Act of 1995, the Board constituted under Section 3 of the Act did not come into the picture at all. He also emphasized the fact that the challenge was to the Notifications issued under Section 4 of the Land Acquisition Act asking not for a writ of mandamus but for quashing the Notifications on the ground that there existed no valid and legal public purpose for which the acquisition was purported to be made. According to him the scheme of the Act left no room for doubt that the powers of the State Government were wide enough to include selection of the site for a new town. Indeed the Board had no mechanism for selecting an appropriate site for a new town and, therefore, the State Government followed the route of Sections 28, 38 and 42 of the Act of 1995 i.e. by conferring on the New Town Planning and Development Authority constituted under Section 31 of the Act the powers and functions of PUDA under section 28 of the Act, and then acquiring the land on the recommendation of the New Town Planning and Development Authority under Section 42 of the Act of 1995. He further submitted that if the High Court was right in its opinion the State would be compelled to first move the Board for the purpose of selection of site. This was wholly unnecessary because in all cases the sanctioning authority being the State, its powers and authority must be interpreted in that larger perspective. He also submitted that there was no requirement in law that a detailed plan complete in all respects must precede the acquisition under the Land Acquisition Act. He also

emphasized the provisions of Section 10 of the Perphiery Act and submitted that the State was not inhibited from acquiring lands which came within the controlled area under the Periphery Act, and this was made explicit by Section 10 of the Periphery Act.

14. Mr. Vikas Singh, learned Additional Solicitor General, appearing for PUDA in SLP) No. 7946 of 2002 submitted that the High Court adjourned the matter sine die awaiting the judgment of this Court in view of the fact that it found certain common questions arising in the Writ Petition. However, he also made his submission on merit since the principles laid down in this batch of appeals may apply to the matter pending before the High Court. According to him the acquisition is sought to be made under the Land Acquisition Act. Section 56 does not at all contemplate compulsory acquisition. The High Court proceeded on the erroneous basis that the scheme should first be formulated and only thereafter the acquisition of land could be made. This completely ignored the State's power of eminent domain. The State is not denuded of its power to acquire land merely because under the scheme of some other Act a Board is constituted to select the site for setting up a new town. He referred to the Scheme of Chapter XI of the Act of 1995 and submitted that the State may be compelled to acquire land under Section 84 of the Act. In this connection he also referred to Section 71(3)(f) of the Act of 1995 which provides that the Draft Comprehensive Master Plan may designate land subject to acquisition for any public purpose. He, therefore, submitted that the power of eminent domain under the Land Acquisition Act cannot be curtailed by the Act of 1995 or any other Act. According to him after the selection of site for a new town under Section 56 of the Act of 1995 there is no provision for compulsory acquisition of land. The site may be selected by the State as well as by the Board constituted under Section 3 of the Act of 1995. Where the compulsory acquisition route is followed the only procedure for acquisition is the one under the Land Acquisition Act. He buttressed his submission by emphasizing that in case the Board did not act to select the site, the State will be rendered powerless. The price of land may go up to such an extent that it may become practically impossible to acquire land for the said purpose. He also cited authorities in support of his submissions which we shall consider later in this judgment.

15. Mr. J.S. Grewal, learned Senior Counsel, appearing on behalf of the respondents referred to the background in which the Act of 1995 was enacted. He submitted that under the old Punjab Housing Development Board Act 1952 the Board did not include any Minister or public figure. The Board consisted of officials of the State Government. Under the Act of 1995 the Board is a high power Board presided over by the Chief Minister of the State. He submitted that the planning area as well as the planning agency has to be declared and designated by the Board. The Board has a very vital role to play

since it is the apex authority under the Act. He submitted that if any land is to be acquired under the Act of 1995, that must be done in accordance with the procedure laid down for that purpose in the Act. He, therefore, submitted that when any land is acquired for the purpose of any authority under the Act of 1995, the State Government may at the request of the authority concerned proceed to acquire land under the provisions of the Land Acquisition Act. On payment by the authority of compensation awarded under the Land Acquisition Act and of any other charges incurred in acquiring the land, the land shall vest in the authority. He emphasised the overriding effect of the Act of 1995 and referred to Section 179 thereof. He contended that for setting up a new township provisions are made only in the Act of 1995 and, therefore, the provisions of the special Act must be scrupulously followed. He did not dispute the State's power of eminent domain and submitted that in appropriate cases the State may acquire lands for public purposes. However, if the land has to be acquired under Section 42 of the Act of 1995 it must be acquired for the purpose of the authority under the Act. If the land is to be acquired to set up a new town as stated in the impugned notifications the site must be selected in accordance with the provisions of the Act of 1995. He did not dispute that if the Government proposes to acquire any land under the Land Acquisition Act for any purpose not covered by the Act of 1995, the provisions thereof will not be attracted. In the instant case, he submitted that the site was in fact selected by the New Town Planning Development Authority constituted under Section 31 of the Act and not by the Board. This was clearly contrary to the provisions of Section 56 which in terms provided that it was the Board which was authorized to declare its intention by issuance of Notification in the Official Gazette to specify any area in the State to be a regional planning area, a local planning area or the site for a new town. Thereafter it was again the Board which could designate the planning agency for that area for the purpose of performance of the functions assigned to it. Thus, so far as the selection of site for a new town is concerned, the site has to be identified by the Board and after hearing objections the Board could declare the site for a new town. He further drew a distinction between the selection of a site for a new town, and preparation of plans for development of the selected site. The planning may be entrusted by the Board to any of the authorities under the Act who may be called upon by the State Government or the Board to take up the work in connection with the preparation and implementation of regional plans, master plans, new township plans, schemes etc. According to him before any of the authorities could be called upon to do so, in the case of setting up of a new town, the existence of a selected site was a pre-condition because no development could take place unless the site was first selected. He, therefore, fully supported the findings of the High Court and submitted that in the absence of a validly selected site for a new township by the Board, no planning and development work could be entrusted to any of the authorities under the Act. The selection of site which amounted to declaration of a planning area was entrusted to the Board under Section 56 of the Act and the authority constituted under Section 31 for the development of the township could not be entrusted with the task of selecting the site and declaring a planning area.

16. To appreciate the submissions urged on behalf of the parties it is necessary to notice some of the salient provisions of the Act of 1996. The Act purports to be:-

"An Act to make provision for better planning and regulating the development and use of land in Planning areas delineated for that purpose, for preparation of Regional Plans and Master Plans and implementation thereof; for the constitution of a State Regional and Town Planning and Development Board, for guiding and directing the planning and development processes in the State; for the constitution of a State Urban Planning and Development Authority. Special Urban Planning and Development Authorities and New Town Planning and Development Authorities, for the effective and planned development of planning areas; and for undertaking urban development and housing programmes and schemes for establishing new towns; and for matters connected therewith or incidental thereto".

"Authority" has been defined as follows :-

2(d) "Authority" means the Punjab Urban Planning and Development Authority constituted under Section 17 or a Special Urban Planning and Development Authority constituted under Section 29 or a New Town Planning and Development Authority constituted under Section 31."

Sections 2(za) and 2(zb) define the "planning agency" and the "planning area":-

"2(za) "Planning Agency" means the Punjab Urban Planning and Development Authority, a Special Urban Planning and Development Authority, a New Town Planning and Development Authority, a local authority or the Town and Country Planning Wing of the Department of Housing and Urban Development, designated as such by the Board under Section 57 of this Act for a planning area.

2(zb) "planning area" means a regional planning area, a local planning area or a site for a new town declared as such under Section 56 of this Act."

17. The Punjab Regional and Town Planning and Development Board is established under Section 3 of the Act of 1995. Section 3 reads as under:-

"3. Establishment of the Board. ? As soon as may be, after the commencement of this Act, the State Government shall, by notification in the Official Gazette, establish for the purposes of carrying out the functions assigned to it under this Act, a Board to be called the Punjab Regional and Town Planning and Development Board".

18. Section 4 provides for the constitution of the Board which shall consist of a Chairman, Vice Chairman, a Member Secretary , not more than 12 ex officio members to be nominated by the State Government from amongst the Ministers including the Minister-in-charge of Housing and Urban Development and Local Government and the Secretaries to Government of Punjab etc. and not more than three non-official members to be nominated by the State Government. The Chief Minister of Punjab and the Minister-in-Charge of Housing and Urban Development shall be respectively the Chairman and the Vice-Chairman of the Board. The functions of the Board are contained in Section 14 which provides as under :-

"14. Functions of the Board:- (1) Subject to the provisions of the Act and rules framed thereunder, the functions of the Board shall be to advise the State Government and to guide and direct the planning agencies, with respect to matters relating to the planning, development and use of urban and rural land in the State, and to perform such other functions as the State Government, from time to time, assign to it".

(2) In particular and without prejudice to the generality of the foregoing provisions, the Board may and shall, if required by the State Government .-

(a) determine the regions, cities, towns, or a part of a city or a site for new town or preparation of Regional Plans or Master Plans ;

(b) direct the preparation of Regional Plans or Master Plans or other documents necessary therefor to be prepared by any of the Planning Agencies ;

(c) undertake, direct or advise on all matters pertaining to the coordination in the planning and implementation of physical development programme ;

(d) collect, maintain and publish statistics and monographs on regional and town planning and perform any other functions which are supplemental, incidental or consequential to any of the functions referred to in this sub-section or which may be prescribed."

19. It would thus be seen that the Board constituted under Section 3 of the Act is a high-powered authority with the Chief Minister at its head. It is no doubt true that the Board may be called upon by the State Government to do certain things as are enumerated in sub-section (2) of Section 14, but it is equally true that even without the directions of the State Government the Board may itself perform those functions. Section 14 does say that the functions of the Board shall be to advise the State Government and to guide and direct the planning agencies and to perform such other functions as the State Government, from time to time, assign to it. This, however, should not lead to the conclusion that the Board, a statutory authority, can be ignored by the State Government altogether. It may be that the advice tendered by the Board may not be acceptable to the State Government, but that is quite different from suggesting that having regard to the overriding powers of the State Government the Board may not be consulted at all even with regard to the matters and functions which it is required to perform under the Act. It is also worth noticing that the matters referred to in Clause (a) include the determination by the Board of a site for new town. While the Board may under Clause (b) direct the other planning agencies to prepare the Regional Plans or Master Plans, determination of a site for new town cannot be delegated by the Board to the planning agencies. The functions to be performed by the Board as enumerated in Section 14 are not exhaustive, and cannot be, by the very nature of the functions to be performed by the Board. Section 14 should not be read in isolation. The other provisions of the Act have also to be read to understand the powers and authority of the Board, and one such provision is Section 56 of the Act. It is useful at this stage to notice the provisions of Sections 56 and 57, which are as under:-

"56. Declaration of Planning Areas. — (1) The Board may, from time to time, by notification in the Official

Gazette, declare its intention to specify any area in the State to be a regional planning area, a local planning area or the site for a new town (hereinafter referred to as the planning area).

(2) Before making the declaration under sub-section (1) the Board may take into consideration such matters as may be prescribed.

(3) Every notification published under sub-section (1) shall define the limits of the area to which it relates.

(4) Any person including representative of a Department of the State Government or the Central Government or a local authority or any other institution may, within sixty days from the date of the publication of the notification under sub-section (1), submit any objections or suggestions in writing relating to anything contained in that notification, to the Board and the Board shall consider all such objections and suggestions.

(5) After the expiry of two months from the date of publication of the notification under sub-section (1) and after considering objections and suggestions, if any, received under sub-section (4), the Board may, by notification in the Official Gazette,-

(a) declare the area with or without any modification to be a regional planning area, a local planning area or a site for a new town, as the case may be ; and

(b) specify the name of the regional planning area or the local planning area or a site for the new town, as the case may be.

(6) Except in such class or category of cases which the Board may in its regulation exempt and except in the case of operational construction or construction in any area comprised in abadi-deh of any village falling inside its lal lakir or phirni, no person shall, on or after publication of public notice under sub-section (5) and till the date the Regional Plan or the Master Plan comes into operation under Section 64 or under Section 75, as the case may be, institute or change the use of land for any purpose or carry out any development in respect of any land without the

previous permission of the Competent Authority and the provisions of Sections 67 and 68 mutatis mutandis shall apply to the grant of such permission.

(7) The Board may, after following the procedure as laid down in this section, alter the limits of any regional planning area, local planning area or the site for a new town.

57. Designation of Planning Agencies. � As soon as may be after declaration of a regional planning area, a local planning area or a site for new town, the Board may for the purpose of the performance of the functions assigned to it, designate planning agency for that area :.

Provided that more than one planning agencies may be designated to perform different functions."

20. A mere perusal of these provisions amply clarifies that the Board has been authorized to declare its intention to specify any area in the State :-

(i) to be a regional planning area ;
(ii) a local planning area ; and
(ii) a site for a new town.

An area so specified is referred to as "the planning area". Thus what applies to a planning area such as a site for a new town, also applies to a regional planning area or a local planning area. The planning area undoubtedly has to be declared by the Board after following the procedure laid down in Section 56. Before making a declaration of its intention to specify a planning area under sub-section (1) the Board has to consider such matters as may be prescribed under the rules. The limits of the specified area have to be clearly defined and a Notification published in the Official Gazette declaring the intention of the Board to specify a planning area. Under sub-section (4) of Section 56 objections and/or suggestions may be made which have to be considered by the Board, whereafter the Board may by Notification in the Official Gazette declare the area with or without any modification to be a regional planning area, a local planning area or a site for a new town, as the case may be. It is further required to specify the name of the planning area so declared. Having done so, the Board is required to designate the planning agency for that area for the purpose of performance of the functions assigned to it.

21. On a perusal of Sections 56 and 57 of the Act of 1995 we entertain no doubt that it is the Board which has to, by Notification in

the Official Gazette, specify an area as a regional planning area, a local planning area or a site for a new town clearly defining the limits of the area. After considering the objections and suggestions that may be received by it the Board may with or without modifications declare the area to be a planning area by Notification in the Official Gazette, and thereafter appoint a planning agency for performance of the functions related thereto. No provision of the Act has been shown to us which authorizes any other agency or authority under the Act to declare a planning area which includes the site for a new town. This function has to be performed only by the Board and that too after entertaining objections and suggestions and considering them in accordance with the Act and the Rules. Not only individuals but even representatives of the departments of the State Government or the Central Government or a local authority or any other institution may submit its objections or suggestions relating to anything contained in the Notification. So construed, in the case of setting up of a new township, the first step to be taken by the Board is to declare a planning area viz. select a site for the new town after entertaining objections and considering the same. Thereafter the Board may designate the planning agency for the purposes of performance of the functions assigned to it. There is nothing in Sections 56 and 57 which can persuade us to hold that the planning agency itself may select the site for a new town. This would become apparent after we consider some of the other provisions of the Act.

22. Section 17 provides for the establishment and constitution of the Authority to be known as the Punjab Urban Planning and Development Authority (PUDA for short). The authority is a body corporate as well as a local authority. The Minister-in-Charge of Housing and Urban Development is its Chairman. The functions of the authority are enumerated in Section 28 which reads as follows :-

"28. Objects and functions of the Authority (1) The objects of the Authority shall be to promote and secure better planning and development of any area of the State and for that purpose the Authority shall have the powers to acquire by way of purchase, transfer, exchange or gift or to hold, manage, plan develop and mortgage or otherwise dispose of land or other property or to carry out itself or in collaboration with any other agency or through any other agency on its behalf, building, engineering, mining and other operations to execute works in connection with supply of water, disposal of sewerage, control of pollution and other services and amenities and generally to do anything with the prior approval or on direction of the State Government, for carrying out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing provisions, the Authority itself or in collaboration with any other agency or through any other agency on its behalf. -

(i) if so required by the State Government or the Board, take up the works in connection with the preparation and implementation of Regional Plans, Master Plans and New Township Plans, and town improvement schemes;

(ii) undertake the work relating to the amenities and services to be provided in the urban areas, urban estates, promotion of urban development as well as construction of houses.

(iii) promote research, development of new techniques of planning, land development and house construction and manufacture of building material;

(iv) promote companies, associations and other bodies for carrying out the purposes of the Act; and

(v) perform any other functions which are supplemental, incidental or consequential to any of the functions referred to in this sub-section or which may be prescribed".

23. Clause (1) of sub-section (2) of Section 28 is significant. It provides that the State Government or the Board may require the authority (PUDA) to take up the works in connection with the preparation and implementation of Regional Plans, Master Plans and New Township Plans, and town improvement schemes. It does not empower PUDA to declare the site for a new town as a planning area though it is authorized to prepare and implement new township plans. It can, therefore, be safely concluded that after a site for a new town is selected by the Board and declared as a planning area in exercise of its powers under Section 56 of the Act, the authority designated as the planning agency for that area, can take up the works in connection with the preparation and implementation of new township plans.

24. Section 29 provides for the constitution of Special Urban Planning and Development Authorities. The Special Authority is constituted if the State Government is of the opinion that the object of proper development of any area or group of areas together with such adjacent areas as may be considered necessary will be best served by

entrusting the work of development or redevelopment thereto to a Special Authority, instead of PUDA. Where the State Government is so satisfied it may, by Notification, constitute such a Special Authority for that area and thereupon, all the powers and functions of PUDA relating to development and redevelopment of that area under the Act shall be exercised and performed by the Special Authority so constituted. Section 29, therefore, enables the State Government to constitute a Special Urban Planning and Development Authority for the proper development of an area or a group of areas. The Special Authority so constituted has all the powers of PUDA relating to development and redevelopment of that area.

25. Under Section 30 it is also open to the State Government to designate a local authority as Special Urban Planning and Development Authority and confer upon it all the powers and functions of PUDA.

26. Apart from PUDA and Special Urban Planning and Development Authority, Section 31 provides for the constitution of a special authority described as the New Town Planning and Development Authority. Sections 31 reads as follows :-

31. "New Town Planning and Development Authority: (1) Where the State Government is of opinion that object of proper planning and development of a site of a new town will be best served by entrusting the work of development thereof to a Special Authority, instead to the Punjab Urban Planning Authority, it may, by notification, constitute a Special Authority for that site to be called the New Town Planning and Development Authority and thereupon, all the powers and the functions of the Punjab Urban Planning and Development Authority relating to the development of that site of the new town under this Act shall be exercised and performed by such New Town Planning and Development Authority.

(2) A New Town Planning and Development Authority constituted under sub-section (1), shall be a body corporate as well as local authority by the name aforesaid having perpetual succession and a common seal, with power to acquire, hold and dispose of property, both movable and immovable and to contract, and by the said name sue and be sued.

(3) A New Town Planning and Development Authority will consist of the following members, namely :-

(i) a Chairman,

(ii) a Chief Administrator who shall be appointed amongst the officers of the Government of Punjab having such qualifications and experience as may be prescribed; and

(iii) other members not exceeding ten to be appointed by the State Government.

(4) The provisions of this shall mutatis mutandis apply to a New Town Planning and Development authority as they apply in relation to the Punjab Urban Planning and Development Authority, with the modification that references to the Punjab Urban Planning and Development Authority shall be construed as references to a New Town Planning and Development Authority".

27. It is under this provision that the State Government proceeded to constitute the New Town Planning and Development Authority for Anandgarh on May 20, 1999. A reading of the provision clarifies that the New Town Planning and Development Authority is constituted with the object of proper planning and development of a site for new town. It is with this in view that Section 32 entrusts the New Town Planning and Development Authority with the duty to plan and develop the site of a new town. It is for this purpose that all the powers and functions of PUDA relating to the development of the site of a new town are to be exercised and performed by the said New Town Planning and Development Authority. The fact that it is entrusted with the task of proper planning and development of a site of a new town itself pre-supposes the existence of a selected site. Neither the PUDA nor the authority constituted under Section 17 nor the New Town Planning and Development Authority constituted under Section 31 is vested with the power to declare a planning area such as a site of a new town. On the other hand Section 56 clearly vests the power to declare a planning area in the Board, and the site of a new town is one such planning area, apart from regional planning area and local planning area. This has to be done, as we have earlier noticed, after considering the objections to the Notification declaring an intention to specify an area as a site for a new town defining its limits. Sub-section (e) of Section 56 mandates that every Notification declaring the Board's intention to specify an area as the site for a new town must define the limits of the area to which it relates. Obviously, therefore, the Notification issued under sub-section (1) of Section 56 declaring the intention of the Board to specify an area as the site for a new town must define the

limits of the area to which it relates meaning thereby that the Board must while declaring its intention to specify an area as a planning area give all the necessary particulars as required under sub-section (1) of Section 56 and consider the objections thereto. From the very scheme of the Act of 1995, and having regard to the clear provisions of Section 56 thereof, there can be no doubt that the planning area has to be declared by the Board with specificity and only after considering the objections and suggestions made. One of the authorities may be entrusted with the task of planning and developing that area which may involve preparation of master plans, zonal plans etc. The role of a planning agency commences only after a planning area is declared by the Board.

28. Having considered some of the important provisions of the Act of 1995 we shall now consider the submission urged on behalf of the appellants that the provisions of the Act of 1995 were not at all applicable to the acquisition in question. This submission must be rejected. It is not disputed that the land was sought to be acquired for setting up a new town. Admittedly, the impugned Notifications were issued at the behest of the Special Planning Agency constituted under Section 31 of the Act of 1995 invoking Section 42 of the Act which provides for acquisition of land for the purposes of the authority under the Act. The State Government exercising its power under Section 31 of the Act of 1995 constituted the New Town Planning and Development Authority, Anandgarh. It was this authority which made its recommendation to the State Government which was approved by the State Government. For the acquisition Section 42 of the Act of 1995 was invoked. In this factual background it is futile to contend that the provisions of Act of 1995 are not applicable to the acquisition in question. We agree with the High Court that the provisions of the Act of 1995 are clearly attracted to the acquisition in question, since the acquisition was for planning and development of a planning area under the Act of 1955.

29. We may also consider the submissions urged by the learned Additional Solicitor General at this stage. He submitted that the acquisition was sought to be made under the provisions of the Land Acquisition Act. According to him Section 56 of the Act of 1995 does not contemplate compulsory acquisition of land. The submission overlooks the fact that the various schemes contemplated by the Act of 1995 may, for their implementation, involve acquisition of land. It may be that some of the schemes within the contemplation of the Act of 1995 may not involve acquisition of land. This, however, does not justify the very wide submission that no acquisition of land is at all contemplated in connection with schemes declared under Section 56 of the Act. Depending on the nature of scheme framed for implementation, the planning authority may require land for its purposes and may, therefore, request the Government to invoke Section 42 of the Act which provides for acquisition of land for the

purposes of the authority under the Act applying the provisions of the Land Acquisition Act. In this case admittedly the Planning Authority constituted under Section 31 of the Act requested the Government to acquire the lands in question by invoking Section 42 of the Act, for the purpose of setting up a new town, Anandgarh. The Scheme with which we are concerned in the instant case, therefore did involve acquisition of land and the Government did in fact issue the impugned Notifications for acquisition of land for the purposes of the aforesaid New Town Scheme.

30. The learned Additional Solicitor General also submitted that the High Court proceeded on the erroneous basis that a Scheme should first be formulated in detail before acquisition of land. We do not find that the High Court has committed such error. The High Court did not hold the acquisition to be bad on the ground that a detailed scheme had not been prepared, but on the ground that there was no valid scheme at all, and consequently no valid public purpose justifying the acquisition.

31. It was then contended that the State in exercise of its power of eminent domain may acquire lands under Section 4 of the Land Acquisition Act and it is not denuded of its power to acquire land merely because under the Scheme of some other Act a certain procedure had been prescribed for acquisition of land. In the facts of this case we are not persuaded to accept this submission. In the instant case, the lands were sought to be acquired for the purpose of implementation of a New Town Scheme and, therefore, the procedure laid down in the Act of 1995 had to be followed. The learned Additional Solicitor General submitted that if this be the correct legal position the State may be powerless in case the Board under the Act of 1995 did not select a site for a new town. This submission also has no force because under sub-section (2) of Section 14 of the Act of 1995, if required by the State Government the Board is bound to select a site for a new town. In the instant case, the State never called upon the Board to select a site, and instead a New Town Planning and Development Authority was constituted under Section 31 of the Act which arrogated to itself the powers and functions of the Board to select a site and make a recommendation to the State Government.

32. Reliance was placed on the decision of this Court in Gandhi Grah Nirman Sahkari Samiti Ltd. & Others Vs. State of Rajasthan and Others : (1993) 2 SCC 662. In that case this Court considered Section 52 of the Rajasthan Urban Improvement Act, 1959 which provided for compulsory acquisition of land. The submission urged before this Court was that the framing of a scheme by the Trust under Chapter V of the Act was a sine qua non for invoking the provisions of Section 52 of the Act. The State Government had no authority to acquire land under Section 52 of the Act unless the same was required for the execution of a scheme framed and sanctioned

under Chapter V of the Act. This Court noticed the crux of the argument that the improvement in the urban area could only be carried out by executing the scheme framed under the Act and in no other way. This Court repelled the submission in the following words:-

"Under the scheme of the Act the improvement of the urban area can be undertaken by the Trust and also by any of the departments of the Government. The framing of the scheme becomes mandatory only when the work is undertaken by the Trust. The State Government, in any of its departments, may decide to develop the urban area under the Act and in that case it would not be necessary for the Government to have a scheme framed under Chapter V of the Act. The power of the State Government to acquire land under the Act has been designed to meet the scheme of the Act. Under Section 52 of the Act the land can be acquired by the State Government at the instance of the Trust, or a department of the Government or any prescribed authority. The plain language of Section 52(1) of the Act negates the contention raised by Mr. Shanti Bhushan. Where on a representation from the Trust or otherwise it appears to the State Government that any land is required for the purpose of improvement or for any other purpose under the Act it can acquire such land by issuing a notification under Section 52(1) of the Act. It is, thus, clear that the State Government has the power to acquire land either for the execution of the schemes framed by the Trust under Chapter V of the Act or for any other public purpose under the Act".

It will thus be seen that the decision rests on the interpretation of Section 52 of the Rajasthan Act which provided that the State Government may acquire land on a representation from the Trust, or even otherwise, if it appeared to the State Government that the land was required for the purpose of improvement or for any other purpose under the Act. So far as Section 42 of the Act of 1995 is concerned it provides as under:-

"42. Acquisition of Land.- (1) When any land other than the land owned by the Central Government is required for the purposes of the Authority under this Act, the State Government may, at the request of the Authority, proceed to acquire it under the provisions of Land Acquisition Act, 1894, and on payment by the Authority of the compensation awarded under that Act and of any other charges incurred in acquiring the land, the land shall vest in the Authority.

(2) For the purposes of the Land Acquisition Act, 1894, and any other law for the time being in force, the Authority shall be deemed to be a local authority"

The acquisition of land by invoking Section 42 is permitted only if a request is made by the authority to do so for purposes of the authority under this Act. The important words "or otherwise" found in the Rajasthan Act are missing in Section 42 of the Act of 1995. On a reading of the Section as a whole it appears that the State Government can proceed to acquire land under the provision of the Land Acquisition Act only at the request of the authority, that too for the purposes of the authority under the Act. There is nothing in the Section which may lead us to hold, as in the Rajasthan Case, that the State on its own satisfaction could acquire land for the purposes of any other scheme under the Act. The powers conferred by Section 52 of the Rajasthan Act are wider than the powers conferred on the State Government under Section 42 of the Act of 1995. The same view was reiterated in Pratap and Another Etc. Etc Vs. State of Rajasthan and Others Etc. Etc. : (1996) 3 SCC 1 and Jaipur Development Authority Vs. Sita Ram and Others : (1997) 3 SCC 522.

33. Reliance was also placed on the judgment of this Court in Ajay Krishan Shinghal and Others Vs. Union of India & Others : (1996) 10 SCC 721 submitting that the acquisition for planned development is a public purpose. Once a public purpose has been specified by the Government, the Notification under Section 4(1) of the Land Acquisition Act is not vitiated on account of the fact that planned development was not specified with particularization of the land in question needed for the public purpose. In the instant case the issue is quite different. The land has been acquired on the request of the New Town Planning Authority constituted under Section 31 of the Act for development of the new town of Anandgarh. The High Court has quashed the Notification not on the ground that the detailed scheme had not been specified in the Notification, but on the ground that they there did not exist any valid public purpose in the absence of a validly declared planning area, namely a site for a new town, by the competent authority by Notification in the Official Gazette under Section 56 of the Act of 1995.

34. The next important finding recorded by the High Court is that the provisions of the Act of 1995 were not followed in specifying and declaring the site for new town for which the land was sought to be acquired. We have earlier considered the various provisions of the Act of 1995 and we concur with the finding of the High Court that in specifying and declaring the planning area, namely the site for a new town, the various provisions of the Act were not complied with.

35. The power to declare a planning area, site for a new town being one of them, vests in the Board under Section 56 which power cannot be delegated by the Board to the authorities constituted under Sections 17, 29 or 31 of the Act of 1995. While notifying its intention to specify any area as a planning area, the Board must define the limits of the area to which it relates, meaning thereby that the area must be identifiable by reference to the definition of its limits. This is mandatory since objections and suggestions in relation thereto have to be considered by the Board. The submission of objections and suggestions in response to the Notification published under Section 56 (1) is not an empty formality and is mandatory in nature. The legislature advisedly incorporated such a provision since declaration of a planning area is a subject of public interest.

36. The Board, before notifying a planning area under Section 56(5) by Notification in the Official Gazette, must consider the objections and suggestions received by it in response to the Notification issued by it under Section 56(1) declaring its intention to specify any area as a planning area.

37. None of the other authorities constituted under Sections 28, 29 and 31 are vested with power to declare a planning area by Notification in the Official Gazette, but they may be authorized to function as a Planning Agency for the planning and development of the planning area by drawing up Schemes, Master Plans, Regional Plans and other documents.

38. In the instant case admittedly, the provisions of Section 56 were completely ignored and without declaring the planning area by Notification in the Official Gazette, and without following the procedure laid down therein, which included consideration of objections and suggestions from the public apart from Government departments, authorities and institutions, the authority constituted under Section 31 without authority of law selected a site for a new town and made its recommendation to the Government for its approval, and later moved the Government for acquisition of land under Section 42 of the Act of 1995. All these actions were in complete breach of the mandatory provisions of Section 56 of the Act, and therefore void.

39. The argument that the Government is the final authority and was not bound to consult the Board cannot be countenanced since that is in the teeth of the mandatory provisions of Section 56 of the Act. The Legislature having enacted a statute and expressly provided a procedure for declaration of a planning area, which involved consideration of objections and suggestions from the public and publication of the declaration in the Official Gazette, the State could not have adopted a different procedure in breach of express provisions, completely ignoring the existence of the Board, the apex authority under the Act, and obliterating the provision for public

participation in the matter of declaring a planning area.

40. We have, therefore, no hesitation in holding that the declaration of the planning area, a site for a new town, was never validly made by the competent authority after following the prescribed procedure and, therefore, there was in law no validly selected site for a new town, nor a validly declared planning area. Consequently, there was no justification for acquisition of land to set up a new town. The public purpose stated in the impugned Notifications was non-existent in view of the fact that there was no planning area validly declared by the competent authority for the development of which any land was required. Section 42 which provided for acquisition of land under the provisions of the Land Acquisition Act could not, therefore, be invoked, since Section 42 came into operation only when land was required for the purposes of the authority under the Act of 1995, and not for any other purpose.

41. The High Court has found that the acquisition was sought to be made in breach of the provisions of the Periphery Act of 1952. In view of the findings recorded by us earlier in this judgment, it is not necessary to go into this question and we, therefore, refrain from expressing any opinion in the matter. May be, in an appropriate case the question may have to be decided.

42. It was brought to our notice that a Notification dated February 21, 2002 was issued by the State Government (after the judgment was pronounced by the High Court), whereby the State Government decided to drop the project and dissolve the New Town Planning and Development Authority for Anandgarh exercising its powers under Section 34 read with Section 40(1) and 49(2) of the Act of 1995 and transferring the assets and liabilities to PUDA with effect from February 15, 2002. We do not consider it necessary to express any opinion in this regard, since it does not relate to the questions that arise for consideration in these appeals.

43. Special Leave Petition (C) No.7946 of 2002 is dismissed. The High Court shall now proceed to dispose of the writ petition in accordance with law.

44. The High Court has given to the State the benefit of doubt so far as the question of mala-fide is concerned. The High Court has, however, made certain observations. We have considered the material on record and find no justification for those observations. It may be that the State Government in its anxiety to set up the new town of Anandgarh acted with haste and in the process lost sight of some of the mandatory provisions of the Act of 1995. That however, does not justify the conclusion that the State had acted mala fide. The material on record does not justify even the observations made by the High Court in this regard and we, therefore, set aside those observations.

45. In the result, we find no merit in the appeals and they are accordingly dismissed without any order as to costs.

M/S. GIRNAR TRADERS V. STATE OF MAHARASHTRA & ORS [2007] INSC 869 (27 August 2007)

B.N. Agrawal & P.K. Balasubramanyan & P.P. NAOLEKAR

J U D G M E N T WITH
CIVIL APPEAL NO. 3922 of 2007 [arising out of S.L.P.(C) No. 11446 of 2005] M/s. S.P. Building Corporation & Anr. �� Appellants Versus State of Maharashtra & Ors. ��Respondents P.P. Naolekar, J.

1. We have had the benefit of perusing the judgment prepared by learned brother P.K. Balasubramanyan, J. in Civil Appeal No.3703 of 2003 titled M/s. Girnar Traders v. State of Maharashtra and Others, wherein learned brother has taken into consideration various decisions of this Court, including decisions delivered by 3-Judge Benches, and various aspects considered therein, and thought it proper to refer the question regarding interpretation and applicability of Section 11A introduced into the Land Acquisition Act, 1894 (for short �the LA Act�) by Amendment Act 68 of 1984 to the Maharashtra Regional and Town Planning Act, 1966 (for short �the MRTP Act�) for consideration by a larger Bench. A 3- Judge Bench of this Court in Nagpur Improvement Trust v. Vasantrao and Others, (2002) 7 SCC 657 and U.P. Avas Evam Vikas Parishad v. Jainul Islam and Another, (1998) 2 SCC 467, on interpretation of the provisions of the Acts under challenge, has held that the LA Act was incorporated in those statutes, that is, they were cases of legislation by incorporation and, therefore, the amendment brought about subsequently in the LA Act would not apply to the statutes in question. However, beneficial amendment of payment of compensation under the amended provisions of the LA Act was made applicable and the owner of the land was held to be entitled to the beneficial payment of compensation.

It appears, it was so held to save the Acts from the vice of arbitrary and hostile discrimination. There does not appear to be any justifiable reason for not applying this principle so far as it relates to the acquisition of land. If the land is not acquired within the stipulated time, then the whole proceedings in acquisition comes to an end, and thereby the owner of the land would be entitled to retain his land which appears to be the superior right than the owner�s right to get the compensation for acquisition of his land. A 2- Judge Bench of this Court in State of Maharashtra and Another v. Sant Joginder Singh Kishan Singh and Others, 1995 Supp. (2) SCC 475 has held that Section 11A of the LA Act is a procedural provision and does not stand on the same footing as Section 23 of the LA Act. We find it difficult to subscribe to the view taken. Procedure is a mode in which the successive steps in litigation are taken. Section 11A not only provides a period in which the land acquisition proceedings are to be completed but also provides for consequences, namely, that if no award is made within the time stipulated, the entire proceedings for the acquisition of the land shall lapse. Lapsing of the acquisition of the land results in owner of the land retaining ownership right in the property and according to us it is a substantive right accrued to the owner of the land, and that in view thereof we feel Section 11A of the LA Act is part of the law which creates and defines right, not adjective law which defines method of enforcing rights. It is a law that creates, defines and regulates the right and powers of the party. For this and the other reasons assigned by our learned brother, we are in agreement with him that the question involved requires consideration by a larger Bench and, accordingly, we agree with the reasons recorded by my learned brother for referring the question to a larger Bench.

However, on consideration of the erudite judgment prepared by our esteemed & learned brother Balasubramanyan, J., regretfully we are unable to persuade ourselves to agree to the decision arrived at by him on interpretation of Section 127 of the MRTP Act and also reference of the case to a larger Bench.

Section 127 of the MRTP Act is a special provision and would be attracted in the peculiar facts and circumstances mentioned in the Section itself. The Section provides a procedure for the land owner to get his land de-reserved if steps are not taken by the State Government within the stipulated period and the relief which the owner of the land is entitled to is also provided therein. The steps to be taken for acquisition of land as provided under Section 127 of the MRTP Act have to be taken into consideration keeping in mind the time lag between the period the land is brought under reservation and inaction on the part of the State to acquire it.

Section 127 of the MRTP Act is a unique provision providing remedial measure to the owner of the land whose land is under the planning scheme for a long period of time, which would be interpreted in the facts and circumstances of each individual case. It does not have any universal application and, therefore, the applicability thereof would depend on the facts of each case. S.L.P.(C) No.11446 of 2005 titled M/s. S.P.

Building Corporation and Anr. v. State of Maharashtra and Others, is required to be decided by this Bench only and, therefore, we propose to decide it as follows:

2. Leave granted.

3. The brief facts necessary for deciding the questions raised in this appeal are that appellant No.1 is a partnership firm registered under the Indian Partnership Act, 1932 and is the owner of an immovable property, i.e. a piece of land, bearing City Survey No.18/738, admeasuring about 5387.35 sq.yds. situated at Carmichael Road, Malabar Hill Division, Mumbai-400026.

4. On 7.7.1958, Bombay Municipal Corporation had issued a declaration under Section 4(1) of the Bombay Town Planning Act, 1954 (hereinafter referred to as the Act of 1954), expressing its intention to prepare a development plan for the area under its jurisdiction and published a development plan in accordance with the provisions of the said Act on 9.1.1964. The plan was submitted by the Corporation to the Government of Maharashtra for sanction on 8.7.1964 and on 6.1.1967 the Government of Maharashtra

accorded sanction to the development plan which pertained to D Ward of the Corporation area and the plan came into force on 7.2.1967. The land of the appellant was notified for development as Open Space and Childrens Park. On 11.1.1967, the Maharashtra Regional and Town Planning Act, 1966 (hereinafter referred to as the MRTP Act) repealed the Act of 1954 saving the proceedings already initiated under the Act of 1954.

5. Proceedings were taken up for acquisition of the land.

Since no award was made as per Section 11A of the Land Acquisition (Amendment) Act, 1984 which came into force on 24.9.1984, the acquisition proceedings were declared by the Land Acquisition Officer to have lapsed. Later on a revised development plan sanctioned by the State Government on 6.7.1991 came into effect on 16.9.1991. On 3.2.1998 the appellants served notice through their advocates under Section 127 of the MRTP Act asking for re-notifying the property or to release the said property from reservation and accord sanction/approval to develop the property by the owner. In reply, the Municipal Corporation, Greater Mumbai informed the appellants that purchase notice issued by their advocates was invalid as ten years had not expired since the sanction of the revised development plan, came into force on 16.9.1991. On 18.10.2000, the appellants again served purchase notice under Section 127 of the MRTP Act. Again the Municipal Corporation of Greater Mumbai informed the appellants that the notice was invalid as the period of ten years had not lapsed from the date of the revised plan.

6. On 15.3.2002, the appellants addressed yet another notice to the Municipal Corporation, Greater Mumbai under Section 127 of the MRTP Act stating therein that ten years period had lapsed on 16.9.2001 and since no proceedings for acquisition of the land as contemplated under Section 127(1) of the MRTP Act or under the Land Acquisition Act , 1894 (hereinafter referred to as the LA Act) having been commenced nor has any award been made or compensation paid, the property should be de-reserved. The purchase notice was served on the Municipal Commissioner, Greater Mumbai on 19.3.2002.

7. The counsel for respondent-Municipal Corporation has submitted certain documents before us at the time of hearing. In pursuance of the purchase notice served on the Municipal Corporation, Greater Mumbai, a meeting of the Improvement Committee was called. On 9.9.2002 (document no.1), the Improvement Committee passed Resolution No.183 recommending the Municipal Corporation to initiate the acquisition proceedings under the provisions of Section 126(2) and (4) of the MRTP Act read with Section 6 of the LA Act, as amended upto date, or in the alternative to recommend acquisition as provided under Section 126(1) of the MRTP Act.

The rates for acquisition under the LA Act and that under the provisions of Section 126(1) of the MRTP Act were also provided for. On 13.9.2002 (document no.2) without there being any resolution sanctioning acquisition or taking steps for acquisition, an application was sent by the Chief Engineer (Development Plan) to the State Government for initiating acquisition proceedings under Section 126 of the MRTP Act as amended upto date read with Section 6 of the LA Act.

Thereafter, on 16.9.2002 (document no.3) the Corporation passed Resolution No.956 whereby sanction was given to initiate the acquisition proceedings of the land and the Municipal Commissioner was authorised to make an application to the State Government under the provisions of Section 126(2) & (4) of the MRTP Act read with Section 6 of the LA Act, as amended upto date; and / or, initiate proceedings under Section 90(1) & (3) of the Bombay Municipal Corporation Act, 1888 as amended upto date, for the land being purchased by the Commissioner on behalf of the Corporation. After the Resolution was passed, on 17.9.2002 (document no.4) a letter was written by the Chief Engineer (Development Plan) to the Secretary, Urban Development Department, Government of Maharashtra informing that the Corporation have accorded sanction to initiate acquisition proceedings and for the said purpose authorized the Municipal Commissioner to make an application to the State Government as per the provisions of Section 126(1) of the MRTP Act as amended upto date to issue orders for acquisition of the property under the MRTP Act read with Section 6 of the LA Act. The letter dated 17.9.2002 is reproduced herein:- To, The Secretary, Urban Development Dept., Govt. of Maharashtra, Mantralaya, Mumbai-400032 Sub: Acquisition of land bearing C.S.No.18738 of Malabar Hill division reserved for Children Park.

Ref: i) TPB-4302/572/UD-11 dtd.27.3.02 ii) CHE/ACQ/C/962 dtd. 13.9.2002 Sir, With reference to above, it is to be mentioned here that Corporation by their Resolution No. 956 of 16.9.2002 (copy enclosed) have accorded sanction to initiate the acquisition proceedings for the above mentioned land reserved for Childrens Park adm.

approximately 4504.52 sq.mt. and also authorized the Municipal Commissioner to make application to State Govt. as per provision of 126(1) of the M.R.&T.P. Act 1966 as amended upto date to issue order for the acquisition of property under reference as provided under the provisions of sec. 126(2) (3) and (4) of the M.R.&T.P. Act 1966 as amended upto date read with section 6 of L.A. Act 1894. The application to State Govt. along with the required information in the usual proforma in triplicate & three copies of plans have already been submitted vide this office letter issued u/no. CHE/ACQ/C/962 dtd.

13.9.2002 (copy enclosed). This is for information and further necessary action.

Yours faithfully, Sd/- CHIEF ENGINEER (DEVELOPMENT PLAN) Later on the State Government on 20.11.2002 issued a notification exercising the power conferred by sub-section (4) read with sub-section (2) of Section 126 of the MRTP Act read with Section 6 of the LA Act.

8. Having aggrieved by the action of the respondents, the appellants filed a writ petition in the High Court of Judicature at Bombay which was registered as Writ Petition No.353 of 2005 (M/s. S.P. Building Corporation & Anr. vs.

State of Maharashtra and Ors.) challenging the proceedings initiated by the respondents. It was contended by the appellants that under Section 127 of the MRTP Act, no steps having been taken within the period prescribed, the reservation is deemed to have lapsed; and secondly, the acquisition proceedings initiated under the MRTP Act, are deemed to have lapsed in view of Section 11A of the LA Act, the award having not been admittedly made within two years from the date of publication of the declaration.

The Division Bench of the Bombay High Court dismissed the petition on both counts. It was held by the Bombay High Court that the resolution of the Improvement Committee passed on 9.9.2002 and the letter written by the Chief Engineer dated 13.9.2002 would constitute a `step taken by the Municipal Corporation as provided under Section 127 of the MRTP Act. The Division Bench relying on a judgment of this Court in the case of State of Maharashtra and Another v. Sant Joginder Singh Kishan Singh and Others, 1995 Supp. (2) SCC 475, has held that Section 11A of the LA Act as amended is not applicable to the proceedings for acquisition initiated under the MRTP Act and dismissed the writ petition.

9. The appellants filed this appeal by way of S.L.P. (C) No. 11446 of 2005 challenging the order of the Division Bench of the Bombay High Court. This Court by an order dated 11.7.2005, issued notice and tagged the case along with C.A.

No. 3703 of 2003 wherein a 2-Judge Bench of this Court had doubted the correctness of the decision rendered by this Court in Sant Joginder Singh Case (supra) on which the Bombay High Court has relied, in regard to the applicability of the newly inserted provision of Section 11A of the LA Act, to the acquisition under Chapter VII of the MRTP Act. Thus, the matter has been heard along with C.A. No.3703 of 2003 wherein the only question raised is in regard to the applicability of the new provision of Section 11A of the LA Act to the acquisition made under the MRTP Act; whereas, apart from the said question, in this case we are also required to decide the scope and ambit of Section 127 read with Section 126 of the MRTP Act for the purposes of de-reservation of the land reserved under a development plan.

10. The question that requires consideration and answer in the present case is : Whether the reservation has lapsed due to the failure of the planning authority to take steps within the period of six months from the date of service of the notice of purchase as stipulated by Section 127 of the MRTP Act; and also the question as regards applicability of new Section 11A of the LA Act to the acquisition of land under the MRTP Act.

11. Under Section 2(19) of the MRTP Act, the planning authority means a local authority and includes other authorities provided in clauses (a) and (b). The local authority is defined in Section 2(15) which for the purposes of this case would be the Municipal Corporation of Greater Mumbai constituted under the Bombay Municipal Corporation Act.

12. Chapter VII of the MRTP Act deals with land acquisition. Sections 125 to 129 fall in Chapter VII. Section 125 provides that any land required, reserved or designated in a regional plan, development plan or town planning scheme for a public purpose or purposes including plans for any area of comprehensive development or for any new town shall be deemed to be land needed for a public purpose within the meaning of the LA Act. Section 126 provides three modes of acquisition of the land included in the town planning scheme for the public purpose. Section 127 provides for lapsing of reservation if the land reserved, allotted or designated is not acquired by agreement within 10 years from the date on which a final regional plan or final development plan comes into force or if proceedings for acquisition of land under the MRTP Act or under the LA Act are not commenced within such period, then the owner or any person interested in the land

may serve a notice. If within six months from the date of service of such notice, the land is not acquired or no steps as aforesaid are commenced for its acquisition, the reservation, allotment or designation shall be deemed to have lapsed and the land shall be deemed to be released from such reservation. Section 128(1) confers the power on the State Government to acquire the land needed for a public purpose different from any public purpose under the scheme, or purpose of the planning authority or development authority or appropriate authority;

the State Government may, notwithstanding anything contained in the MRTP Act, acquire the land under the provisions of the LA Act. Section 129(1) empowers the Collector after the publication of the declaration under Section 126(2) to enter on and take possession of the land under acquisition after giving a notice of 15 days.

13. Section 127 falling in Chapter VII requires interpretation in the present case. However, the same cannot be understood without reference to Section 126 which has an important bearing while interpreting the words used in Section 127, namely, "the land is not acquired or no steps as aforesaid are commenced for its acquisition". Therefore, the relevant provisions to be considered are Sections 126 and 127 of the MRTP Act. Section 126 of the MRTP Act reads as follows:

"126. Acquisition of land required for public purposes specified in plans.- (1) When after the publication of a draft Regional Plan, a Development or any other plan or Town Planning Scheme, any land is required or reserved for any of the public purposes specified in any plan or scheme under this Act at any time the Planning Authority, Development Authority, or as the case may be, any Appropriate Authority may, except as otherwise provided in section 113A, acquire the land, — (a) by agreement by paying an amount agreed to, or (b) in lieu of any such amount, by granting the land-owner or the lessee, subject, however, to the lessee paying the lessor or depositing with the Planning Authority, Development Authority or Appropriate Authority, as the case may be, for payment to the lessor, an amount equivalent to the value of the lessor's interest to be determined by any of the said Authorities concerned on the basis of the principles laid down in the Land Acquisition Act, 1894, Floor Space Index (FSI) or Transferable Development Rights (TDR) against the area of land surrendered free of cost and free from all encumbrances, and also further additional Floor Space Index or Transferable Development Rights against the development or construction of the amenity on the surrendered land at his cost, as the Final Development Control Regulations prepared in this behalf provide, or (c) by making an application to the State Government for acquiring such land under the Land Acquisition Act, 1894, and the land (together with the amenity, if any, so developed or constructed) so acquired by agreement or by grant of Floor Space Index or additional Floor Space Index or Transferable Development Rights under this section or under the Land Acquisition Act, 1894, as the case may be, shall vest absolutely free from all encumbrances in the Planning Authority, Development Authority, or as the case may be, any Appropriate Authority.

(2) On receipt of such application, if the State Government is satisfied that the land specified in the application is needed for the public purpose therein specified, or if the State Government (except in cases falling under section 49 and except as provided in section 113A) itself is of opinion that any land included in any such plan is needed for any public purpose, it may make a declaration to that effect in the Official Gazette, in the

manner provided in section 6 of the Land Acquisition Act, 1894, in respect of the said land. The declaration so published shall, notwithstanding anything contained in the said Act, be deemed to be a declaration duly made under the said section:

Provided that, subject to the provisions of sub- section (4), no such declaration shall be made after the expiry of one year from the date of publication of the draft Regional Plan, Development Plan or any other Plan, or Scheme, as the case may be.

(3) On publication of a declaration under the said section 6, the Collector shall proceed to take order for the acquisition of the land under the said Act;

and the provisions of that Act shall apply to the acquisition of the said land, with the modification that the market value of the land shall be, -- (i) where the land is to be acquired for the purposes of a new town, the market value prevailing on the date of publication of the notification constituting or declaring the Development Authority for such town;

(ii) where the land is acquired for the purposes of a Special Planning Authority, the market value prevailing on the date of publication of the notification of the area as an undeveloped area; and (iii) in any other case the market value on the date of publication of the interim development plan, the draft development plan or the plan for the area or areas for comprehensive development, whichever is earlier, or as the case may be, the date or publication of the draft town planning scheme :

Provided that, nothing in this sub-section shall affect the date for the purpose of determining the market value of land in respect of which proceedings for acquisition commenced before the commencement of the Maharashtra Regional and Town Planning (Second Amendment) Act, 1972:

Provided further that, for the purpose of clause (ii) of this sub-section, the market value in respect of land included in any undeveloped area notified under sub-section (1) of section 40 prior to the commencement of the Maharashtra Regional and Town Planning (Second Amendment) Act, 1972, shall be the market value prevailing on the date of such commencement.

(4) Notwithstanding anything contained in the proviso to sub-section (2) and sub-section (3), if a declaration is not made within the period referred to in sub-section (2) (or having been made, the aforesaid period expired on the commencement of the Maharashtra Regional and Town Planning (Amendment) Act, 1993), the State Government may make a fresh declaration for acquiring the land under the Land Acquisition Act, 1894, in the manner provided by sub-sections (2) and (3) of this section, subject to the modification that the market value of the land shall be the market value at the date of declaration in the Official Gazette made for acquiring the land afresh.� Under sub-section (1) of Section 126, after publication of the draft regional plan, a development or any other plan or town planning scheme, any land required or reserved for any of the public purposes specified in any plan or scheme under the MRTP Act, may be acquired (a) by agreement between the parties by paying an amount agreed to; or (b) by granting the land owner or the lessee, Floor Space Index (FSI) or Transferable Development Rights (TDR) against the area of land surrendered free of

cost and free from all encumbrances and also further additional Floor Space Index or Transferable Development Rights against the development or construction of the amenity on the surrendered land at his cost, as the Final Development Control Regulations prepared in this behalf provide; or (c) by making an application to the State Government for acquiring such land under the LA Act. Sub- section (2) provides that on receipt of such application or on its own motion, the State Government would satisfy itself that the land specified in the application, is needed for a public purpose and, if it is so found, would make a declaration by issuing a notification in the Official Gazette in the manner provided in Section 6 of the LA Act. Proviso is added to sub- section (2) whereunder a declaration under Section 6 of the LA Act in the Official Gazette has to be made within one year from the date of publication of the draft regional plan, development plan or any other plan or scheme, as the case may be. Sub- section (3) postulates that on publication of a declaration in the Official Gazette under Section 6 of the LA Act, the Collector shall proceed to take orders for the acquisition of the land under the LA Act and the provisions of that Act shall apply to the acquisition of the said land with certain modifications as provided in clauses (i), (ii) and (iii) of sub-section (3) for determination of the market value on the basis of different dates. Sub-section (3) makes it abundantly clear that after publication of the declaration in the Official Gazette under Section 6 of the LA Act, the entire procedure which shall be followed will be as provided under the LA Act, that is to say, from Section 8 onwards upto Section 28 of the LA Act which deal with acquisition of land under the LA Act.

14. Sub-section (2) of Section 126 provides for one year's limitation for publication of the declaration from the date of publication of the draft plan or scheme. Sub-section (4), however, empowers the State Government to make a fresh declaration under Section 6 of the LA Act even if the prescribed period of one year has expired. This declaration is to be issued by the State Government for acquisition of the land without there being any application moved by the planning/local authority under clause (c) of Section 126(1).

Sub-section (4) of Section 126 authorizes the State Government to make a declaration for acquisition of the land under Section 6 of the LA Act without any steps taken by the planning authority, i.e., Bombay Municipal Corporation.

Under sub-section (4) of Section 126, the State Government can make a fresh declaration if the declaration under sub- section (2) of Section 126 was not made within the time stipulated for acquisition of the land, if it is satisfied that the land is required for a public purpose, subject to the modification that the market value of the land shall be the market value at the date on which the declaration in the Official Gazette is made for acquisition of the land afresh.

Sub-section (4) is the provision whereunder only the State Government is authorized and empowered to issue fresh declaration for acquiring the land under the LA Act.

15. Section 127 of the MRTP Act which requires consideration in the present case is a provision which provides, as is clear from its heading itself, for lapsing of reservation of the lands included in the development plan.

The development authority for utilization of the land for the purpose for which it is included in the plan has to take steps and do things within the period stipulated in a particular span of time, the land having been reserved curtailing the right of the owner of its user. Section 127 reads as under:

127. Lapsing of reservations.- If any land reserved, allotted or designated for any purpose specified in any plan under this Act is not acquired by agreement within ten years from the date on which a final Regional Plan, or final Development Plan comes into force or if proceedings for the acquisition of such land under this Act or under the Land Acquisition Act, 1894, are not commenced within such period, the owner or any person interested in the land may serve notice on the Planning Authority, Development Authority or as the case may be, Appropriate Authority to that effect; and if within six months from the date of the service of such notice, the land is not acquired or no steps as aforesaid are commenced for its acquisition, the reservation, allotment or designation shall be deemed to have lapsed, and thereupon the land shall be deemed to be released from such reservation, allotment or designation and shall become available to the owner for the purpose of development as otherwise permissible in the case of adjacent land under the relevant plan. Section 127 prescribes two time periods. First, a period of 10 years within which the acquisition of the land reserved, allotted or designated has to be completed by agreement from the date on which a regional plan or development plan comes into force, or the proceedings for acquisition of such land under the MRTP Act or under the LA Act are commenced.

Secondly, if the first part of Section 127 is not complied with or no steps are taken, then the second part of Section 127 will come into operation, under which a period of six months is provided from the date on which the notice has been served by the owner within which the land has to be acquired or the steps as aforesaid are to be commenced for its acquisition.

The six-month period shall commence from the date the owner or any person interested in the land serves a notice on the planning authority, development authority or appropriate authority expressing his intent claiming de-reservation of the land. If neither of the things is done, the reservation shall lapse. If there is no notice by the owner or any person interested, there is no question of lapsing reservation, allotment or designation of the land under the development plan. Second part of Section 127 stipulates that the reservation of the land under a development scheme shall lapse if the land is not acquired or no steps are taken for acquisition of the land within the period of six months from the date of service of the purchase notice. The word `aforesaid in the collocation of the words no steps as aforesaid are commenced for its acquisition obviously refers to the steps contemplated by Section 126 of the MRTP Act.

16. If no proceedings as provided under Section 127 are taken and as a result thereof the reservation of the land lapses, the land shall be released from reservation, allotment or designation and shall be available to the owner for the purpose of development. The availability of the land to the owner for the development would only be for the purpose which is permissible in the case of adjacent land under the relevant plan. Thus, even after the release, the owner cannot utilize the land in whatever manner he deems fit and proper, but its utilisation has to be in conformity with the relevant plan for which the adjacent lands are permitted to be utilized.

17. It is an admitted position that on 16.9.1991 the revised development plan was sanctioned and 10 years have expired on 15.9.2001 without there being any acquisition or steps being taken for acquisition of the land in question. On 15.3.2002, the purchase notice under Section 127 was given by the appellants which was received by the authorities on 19.3.2002. Under the second part of Section 127, the land was either required to be acquired or steps in that regard have to be commenced by 18.9.2002. For the first time after the service of purchase notice, on 9.9.2002 a proposal was made by the Improvement Committee recommending the Municipal Corporation for sanction to initiate the acquisition proceedings. On 13.9.2002 without there being any resolution by the Municipal Corporation, the Chief Engineer (Development Plan) sent an application to the State Government for initiating the acquisition proceedings. For the first time on 16.9.2002, a resolution was passed by the Municipal Corporation whereby sanction was given to initiate the acquisition proceedings of land and the Municipal Commissioner was authorised to make an application to the State Government and on 17.9.2002 a letter was sent by the Chief Engineer (Development Plan) to the Secretary, Urban Development Department, Government of Maharashtra for initiating acquisition proceedings. Admittedly, in the present case, the land was neither acquired nor were the steps taken within 10 years from the date on which the final regional plan or final development plan came into force.

18. Shri Shekhar Naphade, Senior Advocate appearing for the State and Shri Bhim Rao Naik, Senior Advocate appearing for the Municipal Corporation contended that the steps were taken on 17.9.2002 when in pursuance of the resolution passed by the Municipal Corporation of Greater Mumbai, the Chief Engineer (Development Plan) sent a letter to the State of Maharashtra enclosing therewith a copy of Resolution No. 956 dated 16.9.2002, requesting that the steps be taken for acquisition of the land and this step taken by the respondents would constitute `steps� for the acquisition of the land under clause (c) of Section 126(1) of the MRTP Act, the same having been taken on 17.9.2002 when the period of six months had not expired, the same to be expired on 18.9.2002 and, therefore, the provision of de-reservation under Section 127 would not apply.

19. It is contended by Shri Soli J. Sorabjee and Shri U.U. Lalit, learned senior counsel appearing for the appellants, that the intent and purpose of Section 127 of the MRTP Act is the acquisition of land within six months or the steps are taken for acquisition of the land within six months, which could only be when a declaration under Section 6 of the LA Act is published in the Official Gazette. It is submitted by the learned senior counsel that the words �if within six months from the date of the service of such notice, the land is not acquired or no steps as aforesaid are commenced for its acquisition� are not susceptible of a literal construction and the words have to be given a meaning which safeguards a citizen against arbitrary and irrational executive action which, in fact, may not result in acquisition of the land for a long period to come. It cannot be doubted that the period of 10 years is a long period where the land of the owner is kept in reservation. Section 127 gives an opportunity to the owner for de-reservation of the land if no steps are taken for acquisition by the authorities within a period of six months in spite of service of notice for de-reservation after the period of 10 years has expired.

20. While interpreting the purpose of Section 127, this Court in the matter of Municipal Corporation of Greater Bombay v. Dr. Hakimwadi Tenants� Association and Others, 1988 (Supp.) SCC 55, has said :

11. It cannot be doubted that a period of 10 years is long enough. The Development or the Planning Authority must take recourse to acquisition with some amount of promptitude in order that the compensation paid to the expropriated owner bears a just relation to the real value of the land as otherwise, the compensation paid for the acquisition would be wholly illusory.

Such fetter on statutory powers is in the interest of the general public and the conditions subject to which they can be exercised must be strictly followed. The Court also said:

While the contention of learned counsel appearing for the appellant that the words `six months from the date of service of such notice in Section 127 of the Act were not susceptible of a literal construction, must be accepted, it must be borne in mind that the period of six months provided by Section 127 upon the expiry of which the reservation of the land under a Development Plan lapses, is a valuable safeguard to the citizen against arbitrary and irrational executive action. Section 127 of the Act is a fetter upon the power of eminent domain.

21. Giving a plain meaning to the words used in the statute would not be resorted to when there is a sense of possible injustice. In such a case, the simple application of the words in their primary and unqualified sense is not always sufficient and will sometimes fail to carry out the manifest intention of law-giver as collected from the statute itself and the nature of subject-matter and the mischiefs to be remedied.

If the plain words lead apparently to do some injustice or absurdity and at variance with, or not required by, the scope and object of the legislation, it would be necessary to examine further and to test, by certain settled rules of interpretation, what was the real and true intention of the legislature and thereafter apply the words if they are capable of being so applied so as to give effect to that intention. Where the plain literal interpretation of statutory provision were to manifestly result in injustice never intended by the legislature, the court is entitled to modify the language used by the legislature so as to achieve the intention of the legislature and to produce a rational construction.

22. Where the legislature has used words in an Act which if generally construed, must lead to palpable injustice and consequences revolting to the mind of any reasonable man, the court will always endeavour to place on such words a reasonable limitation, on the ground that the legislature could not have intended such consequence to ensue, unless the express language in the Act or binding authority prevents such limitation being interpolated into the Act. In construing an Act, a construction ought not be put that would work injustice, or even hardship or inconvenience, unless it is clear that such was the intention of the legislature. It is also settled that where the language of the legislature admits of two constructions and if construction in one way would lead to obvious injustice, the courts act upon the view that such a result could not have been intended, unless the intention had been manifested in express words. Out of the two interpretations, that language of the statute should be preferred to that interpretation which would frustrate it. It is a cardinal rule governing the interpretation of the statutes that when the language of the legislature admits of two constructions, the court should not adopt the construction which would lead to an absurdity or obvious injustice. It is

equally well settled that within two constructions that alternative is to be chosen which would be consistent with the smooth working of the system which the statute purported to be regulating and that alternative is to be rejected which will introduce uncertainty, friction or confusion with the working of the system. [See Collector of Customs v. Digvijaysinhji Spinning & Weaving Mills Ltd. (1962) 1 SCR 896, at page 899 and His Holiness Kesvananda Bharati v. State of Kerala, AIR 1973 SC 1461].

23. The court must always lean to the interpretation which is a reasonable one, and discard the literal interpretation which does not fit in with the scheme of the Act under consideration.

24. In series of judgments of this Court, these exceptional situations have been provided for. In Narashimaha Murthy v. Susheelabai, (1996) 3 SCC 644 (at page 647), it was held that:

□□The purpose of law is to prevent brooding sense of injustice. It is not the words of the law but the spirit and eternal sense of it that makes the law meaningful□.□ In the case of American Home Products Corporation v.

Mac Laboratories Pvt. Ltd. and Another, AIR 1986 SC 137 (at page 166, para 66), it was held that:

□ .. It is a well-known principle of interpretation of statutes that a construction should not be put upon a statutory provision which would lead to manifest absurdity or futility, palpable injustice, or absurd inconvenience or anomaly. □□ Further, in the case of State of Punjab v. Sat Ram Das, AIR 1959 Punj. 497, the Punjab High Court held that:

□To avoid absurdity or incongruity, grammatical and ordinary sense of the words can, in certain circumstances, be avoided.□

25. Many a times, it becomes necessary to look into the true intention of the legislature in order to give a proper effect to the statutory provisions and in order to achieve the actual intended goal behind the legislation. In the case of Tirath Singh v. Bachittar Singh and others, AIR 1955 SC 830 (at page 833, para 7), it was held by the Court that:

□□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□.

The same has been upheld by the Supreme Court in Commissioner of Income Tax, Bangalore v. J.H. Gotla, AIR 1985 SC 1698 and in Andhra Cotton Mills Ltd. v.

Lakshmi Ganesh Cotton Mill, (1996) 1 ALT 537 (AP).

Similarly, in the case of State of Rajasthan v. Leela Jain and Others, AIR 1965 SC 1296 (at page 1299, para 11), it was held that:

��Unless the words are unmeaning or absurd, it would not be in accord with any sound principle of construction to refuse to give effect to the provisions of a statute on the very elusive ground that to give them their ordinary meaning leads to consequences which are not in accord with the notions of propriety or justice��

26. Learned senior counsel appearing on both sides have strongly relied on the decision of this Court in Municipal Corporation of Greater Bombay v. Dr. Hakimwadi Tenants� Association and Others, 1988 (Supp.) SCC 55. It is contended by the learned senior counsel for the appellants that the decision squarely covers the proposition of law wherein it has been held that the development or the planning authority must take recourse to acquisition with some amount of promptitude in order that the compensation paid to the expropriated owner bears a just relation to the real value of the land; and that the period of six months provided by Section 127 upon the expiry of which the reservation of the land under a development plan lapses, is a valuable safeguard to the citizens against the arbitrary and irrational executive action. Section 127 of the Act is a fetter upon the power of eminent domain. On the other hand, the learned senior counsel for the State submits that if we read para 11 of the above judgment, it is clearly held that the steps for commencement of the acquisition obviously refer to the steps contemplated by Section 126(1) which means the step taken of making an application under clause (c) of Section 126(1) of the MRTP Act and has contended that this Court had already observed that after the service of notice from the owner or any person interested in the land as provided under Section 127 of the MRTP Act, the steps taken within six months of such service, included any step taken by the appropriate authority for the acquisition of land as contemplated under the provisions of Section 126 (1) of the MRTP Act. It has been further contended that such observation of this Court is binding as precedent.

27. At this juncture, it will be appropriate for us to refer some of the judicial pronouncements to illustrate what constitutes the binding precedent. This Court in Additional District Magistrate, Jabalpur v. Shivakant Shukla, (1976) 2 SCC 521 has observed:

�394. �The Earl of Halsbury, L.C. said in Quinn v.

Leathem, 1901 AC 495, 506 that the generality of the expressions which may be found in a judgment are not intended to be expositions of the whole law but are governed and qualified by the particular facts of the case in which such expressions are to be found. This Court in the State of Orissa v.

Sudhansu Sekhar Misra, (1968) 2 SCR 154, 163, uttered the caution that it is not a profitable task to extract a sentence here and there from a judgment and to build upon it because the essence of the decision is its ratio and not every observation found therein�� 474. �when we are considering the observations of a high judicial authority like this Court, the greatest possible care must be taken to relate the observations of a judge to the precise issues before him and to confine such observations, even though expressed in broad terms, in the general compass of the question before him, unless he makes it clear that he intended his remarks to have a wider ambit.

It is not possible for judges always to express their judgments so as to exclude entirely the risk that in some subsequent case their language may be misapplied and any attempt at such perfection of expression can only lead to the opposite result of uncertainty and even obscurity as regards the case in hand...� In Union of India and Others v. Dhanwanti Devi and Others, (1996) 6 SCC 44, a three-Judge Bench of this Court has observed as follows:

�9. �It is not everything said by a Judge while giving judgment that constitutes a precedent. The only thing in a judges� decision binding a party is the principle upon which the case is decided and for this reason it is important to analyse a decision and isolate from it the ratio decidendi. According to the well-settled theory of precedents, every decision contains three basic postulates - (i) findings of material facts, direct and inferential. An inferential finding of facts is the inference which the Judge draws from the direct, or perceptible facts; (ii) statements of the principles of law applicable to the legal problems disclosed by the facts; and (iii) judgment based on the combined effect of the above. A decision is only an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically follows from the various observations made in the judgment. Every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions which may be found there is not intended to be exposition of the whole law, but governed and qualified by the particular facts of the case in which such expressions are to be found. It would, therefore, be not profitable to extract a sentence here and there from the judgment and to build upon it because the essence of the decision is its ratio and not every observation found therein. The enunciation of the reason or principle on which a question before a court has been decided is alone binding as a precedent. The concrete decision alone is binding between the parties to it, but it is the abstract ratio decidendi, ascertained on a consideration of the judgment in relation to the subject matter of the decision, which alone has the force of law and which, when it is clear what it was, is binding. It is only the principle laid down in the judgment that is binding law under Article 141 of the Constitution. A deliberate judicial decision arrived at after hearing an argument on a question which arises in the case or is put in issue may constitute a precedent, no matter for what reason, and the precedent by long recognition may mature into rule of stare decisis. It is the rule deductible from the application of law to the facts and circumstances of the case which constitutes its ratio decidendi.

10. Therefore, in order to understand and appreciate the binding force of a decision it is always necessary to see what were the facts in the case in which the decision was given and what was the point which had to be decided. No judgment can be read as if it is a statute. A word or a clause or a sentence in the judgment cannot be regarded as a full exposition of law. Law cannot afford to be static and therefore, Judges are to employ an intelligent technique in the use of precedents�� Similarly, in Director of Settlements, A.P. and Others v.

M.R. Apparao and Another, (2002) 4 SCC 638, a Bench comprising of three Judges, has observed:

�7. �But what is binding is the ratio of the decision and not any finding of facts. It is the principle found out upon a reading of a judgment as a whole, in the light of the questions before the Court that forms the ratio and not any particular word or sentence"A judgment of the Court has to be read in the context of questions which arose for consideration in the case in which the judgment was delivered. An "obiter dictum" as distinguished from a ratio decidendi is an observation by the Court on a legal question suggested in a case before it but not arising in such manner as to require a decision..." This Court in Shin-Etsu Chemical Co. Ltd v. Aksh Optifibre Ltd. and Another, (2005) 7 SCC 234 has observed:

"69. "if the court thinks that an issue does not arise, then any observation made with regard to such an issue would be purely obiter dictum. It is a well-settled proposition that the ratio decidendi of a case is the principle of law that decided the dispute in the facts of the case and, therefore, a decision cannot be relied upon in support of a proposition that it did not decide. [See also: Mittal Engg.

Works (P) Ltd. v. CCE, (1997) 1 SCC 203 at p. 207 (para. 8); Jagdish Lal v. State of Haryana, (1997) 6 SCC 538 at p. 560 (para. 17); Divisional Controller, KSRTC v. Mahadeva Shetty, (2003) 7 SCC 197 at p. 206 (para. 23).]""

28. We will now analyse that whether the observations of the Court in Municipal Corporation of Greater Bombay Case (supra) as extracted from paragraph 11 of that Judgment (supra) constituted binding or authoritative precedent with respect to the question of law arising in the present case. In Municipal Corporation of Greater Bombay Case (supra), the planning authority had published a draft Development Plan in which land of a trust property was reserved for a recreation ground. The Development Plan was finalised and sanctioned by the State Government on 6.1.1967. The final development scheme came into effect from 7.2.1967. Since no action had been taken for acquisition of the land until 1.1.1977, the owners thereof, i.e., the trustees, served a purchase notice dated 1.7.1977 on Corporation either to acquire the same or release it from acquisition, and the same was received on 4.7.1977. On 28.7.1977 the Corporation's Executive Engineer wrote a letter to the trustees asking information regarding the ownership of the land and the particulars of the tenants thereof. It was also stated that the relevant date under Section 127 of the MRTP Act would be the date upon which such information was received. The trustees, by their lawyer's letter dated 3.8.1977, conveyed that the date of six months stipulated by Section 127 had to be computed from the date of the receipt from them of the information required and that Corporation could not make an inquiry at that stage without taking a decision on the material question. The Executive Engineer once again wrote to trustees stating that the period of six months allowed by Section 127 would commence on 4.8.1977, i.e., the date when the requisite information was furnished. The Corporation passed a resolution dated 10.1.1978 for the acquisition of the land and made an application to the State Government which on being satisfied that the land was required for a public purpose issued the requisite notification dated 7.4.1978 under Section 6 of the LA Act for acquisition of the land. A petition was filed before the High Court to quash the aforementioned notification, which was allowed by the Single Judge and subsequently maintained by the Division Bench. The contention of the appellant Corporation before this Court was that the period of six months after the notice by the owner or any person interested in the land as specified under section 127, would start from date when such person had provided the requisite information to the Corporation.

29. In light of the above-mentioned factual matrix, the question of law involved in the Municipal Corporation of Greater Bombay Case (supra) was as follows:

�2. The short point involved in this appeal by special leave from a judgment of a Division Bench of the Bombay High Court dated June 18, 1986, is whether the period of six months specified in Section 127 of the Act is to be reckoned from the date of service of the purchase notice dated July 1, 1977 by the owner on the Planning Authority i.e.

the Municipal Corporation of Greater Bombay here, or the date on which the requisite information of particulars is furnished by the owner.� The Court has answered the above question as follows:

�7. According to the plain reading of Section 127 of the Act, it is manifest that the question whether the reservation has lapsed due to the failure of the Planning Authority to take any steps within a period of six months of the date of service of the notice of purchase as stipulated by Section 127, is a mixed question of fact and law. It would therefore be difficult, if not well nigh impossible, to lay down a rule of universal application. It cannot be posited that the period of six months would necessarily begin to run from the date of service of a purchase notice under Section 127 of the Act. The condition pre-requisite for the running of time under Section 127 is the service of a valid purchase notice. It is needless to stress that the Corporation must prima facie be satisfied that the notice served was by the owner of the affected land or any person interested in the land. But, at the same time, Section 127 of the Act does not contemplate an investigation into title by the officers of the Planning Authority, nor can the officers prevent the running of time if there is a valid notice��

30. Thus, after perusing the judgment in Municipal Corporation of Greater Bombay Case (supra), we have found that the question for consideration before the Court in the Municipal Corporation of Greater Bombay Case (supra) has reference to first step required to be taken by the owner after lapse of 10 years� period without any step taken by the authority for acquisition of land, whereby the owners of the land served the notice for dereservation of the land. The Court was not called upon to decide the case on the substantial step, namely, the step taken by the authority within six months of service of notice by the owners for dereservation of their land which is second step required to be taken by the authority after service of notice. The observations of this Court regarding the linking of word �aforesaid� from the wordings �no steps as aforesaid are commenced for its acquisition� of Section 127 with the steps taken by the competent authority for acquisition of land as provided under Section 126(1) of the MRTP Act, had no direct or substantial nexus either with the factual matrix or any of the legal issues raised before it. It is apparent that no legal issues, either with respect to interpretation of words �no steps as aforesaid are commenced for its acquisition� as stipulated under the provisions of Section 127 or any link of these words with steps to be taken on service of notice, were contended before the Court. Thus, observations of the Court did not relate to any of the legal questions arising in the case and, accordingly, cannot be considered as the part of ratio decidendi. Hence, in light of the aforementioned judicial pronouncements, which have well settled the proposition that only the ratio decidendi can act as the binding or authoritative precedent, it is clear that the reliance placed on mere general observations or casual expressions of the Court, is not of much avail to the respondents.

31. When we conjointly read Sections 126 and 127 of the MRTP Act, it is apparent that the legislative intent is to expeditiously acquire the land reserved under the Town Planning Scheme and, therefore, various periods have been prescribed for acquisition of the owner�s property. The intent and purpose of the provisions of Sections 126 and 127 has been well explained in Municipal Corporation of Greater Bombay Case (supra). If the acquisition is left for a time immemorial in the hands of the concerned authority by simply making an application to the State Government for acquiring such land under the LA Act, 1894, then the authority will simply move such an application and if no such notification is issued by the State Government for one year of the publication of the draft regional plan under Section 126(2) read with Section 6 of the LA Act, wait for the notification to be issued by the State Government by exercising suo motu power under sub-section (4) of Section 126; and till then no declaration could be made under Section 127 as regards lapsing of reservation and contemplated declaration of land being released and available for the land owner for his utilization as permitted under Section 127. Section 127 permitted inaction on the part of the acquisition authorities for a period of 10 years for de-reservation of the land. Not only that, it gives a further time for either to acquire the land or to take steps for acquisition of the land within a period of six months from the date of service of notice by the land owner for de-reservation.

The steps towards commencement of the acquisition in such a situation would necessarily be the steps for acquisition and not a step which may not result into acquisition and merely for the purpose of seeking time so that Section 127 does not come into operation. Providing the period of six months after the service of notice clearly indicates the intention of the legislature of an urgency where nothing has been done in regard to the land reserved under the plan for a period of 10 years and the owner is deprived of the utilization of his land as per the user permissible under the plan. When mandate is given in a Section requiring compliance within a particular period, the strict compliance is required thereof as introduction of this Section is with legislative intent to balance the power of the State of �eminent domain�. The State possessed the power to take or control the property of the owner for the benefit of public cause, but when the State so acted, it was obliged to compensate the injured upon making just compensation. Compensation provided to the owner is the release of the land for keeping the land under reservation for 10 years without taking any steps for acquisition of the same. The underlying principle envisaged in Section 127 of the MRTP Act is either to utilize the land for the purpose it is reserved in the plan in a given time or let the owner utilize the land for the purpose it is permissible under the Town Planning Scheme. The step taken under the Section within the time stipulated should be towards acquisition of land. It is a step of acquisition of land and not step for acquisition of land. It is trite that failure of authorities to take steps which result in actual commencement of acquisition of land cannot be permitted to defeat the purpose and object of the scheme of acquisition under the MRTPAct by merely moving an application requesting the Government to acquire the land, which Government may or may not accept. Any step which may or may not culminate in the step for acquisition cannot be said to be a step towards acquisition.

32. It may also be noted that the legislature while enacting Section 127 has deliberately used the word `steps� (in plural and not in singular) which are required to be taken for acquisition of the land. On construction of Section 126 which provides for acquisition of

the land under the MRTP Act, it is apparent that the steps for acquisition of the land would be issuance of the declaration under Section 6 of the LA Act.

Clause (c) of Section 126(1) merely provides for a mode by which the State Government can be requested for the acquisition of the land under Section 6 of the LA Act. The making of an application to the State Government for acquisition of the land would not be a step for acquisition of the land under reservation. Sub-section (2) of Section 126 leaves it open to the State Government either to permit the acquisition or not to permit, considering the public purpose for which the acquisition is sought for by the authorities. Thus, the steps towards acquisition would really commence when the State Government permits the acquisition and as a result thereof publishes the declaration under Section 6 of the LA Act.

33. The MRTP Act does not contain any reference to Section 4 or Section 5A of the LA Act. The MRTP Act contains the provisions relating to preparation of regional plan, the development plan, plans for comprehensive developments, town planning schemes and in such plans and in the schemes, the land is reserved for public purpose. The reservation of land for a particular purpose under the MRTP Act is done through a complex exercise which begins with land use map, survey, population studies and several other complex factors. This process replaces the provisions of Section 4 of the LA Act and the inquiry contemplated under Section 5A of the LA Act. These provisions are purposely excluded for the purposes of acquisition under the MRTP Act.

The acquisition commences with the publication of declaration under Section 6 of the LA Act. The publication of the declaration under sub-sections (2) and (4) of Section 126 read with Section 6 of the LA Act is a sine qua non for the commencement of any proceedings for acquisition under the MRTP Act. It is Section 6 declaration which would commence the acquisition proceedings under the MRTP Act and would culminate into passing of an award as provided in sub-section (3) of Section 126 of the MRTP Act. Thus, unless and until Section 6 declaration is issued, it cannot be said that the steps for acquisition are commenced.

34. There is another aspect of the matter. If we read Section 126 of the MRTP Act and the words used therein are given the verbatim meaning, then the steps commenced for acquisition of the land would not include making of an application under Section 126(1)(c) or the declaration which is to be made by the State Government under sub-section (2) of Section 126 of the MRTP Act.

35. On a conjoint reading of sub-sections (1), (2) and (4) of Section 126, we notice that Section 126 provides for different steps which are to be taken by the authorities for acquisition of the land in different eventualities and within a particular time span. Steps taken for acquisition of the land by the authorities under clause (c) of Section 126(1) have to be culminated into Section 6 declaration under the LA Act for acquisition of the land in the Official Gazette, within a period of one year under the proviso to sub-section (2) of Section 126. If no such declaration is made within the time prescribed, no declaration under Section 6 of the LA Act could be issued under the proviso to sub-section (2) and no further steps for acquisition of the land could be taken in pursuance of the application moved to the State Government by the planning authority or other authority. Proviso to sub-section (2) of Section 126 prohibits publication of the

declaration after the expiry of one year from the date of publication of draft regional plan, development plan or any other plan or scheme.

Thus, from the date of publication of the draft regional plan, within one year an application has to be moved under clause (c) of Section 126(1) which should culminate into a declaration under Section 6 of the LA Act. As per the proviso to sub- section (2) of Section 126, the maximum period permitted between the publication of a draft regional plan and declaration by the Government in the Official Gazette under Section 126(2) is one year. In other words, during one year of the publication of the draft regional plan, two steps need to be completed, namely, (i) application by the appropriate authority to the State Government under Section 126(1)(c); and (ii) declaration by the State Government on receipt of the application mentioned in clause (c) of Section 126(1) on satisfaction of the conditions specified under Section 126(2).

The only exception to this provision has been given under Section 126(4). In the present case, the amended regional plan was published in the year 1991. Thereafter, the steps by making an application under clause (c) of sub-section (1) of Section 126 for issuance of the declaration of acquisition and the declaration itself has to be made within the period of one year from the date of the publication of regional plan, that is, within the period of one year from 1991. The application under Section 126(1)(c) could be said to be a step taken for acquisition of the land if such application is moved within the period of one year from the date of publication of regional plan. The application moved after the expiry of one year could not result in the publication of declaration in the manner provided under Section 6 of the LA Act, under sub-section (2) of Section 126 of the MRTP Act, there being a prohibition under the proviso to issue such declaration after one year.

Therefore, by no stretch of imagination, the step taken by the Municipal Corporation under Section 126(1)(c) of making an application could be said to be a step for the commencement of acquisition of the land. After the expiry of one year, it is left to the Government concerned under sub-section (4) of Section 126 to issue declaration under Section 6 of the LA Act for the purposes of acquisition for which no application is required under Section 126(1)(c). Sub-section (4) of Section 126 of the MRTP Act would come into operation if the State Government is of the view that the land is required to be acquired for any public purpose.

36. The High Court has committed an apparent error when it held that the steps taken by the respondent- Corporation on 9.9.2002 and 13.9.2002 would constitute steps as required under Section 126(1)(c) of the MRTP Act.

What is required under Section 126(1)(c) is that the application is to be moved to the State Government for acquiring the land under the LA Act by the planning/local authority. Passing of a resolution by the Improvement Committee recommending that the steps be taken under Section 126(1)(c) or making an application by the Chief Engineer without there being any authority or resolution passed by the Municipal Corporation, could not be taken to be steps taken of moving an application before the State Government for acquiring the land under the LA Act. The High Court has committed an apparent error in relying on these two documents for reaching the conclusion that the steps for acquisition had been commenced by the Municipal

Corporation before the expiry of period of six months which was to expire on 18.9.2002. Further, if we look at the letter dated 17.9.2002 which, as per the counsel for the respondent- Corporation, is a request made by the Municipal Corporation to the State Government under clause (c) of Section 126(1), we cannot agree with the submissions of the respondents. The letter itself shows that the resolution was passed by the Municipal Corporation on 16.9.2002 whereby it was informed that the sanction had been accorded to initiate the acquisition proceedings for the land in question. The letter also mentioned that the authorization had been given to the Municipal Commissioner to make an application to the State Government as per the provisions of Section 126(1) of the MRTP Act. Under Section 2(19) read with Section 2(15) with Section 126(1) of the MRTP Act, the application to the State Government under clause (c) of Section 126(1) has to be made by the planning/local authority, i.e. the Municipal Corporation of Greater Mumbai constituted under the Bombay Municipal Corporation Act. The Municipal Corporation had passed a resolution delegating authority to Municipal Commissioner for making an application to the State Government, but the application/letter either dated 13.9.2002 or 17.9.2002 were made to the State Government by the Chief Engineer (Development Plan). The authority was given by the Municipal Corporation to the Municipal Commissioner to make an application to the State Government. No such application or letter moved by the Municipal Commissioner has been produced before us. On being asked by this Court, as many as six documents have been produced before us by the counsel for the Municipal Corporation who has stated before us that these documents were also placed before the Division Bench of the Bombay High Court. Therefore, we have permitted production of these documents before us. On a minute and careful scrutiny of the documents produced before us, we do not find that the application under clause (c) of Section 126(1) was moved by the officer authorized by the Municipal Corporation, i.e. the Municipal Commissioner, to the State Government for acquisition of the land, so that it could be said that steps as contemplated were taken for the commencement of acquisition proceedings.

37. In view of our decision on the interpretation and applicability of Section 127 of the MRTP Act to the facts of the present case, the appellants are entitled to the relief claimed, and the other question argued on the applicability of the newly inserted Section 11A of the LA Act to the acquisition of land made under the MRTP Act need not require to be considered by us in this case.

38. For the aforesaid reasons, the impugned judgment and order dated 18.3.2005 passed by the Division Bench of the Bombay High Court is set aside and this appeal is allowed.

As no steps have been taken by the Municipal Corporation for acquisition of the land within the time period, there is deemed de-reservation of the land in question and the appellants are permitted to utilise the land as permissible under Section 127 of the MRTP Act.

Sl No 310

Circular Number RD 166 AQW 85

Date 12/31/85

Section Land Acquisition

Subject Publication of Land Acquisition Notifications in Local Daily Newspapers-Regarding.

Body **[180]**
RD 166 AQW 85 Dt. 31.12.85 ©

Sub: Publication of Land Acquisition Notifications in Local Daily Newspapers-Regarding.

In Government Circular No. RD 166 AQW 84 (P) dated 17.09.1985 certain Newspapers were identified for publication of Notifications issued under Sections 4(1) and 6 (1) of the Land Acquisition (Amendment) Act 1984 for each district.
In addition to the newspapers identified in the Government Circular dated 17.9.1985, Government directs that the notifications issued Under Section 4(1) and 6 (1) of the Land Acquisition Act should be published in the newspapers indicated in the annexure to this Circular in respect of the Districts shown under column (2) with immediate effect subject to the conditions stipulated in Government circular No. RD 166 AQW 84 (P) Dated 17.9.1985.

Annexure to Circular No. RD 166 AQW 85, dated : 31st Dec. 1985.

Sl.No. District Name of the
Newspaper (Adl.)
1 2 3

1. Bangalore 1. Lokavani (K)
2. Janavani
3. Mysore Prabha (K)
2. Tumkur 1. Vijayavani (K)
2. Tumkur Times (K)
3. Tumkur Varthe (K)
4. Lokavani
5. Amrutavani (K)
6. Ekesh (K)
3. Kolar 1. Lokavani
4. Shimoga 1. Chalagara (K)
2. Shimoga Times (K)
3. Manobhoomi (K)
4. Bruhaspathi Vani (K)
5. Echarike (K)
6. Navika (K)
7. Chaladanka Malla (K)
8. Kanteerava (K)
9. Sahyadri (K)

10. Ushamahi (K)
11. Sagar Varthe (K)
12. Karmchari (K)
13. Vanaraja (K)
14. Sagar Sandesha (K)
5. Bidar 1. Bidar Kee Awaz (Hindi)
2. Public (K)
6. Gulbarga 1. Vritta Manjari (Hindi)
7. Belgaum 1. Johar-E-Guftar (Urdu)
8. Bellary 1. Satya Kama (K)
9. Raichur 1. Raichur Vani (K)
2. Navodaya (K)
3. Nadanudi (K)
4. Samaja vikasa (K)
5. Mitra Vani (K)
10. Mysore 1. Sankranti (K)
2. Vartamana (K)
3. Kausar (Urdu)
4. Mysore Mitra (K)
5. Star of Mysore (E)
6. Ashoka (K)
7. Prakruth (Samskrit)
8. Rajya Dharma (K)
9. Mino News
10. Shams (Urdu)
11. Viswa Doota (K)
12. Mysore Today (K)
13. Samachar (E)
14. Mysore Monitor
15. Sudharma (K)
16. Mysore Patrike (K)
17. Vijaya Patrike (K)
18. Nawadhwani Patrike (K)
19. Saadhwi Patrike (K)
20. Aruna (K)
21. Poura Dhwani (K)
22. Aftar – E – Karnataka (Urdu)

Sl No 317

Circular Number RD 166 AQW 84

Date 09/17/85

Section Land Acquisition

Subject Publication of Notification under Section 4(1) & 6(1) of land Acquisition Act-Institutions Regarding

Body **[187]**
RD 166 AQW 84 Dt. 17.9.85 (C)

Sub: Publication of Notification under Section 4(1) & 6(1) of land Acquisition Act-Institutions Regarding

In Government Circular No.RD 166 AQW 84 (P) dated 8.5.1985, certain news papers were identified for publication of Notifications issued under sec. 4(1) and 6(1) of the Land Acquisition (Amendment) Act 1984, for each District.
Subsequently, representations have been received by Government from the Editors of various news papers, requesting for inclusion of their names in the approved list for publication of said Notifications. The Deputy Commissioners/Special Deputy Commissioners have also furnished the lists of news papers including Local news papers which are in circulation within their respective Districts.
Government after carefully considering of the requests of the Editors of newspapers and reports of the Deputy Commissioners/Special Deputy Commissioners and in suppression of the list of new papers recognised in Government Circular of even No. Dated 8.5.1985, hereby directs that the Notifications issued under sec. 4(1) & 6(1) of the L.A.Act should be published in the news papers indicated in the Annexure to this Circular, in respect of each District, with immediate effect subject to the following conditions:
1. Care should be taken to minimise the space in the publication column of news papers to avoid unnecessary expenditure to the acquiring body/Govt.
2. The News Paper should be a registered one and satisfty the conditions prescribed by the Department of Information & Publicity for release of Government, advertisements.
3. The rates to be charged by the News papers for publication, should be as per the schedule of rates prescribed by the Department of Information and Publicity for publication of Government advertisements or the actual rates charged by the News papers which ever is less.

Note: The information on items (2) & (3) above may be obtained from the Department of Information and Publicity.

4. Notifications should released to the News papers for publication equitably to all the News papers on rotation basis on merits, depending upon the number of copies in circulation, convering all the eligible News Papers.
5. News papers which are in large circulation in the locality in which lands are acquired should be given preference, subject to satisfy the above condition and as per the provisions of Sec. 4 & 6 of the Land Acquisition Act 1i9894 (as amended)

Annexure to Circular No. RD 166 AQW 84 (P) dated 17.9.1985.

List of news papers in which Notification Under Section 4(1) and 6(1) of the Land Acquisition Act are to be published.

SL. No.	Districts	Name of the News Paper
1.	(a) Bungler (Urban) (b) Bungler	1. The Times 2. Deccan Prabha 3. Kannada Prabha 4. Samyukta Karnataka (K)

	(Rural)	5. Prajavani 1. Kannada Prabha 2. Samyukta Karnataka 3. Bayalu Seeme (Channapatna, Ramanagaram, Kanakapura & Magadi Taluks)
2.	Tumor	1. Kannada Prabha 2. Prajavani 3. Samyukta Karnataka
3.	Kola	1. Kannada Prabha 2 Prajavani 3. Samyukta Karnataka (K) 4. Honnuid 5. Kolarapatrike 6. Kolar Vani
4.	Chitradurga	1. Prajavani 2. Samyukta Karnata 3. Chandravalli 4. Priya 5. Brammagiri 6. Veeragrani 7. Swami 8. Kote Koogu 9. Kranthi-doota 10. Janatavani 11. Davanagere Nagarawani 12. Davanagere Bhoovaneswary 13. Lokaprabha.
5.	Shimoga	1. Kannada Prabha 2. Prajavani 3. Udayavani 4. Samyukta Karnataka
6.	Belgaum.	1. Samyukta Karanataka 2. Vishwavani 3. Kannadamma 4. Nadoj (Marathi) 5. Tarun Bharathi (Marathi) 6. Lokadarshana 7. Navanau 8. Ranzunzar (marathi) 9. Satyajit (Marathi) 10. Samatola 11. Samadarshi Note: Matai Newspapers in Khanapur,

		Belgaum and Nippni Taluks only.
7.	Bijapur	1. Samyukta Karnataka 2. Vishwavani 3. Kannada Kogile 4. Bijapur Vatha 5. Kannadamma 6. Navandu 7. Samyukta Nadu 8. Vishala Karnataka 9. Nagarika 10. Samajaverra 11. Udaya 12. Nadanudi 13. Shassana.
8.	Dharwada	1. Samuyukta Karantaka 2. Vishwa Vani 3. Navanadu 4. Vishala Karnataka 5. Netaji 6. Navodaya.
9.	Uttara Kannada	1. Samyukta Karanataka 2. Vishwa Vani 3. Lokadhawani 4. Navanadu 5. Kannadamma 6. Mugaru.
10.	Gulbarga	1. Samyukta Karnataka 2. Greenobles 3. Satyakama 4. Shasana 5. Samyuktanadu 6. Nagarika 7. Samajaveera 8. Udaya 9. Nadanudi 10. Kranti 11. Kannada Bandhu 12. Chintaka 13. Bhagyalakshmi
11.	Bidar	1. Kannada Prabha 2. Prajavani 3. Shasanna 4. Uttara Karnataka
12.	Bellary.	1. Kannada Prabha 2. Samyukta Karnataka

		3. Prajavani 4. Navanadu 5. Hospet Time 6. Lok Darshan 7. Vishwavani
13.	Raichur	1. Kannada Prabha 2. Samyukta Karnataka 3. Prajavani 4. Shaasana
14.	Mysore	1. Prajavani 2. Kannada Prabha 3. Samyukta Karnataka 4. Andolana
15.	Mandya	1. Kannada Prabha 2. Samyukta Karnataka 3. Veekshaka 4. Nudi Bharthi
16.	Kodagu	1. Prajavani 2. Kodagu Dainika 3. Shakti
17.	Hassan	1. Kannada Prabha 2. Samyukta Karnataka 3. Janamitra 4. Janamadyama 5. Prathindhi
18.	Chickmangalur	1. Kannada Prabha 2. Samyukta Karnataka 3. Janamitgra 4. Girivartha 5. Hosadigantha
19.	Dhakshina Kannada	1. Mugaru 2. Udayavani 3. Prajavani 4. Hosadigantha 5. Kannada Prabha 7.

Sl No 381

Circular Number RD. 50 AQW 81

Date 09/10/81

Section Land Acquisition

Subject Land Acquisition – Enquiry under Section 5(A) – Instructions – reg.

Body **[236]**
RD. 50 AQW 81 Dt. 10-9-81 (c)
Sub: Land Acquisition – Enquiry under Section 5(A) – Instructions – reg.
In Government Circular No. RD 22 AQP 69, dated 17.4.1969 a calendar prescribing a time schedule for each stage of a land acquisition case, has been given in order to expedite the prompt disposal of such proceedings. Whenever objections are received in response to the 4(1) Notification, the concerned authorities are required to fix a date for hearing the objections and give notice thereof to the objectors as well as to the acquiring body. The acquiring body is required to furnish replies to the objections raised well in time and also depute a representative to attend the hearing. Attention is also invited in this connection to Government Circular No. RD 42 AQP 69, dated 4-12-1972 in which instructions have been issued in regard to the proper procedure to be followed in conducting the enquiry under section 5-a of the Land Acquisition Act.
A case has come to the notice of Government wherein the acquiring body was given a very short notice to file their replies to the objections raised and to attend the hearing, which resulted in unnecessary correspondence and postponement of hearings and consequent delays, which could have been avoided.
All the Assistant Commissioners/Land Acquisition Officers are hereby directed to ensure that sufficient time of, say a fortnight is given to the Acquiring Body for filing their replies, keeping in view that the directions issued in the aforesaid circulars.

Sl No 786

Circular Number RD 124 AQW 73

Date 12/02/74

Section Land Acquisition

Subject Taking over of possession u/s 16 of Land Acquisition Act.

Body **RD 124 AQW 73 Dt. 2-12-74 [C]**

Subject: Taking over of possession u/s 16 of Land Acquisition Act.

In Circular No. RD 22 AQP 69 dated 17-4-1969 instructions have been issued to the effect that immediately the award is passed the Tahsildar concerned should fix the date for taking possession of the land which should not be later than 15 days from the date of the receipt of the award by him. The requisitioning Department should be requested to depute an officer to take possession of the land on a specified date and if it fails to depute an office a notice may be sent to it intimating that the lands acquired have been taken possession of and that if no arrangements are made by the department to receive possession within a week, the indenting Department will be deemed to have taken possession of the same and necessary entries made accordingly in the relevant records.

But recently one of the acquiring bodies has represented to Government that this procedure is causing hardships in the sense that it had to pay higher compensation on reference to the court by the interested persons under Section 18 of Land Acquisition Officer from the date of taking possession of land. It contended that the local officer could have postponed the taking possession of the land till the statutory period of appeal prescribed under Section 18 of Land Acquisition Act is completed.

Government have considered this suggestion carefully and to obviate the hardships mentioned all the Local Officers are directed not to take possession of lands until the statutory period of appeal under Section 18 of Land Acquisition Act is completed, in such of those cases where a specific request to that effect is received from the Acquiring Bodies. If there is no reference by any interested persons to the court within the statutory period, then immediately the date for taking possession of the land should be fixed in consultation with the Acquiring Bodies, which should not be later than 15 days from the date of he receipt of he award by the concerned Body. If any interested person makes reference to court, then the Land Acquisition Officer should await the judgment of the court before taking possession. After receipt of the judgment, the Land Acquisition Officer should consult the acquiring body whether or not intends to take possession. If it intends to take possession, then only possession should be taken. If the acquiring body is not interested taking possession, the local offices should not force the acquiring body to take possession. They should obtain the proposal from the acquiring body to drop the acquisition and it should be sent to Government along with the Withdrawal Notification under Section 48 of Land Acquisition Act.

The Circular instructions issued in Circular No. 22/AQP 69 date 17-4-1969 may be treated as amended to this extent.

Sl No 841

Circular Number RD 42 AQP 69

Date 12/04/72

Section Land Acquisition

Subject LAND ACQUISITION – Enquiry u/s 5 of the Mysore Land Acquisition Rules 1965 – instruction
issued –

Body **RD 42 AQP 69 Dt. 4-12-72[C]**

Subject :- LAND ACQUISITION – Enquiry u/s 5 of the Mysore Land Acquisition Rules 1965 – instruction issued –

It is generally observed that the Land Acquisition Officers are not following the rules prescribed in conducting the enquiry under Section 5-A of the Land Acquisition Act. After giving a hearing to the objection petitioner or his legal representative, the objection petition is sent to the acquiring body and their remarks are obtained. Based on these remarks, the enquiry report, as contemplated under Section 5-A of the Land Acquisition Act is submitted to Government. This is an incorrect procedure. If the remarks of the acquiring body are taken into consideration after the public inquiry, it may vitiate the enquiry altogether since such a procedure would violate the principles of natural justice. The objection petitioner should known the remarks of the acquiring body and should have an opportunity to rebut the same if he so desire. In Writ Petition No 1247 of 1969, the High Court of Mysore and held that the Department, at whose instance the land is said to be acquired, has to file its answer to the objections on or before the date fixed for enquiry and the representatives of the Department can be heard only at the said enquiry and not after. The hearing contemplated is a public hearing in the presence of both the parties. The Land Acquisition Officer is not entitled to hear or receive any representation from the Department behind the back of the objector to his prejudice.

It is therefore impressed on all the Land Acquisition Officers that they should follow to the above decision of the High Court of Mysore strictly in the disposal of the Land Acquisition cases. The final enquiry should be conducted only after getting all the information necessary from the Government Departments, which are the acquiring bodies, and the objector should be informed of the remarks of the acquiring body at the time of the final hearing. In the case of acquisition of the lands in favour of local bodies, other than Government Departments, the procedure laid down in Rule 5 of the Land Acquisition Rules, 1965, should be strictly followed and no correspondence should be entertained with the acquiring bodies subsequent to the hearing.

Sl No 869

Circular Number RD 125 AQW 70

Date 04/01/71

Section Land Acquisition

Subject Legislation to ban allotment of Fertile Land for Industrial purposes -

Body **RD. 125 AQW 70 Dt. – 4-71 [L]**

[Letter from The Secretary to the Government of Mysore, Revenue Department to All Divisional Commissioner/Deputy Commissioner]

Subject:- Legislation to ban allotment of Fertile Land for Industrial purposes -

I am directed to forward herewith for information a copy of the letter No. F 4-1/70 - Lands dated 11-6-70, from the Government of India, Ministry of Food, Agriculture, Community Development and Co-operation (Department of Agriculture) New Delhi, along with its enclosures, in regard to the steps to be taken for preventing acquisition of good Agricultural land.

Further, I am to request you to forward your considered views to Government immediately, so as to enable Government to send their views to the Government of India, urgently.

COPY

of the letter No. F-4-3/70, Lands, dated 11th June 1970 from the Secretary to the Government of India, Ministry of Food Agriculture, Community Development and Co-operation, (Department of Agriculture), New Delhi addressed to the Chief Secretaries of all States and Union Territories.

Subject:- Acquisition of land - steps to be taken for preventing acquisition of
good agricultural land.

I am directed to refer to the enclosed copy of this Ministry's letter No. 4-5/65-General II, dated the 30th March, 1965 (Annexure I) regarding the prevention of diversion of agricultural land to non-agricultural purposes. The Land Acquisition Review Committee, which went into all aspects of land acquisition, has made the following observations and recommendations on this subject in Chapter 12 of its Report:-

(i) The Land Acquisition Committee constituted under the Land Acquisition (companies) Rules, 1963 plays an important role in advising the Government against excessive acquisition of land and taking of good agricultural land for companies. However, there is no provision either in the Land Acquisition Act, 1894 or Rules made thereunder for preventing excessive acquisition of land or acquisition of good agricultural land where acquisition is sought to be made by the Government for public purpose under Part II of the Act.
(ii) It would not be practicable to impose a total ban on the acquisition of good agricultural land. Acquisition of Good Agricultural Land might become necessary in certain cases because of its strategic importance and also for the development of agriculture itself. However, there can be no two opinions on the question that good agricultural land should not be acquired unless it is absolutely necessary. It is thus essential to provide for a statutory device for preventing the acquisition of good agricultural land and acquisition if excessive land agricultural or non-agricultural.

(iii) A Land Acquisition Committee should be set up under the Act for advising Government in respect of Land use Policy in the matter of large scale acquisition for public purpose including implementation of projects. The function of the Committee would be to ensure that:-

a) the land which is already in the possession of the acquiring body is put to optimum use before permitting the proposed acquisition.

b) An excessive acquisition does not take place;

c) the acquisition of good agricultural land does not take place where it can be avoided; and

d) the proposed acquisition is justified on the basis of high density norms.

The committee should tender advice to the Government before issue of the notification under section 4(1) of the Land Acquisition Act. While the composition of the committee has been left to be decided by the appropriate Government, it has been recommended in the Report that its members should include experts on the subject and representatives of the people. In this connection it may be mentioned that a copy of the Report in full has already been forwarded to your Government (Revenue Department) under this Ministry's letter No. 2.7/70 – lands dated the 5th May 1970.

2. I am to request that the relevant portion of the Report may be examined by the State Government at the earliest and guidelines issued to the authorities concerned with land acquisition, in case this has not been already done, emphasising the need for preventing as far as possible good agricultural land from being acquired. It is requested that action or proposed to be taken on this matter may please be intimated to this Ministry.

A N N E X U R E I

Copy of the letter No. F4-5/65-Generl-II dated 30th March 1965, from the Under Secretary to the Government of India, Ministry of Food and Agriculture, (Department of Agriculture) New Delhi, addressed to the Revenue Secretaries of all State Government and Union Territories -

Subject:- Diversion of agricultural land to non-agricultural uses-

I am directed to say that as the State Governments are aware, the Land Acquisition (Companies) Rules, 1963 framed by the Central Government contain provisions to ensure that good agricultural land not acquired for a company except where it is unavoidable. In D.O. letter No. 4-16/62-C (G), dated 12th July, 1963 from the Union Minister for Food and Agriculture to the Chief Ministers of all States and Administrators of the Union territories. The Union Minister had specifically drawn attention to the need to ensure that even in other cases i. E, where land is acquired for Government good agricultural land is not acquired except in unavoidable circumstances. Earlier, in 1958 also this Ministry has written to the State Government or avoiding as far as possible acquisition of good agricultural land for non-agricultural purposes (copy of letter No. 3-7/58-LRU, dated 22nd March, 1958 enclosed for ready reference.)

However, the point remains that the owner of land may himself, or when he transfers land, the transferee, may divert good agricultural land to non-agricultural use and the question for consideration is whether some safeguard are necessary to prevent good agricultural land being converted to non-agricultural use except where it is essential or unavoidable. In this connection a suggestion received from on Shri, L.M. Bhattacharjee, LL.B., is also attached. It will be highly appreciated if the State Governments could kindly supply information about the existing position in this regard and the action, if any proposed to be taken.

ANNEXURE – I

Copy of letter No. 4-16/62-C(G) dated the 12th July 1963, from the Minister of Food and Agriculture (Shri S. K. Patil) to the Chief Ministers of all States and Administrators of Union Territories.

Land Acquisition Act, 1894 :-

During the debate on the Land Acquisition (Amendment) Bill, 1962 in the Parliament, several members were highly critical of the administration of the Land Acquisition Act. The main points which received the attention of the critics were the acquisition of good agricultural land for non-agricultural purposes, the acquired lands lying unused over long period, inadequacy of compensation and delays in the payment of compensation. It was also emphasised during the debate that the Government should actively assist in the rehabilitation of the person whose lands was acquired. These suggestions have been kept inview in framing the Rules under Part VII of the Land Acquisition Act. I enclose a copy or these in forwarding these rules to the State Governments, several suggestions have been made about the administration of the Act.

I should like to draw your attention to rule 9 which required that acquisition of lands for a company, other than a company owned or controlled Government, or a State Government shall ordinarily be made in accordance with the provisions of Part VII of the Act so that the procedures which have been set out in the Rules may be made applicable to all such acquisitions. Although this Rule has been left flexible it is the intention that the acquisition of land for the use of a privately owned company left flexible it is the intention that the acquisition of land for the use of a privately owned company should be made only under Part VII of the Act, except where you are satisfied that it would be in public interest to depart from this general practice in any particular case. Ordinary processes of land acquisition Act for acquiring land for "Public Purposes" should not be used in such cases, save in exceptional circumstances.

These Rules are applicable only to the acquisition of lands for companies under part VII of the Act and not to acquisitions made under the general provisions of the Act for the purpose of the State or for companies owned or controlled by the Central Government or any State Government. The main points which attracted the criticism is the Parliament apply equally to the acquisition of land for the purpose of the State or for companies owned or controlled by the State Government. Even in these cases, it is important to ensure that good agricultural land is not acquired except in unavoidable circumstances, that acquired land is not kept unused over unduly long period, that compensation paid is both prompt and adequate and that necessary arrangements are made to rehabilitate persons seriously affected by the acquisition proceedings.

Several members of the Parliament asked that the entire Land Acquisition Act 1894, be amended. While this question is under separate consideration, I shall be grateful if the procedures and practices prevailing in your State are reviewed, taking into consideration the criticisms made in the parliament and revised to the extent necessary.

I shall be glad to know in due course the action by your Government.

COPY

of the letter No.3-7/58-LRU, dated 22nd March, 1958, from the Under Secretary to the Government of India, Ministry of Food, Agricultural (Department of Agricultural), New Delhi, addressed to All the States and Union Territories.

Sub : URBAN EXPANSION - ACQUISITION OF AGRICULTURAL LANDS FOR NON-AGRICULTURAL PURPOSES.

I am directed to say that acquisition of good agricultural land for a non-agricultural purpose affects our objective of increased food production. In some cases there may be no alternative land suitable for the specific purpose for which agricultural land is being acquired. However, there may be other cases where the acquisition of fertile agricultural land for a non-agricultural purpose could be avoided and alternative land which is not so valuable for agricultural purpose could be acquired. It will be highly appreciated if the State Government would kindly intimate whether any precautions are taken to minimise the acquisition of good agricultural lands for urban purposes.

It is also suggested that a representative of the State Agricultural Department may be associated with the selection of sites for non-agricultural purposes so that agricultural needs may also be kept in view and wherever possible the acquisition of good agricultural lands and their conversion to a non-agricultural use is avoided.
An early reply will be appreciated.

Copy of suggestion from Shri.L.M. Bhattacharjee, LL.B., 7, Earle street, Calcutta - 25.

"The permission to transform cultivated agricultural lands for residential purpose or for excavating tanks should be taken from Government to prevent hoarders to invest their unaccounted money in lands speculation thereby reducing the area of cultivated land".

Foot Notes

Sl No 1005

Circular Number RD 1324 LPW 66

Date 02/01/68

Section Land Acquisition

Subject Factors to be taken into consideration before initiation of Acquisition Proceedings - Issue of
instructions.

Body **RD 1324 LPW 66 dt. 1-2-68 [C]**

Subject:- Factors to be taken into consideration before initiation of Acquisition Proceedings - Issue of instructions.

Several instances have come to the notice of Government in which the omission to observe important rules of procedure relating to Land acquisition and appreciation of several factors to be taken into consideration in determining the suitability or otherwise of a particular land for acquisition, has often led to the necessity of either cancelling the preliminary notification or withdrawing the final notification. The following are some of the reasons generally adduced for cancelling/withdrawing the Land acquisition notifications already published:-

1. Among the applicant who has requested for sites in the village, none is there who does not own a site or a house. Therefore the preliminary notification be cancelled.

2. There are plenty of vacant sites in the village which can be disposed of to the persons who are really in need of sites for the construction of houses. Hence the acquisition proceedings be dropped.

3. The land already notified for the purpose of manure pits is not suitable, as the dirty water would flow into the village close by and the sanitary condition would worsen.

4. The Acquisition of land for burial ground, already notified, is close to building sites and Industrial Training Centre and Estate, and therefore unsuitable.

5. The land notified is not fit for the extension of village site, since it is a garden land and the land is hypothecated to Government in connection with Taccavi loan.

6. That the present land bearing certain S. Nos. plus land available in a particular S. No. is sufficient and therefore the present acquisition of notified land may be cancelled or dropped.

7. The notified land is being cultivated with ragi crops with mulberry and cocoanut trees standing on the lands.

8. The land notified is not liked by the party/village Panchayat for the purpose of village

extension.

9. The occupants are not actually in possession or living on the lands notified for acquisition but are in possession of some other lands. Therefore the lands in actual possession will have to be notified.

10. That the lands selected is low lying and likely to become marshy during the rainy season, as the water rushes to the village which is just adjacent to the stream.

11. That the land is owned on behalf of a limited company and that conversion fine has already been paid and the acquisition would cause great hardship to the company if the lands are acquired.

12. That the portions to be acquired are found to vest already with the Municipality.

13. That the notification was not immediately followed by a public notice in the village.

14. That the persons to be provided with sites are few and they could be provided with sites out of the land available with the Panchayat.

15. That the lands are very fertile.

16. That Government would have to pay heavy compensation if acquired.

17. That the concerned Village Panchayat has not credited or failed to credit the balance of cost despite sufficient opportunity given to the Village Panchayat.

18. That the proposed lands are at a distance of about a furlong from the existing colony and not continuous and therefore unsuitable for acquisition.

19. That there are khanas with valuable tamarind trees of over 2- to 25 years standing.

20. Only one person is in need of site and that such a person will be provided with a site out of the gramtana and therefore acquisition be dropped.

21. That the lands have already been acquired by private schools and buildings have also come up and in the circumstances the notification already published be withdrawn.

22. The Land Acquisition Officer has not published the substance of the notification immediately following its publication in the Gazette as required under the provisions of the Land Acquisition Act.

23. Owing to change in the alignment of the road, the acquisition may be dropped.

24. That a transmission line of the Electricity Board runs in the land already notified for acquisition and therefore the acquisition proceedings may be dropped.

25. The Acquiring Body has not provided the funs. Therefore the acquisition proceedings may be dropped.

It is needless to point out that if only the Acquisition Officers had examined and appreciated the state of affairs before initiating the acquisition proposals properly, the need for cancellation/withdrawal of a notification already published would not have arisen at all. In this context, it should be noted by all concerned that re-issue of land acquisition notification would entail the liability of the State, while passing the award, as the value of property on the date of preliminary notification is significant, apart from causing avoidable waste of time and labour at all levels. Government would therefore desire that the Land Acquisition Offices should thoroughly examine the position obtaining at the time of initiating the acquisition proposals in the light of 25 points cited above and scrupulously avoid such situations enumerated at para 1 above. If instances of lapse on the part of the Land Acquisition Officers to examine the acquisition cases as above are observed, or are brought to the notice of Government, Government will be constrained to take disciplinary action against such defaulting officers under rules in force.

Sl No 1191

Circular Number LLH 172 VAQ 57

Date 10/16/57

Section Land Acquisition

Subject OFFICIAL MEMORANDUM

Body GOVERNMENT OF MYSORE.

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No LLH 172 VAQ 57 Dated, Bangalore, 16th October. '1957.

OFFICIAL MEMORANDUM,

In the Official Memorandum No.L.8084-92/V.P.16-34-151 dated the 25th May 1935, Government issued certain instructions in respect of the withdrawal from the acquisition of lands for extension of village sites. The Official Memorandum is reproduced below.

"Several recommendations have been received for dropping proceeding of acquisition of land for extension of village sites, long after sanction was accorded, on the ground that the land proposed is unsuited for the purpose or that the local body concerned is unable or unwilling to finance the scheme. Government consider that reconsideration might well have been avoided if the local officers had in the first instance inspected that area proposed for acquisition and satisfied themselves in regard to the suitability and obtained a deposit of the contribution by the local body concerned.

The Deputy Commissioners are requested to impress upon the officers concerned, the necessity and the importance of strictly adhering to the standing orders in this behalf. "

Of late, Government have been receiving recommendations from some of the Deputy Commissioners for withdrawal from the acquisition of lands for more or less the reasons cited in the Memorandum referred to above. A perusal of the records in these cases has revealed that the officers concerned with the acquisition have expressed inconsistent opinions. Had the concerned officers examined all aspects of the question OK and inspected the lands in such cases before making proposals for acquisition of lands, the necessity of withdrawing from the acquisition of lands would not have arisen.

When the acquisition proceedings relating to the extensions of villages are complete and the final notification issued by Government, it should not become a mater of routine to reopen the question either on the ground that the site selected is not suitable or the village Panchayat has revised its resolution.

The Deputy Commissioners of Districts and the Collectors are requested to see that above instructions are strictly adhered to by all the officers concerned with the acquisition of lands for extension of villages and they should expedite the disposal of the cases at all levels.

Any deviation from the directions given above shall be viewed seriously.

(B.Channabasappa)
For Secretary to Government,
L.S.G & Public Health Department.

Sl No 1197

Circular Number RD 37 LCF 58

Date 12/12/58

Section Land Acquisition

Subject Urban Expansion – Acquisition of Agricultural
Lands for non-agricultural purposes.

Body GOVERNMENT OF MYSORE.

No. RD 37 LCF 58 Mysore Government Secretariat,
Vidhana Soudha,
Dated, Bangalore 12 December 1958.
Agrahayana 21 Saka 1880.

C I R C U L A R

Subject: Urban Expansion – Acquisition of Agricultural
Lands for non-agricultural purposes.

Acquisition for good agricultural land for non-agricultural purpose affects the objective of increased food production. In some cases, near urban areas there may be no alternative land suitable for the specific purpose for which agricultural land is being acquired. However, there may be other cases where the acquisition for fertile agricultural land for non-agricultural purpose could be avoided and alternative land which is not so valuable for agricultural purposes could be acquired. Fertile agricultural lands should not normally be acquired for non-agricultural purposes unless there is no other alternative.

(K. Balasubramanyam)
Secretary to Government,
Revenue Department.

Sl No 1195

Circular Number RDF-64-LOU-58

Date 10/09/58

Section Land Acquisition

Subject Instructions regarding submission of proposals for land acquisition.

Body GOVERNMENT OF MYSORE
Mysore Government Secretariat,
Revenue Department,
VIDHANA SOUDHA,
NO.RDF-64-LOU-58 Bangalore, Dated 9-10-1958.
Asvija 17 Saka 1880-

C I R C U L A R

SUBJECT :- Instructions regarding submission of proposals for land acquisition.

* * * * * * * *

It has been noticed that the proposals sent by the Revenue Officers in Land Acquisition cases are not accompanied by full information in respect of the proposed acquisition. In most of the cases there is no indication whether the estimated cost of acquisition has been verified by a responsible officer with reference to the statistics of the sales and leases of lands in the locality. There have been instance where the amount of compensation as per firal award had no relation at all to the estimate furnished while submitting proposals for the acquisition. This has resulted in acquisition being undertaken without a complete examination of al implications. Many cases where Government would have dropped the proceedings or selected some other lands if the estimated cost had been worked out correctly in the fist instance, have come to notice at a very late stage of the proceedings, when it was too late to withdrawn from acquisition. The initiating Departments and the Revenue Officers are therefore requested to furnish full information on the points detailed in the Appended Forms A,B and C while submitting their proposals for acquisition.

The proposal for land acquisition should be sent to the Administrative Department concerned as directed in Government Circular No. RDF-207LQU-57 dated 13-1-1958.

(B.T.NAYAK)
Under Secretary to Government,
Revenue Department.

F O R M -A-

PART I: Preliminary to issue of notification under Section 4 of the Land Acquisition Act.

* * *

(a) Information to be furnished by the Initiating Department and verified by Revenue Department wherever necessary.

1. District : (d) Other description and also
2. Taluk : description of buildings &
3. Village: other structures, trees etc.
4. Land to be acquired : on the land.

(a) Survey No. or C.T.S.No. or Municipal Number
(b) Assessment.
(c) Extent of land required (Acres & Guntas)

5. Purpose for which land is to be acquired.
6. For whom acquired :-

(a) Department, if acquisition is on behalf of a Government Department.
(b)Person or authority liable to pay compensation, if acquisition is for a Company or local authority or industry.

7. Is the permanent acquisition proposed when temporary acquisition under Sec. 35 (Sec.30 of Hyderabad L.A. Act.) will suffice for the whole or any part?

(b) <u>Information to be furnished by Revenue Department:</u> <u>Action to be taken by Revenue Inspector.</u> Revenue Inspe - Tahsildar's Ctro's Report opinion

1. Whether the area asked for
is genuinely required and has

not been selected out of malice etc..?

2. Is the area asked for palpably
in excess of requirements?
If so, what should be the ade-
quate requirement and why the
acquiring body does not accept that much area?
3. Whether a sketch of the land with boundaries showing :

i) Land under acquisition
ii) Alternative site, if any, suggested either by the interested persons or Revenue Dept.
iii) Fragments; buildings, severance, rights of way, railway track, religious or other public building etc..,

4. Can very much less expensive land be got for the purpose in the Vicinity? If so, why the acquiring body is not according it and insists on the acquisition of the land proposed by it ?

5. Whether the land purposed for acquisition is or is not required for any public, Department or semi-Government purposes e.g. Principal, State Transport etc..?

6. Does the boundary intersect any building or the premises of any building in such a way that section 49 (1) or Sector 40 of Hyderabad Land Acquisition Act might be invoked ? If so, whether the parties will invoke this Section?
7. Does the boundary leave any fragments of land such that excessive demands for severance might arise?

8. Is any religious building, grave-yard, or ancient monument affected?

9. Does the proposal interfere with any public right of way or streams, or water-courses, or drainages, channels for which provision must be made?

10. In urban areas, are there any rights of private access to buildings or rights of light and/or air or drainage likely to be interfered with?

11. Is any of the land occupied either by Military, other Department Court of Wards, Local Board etc.., or is it unoccupied, at the disposal of Government?

12. Whether any of the land belongs to the Harijans, and whether they are opposed to the acquisition and if so, what is the opinion of the social welfare Department.

13. Panch or Mahazar valuation.

14. Is data or leases in five years and valuation of lands in the vicinity on the basis of such leases furnished?

15. Is data of leases in five years and valuation of lands in the vicinity on the bases of such leases furnished?

NOTE : Replies to questions 14 and 15 should be furnished with reference to the entries in Records of Rights where such Records exist. In all areas information regarding unregistered sales and leases should be ascertained locally and furnished. In areas where R.R.Scheme has not yet been introduced information regarding registered transactions should be got from Sub-Registrar's office.

(c) <u>Action to be taken by Tahsildar.</u>

1. If the land is in the vicinity of a Railway, date on which intimation was sent regarding proposed acquisition to Railway Authorities informing them that further action will be taken if no objections are received from them within a fortnight.

2. Whether any replay has been received from the Railway Authorities.

3. Has reference to Social Welfare Department been made if necessary (vide item 12 above)

4. What is final accepted value of land having regard to (b (13), b(14) and b(15).

<u>(d) Replies to be furnished by Assistant Commissioner.</u>

1. Has the information furnished by the Revenue Inspector and Tahsildar been checked by the Assistant Commissioner.

2. What is the Assistant Commissioner's opinion regarding the value of the land.

3. (a) Date on which amount in deposited in case of Adquisition for Companies, Industries or local Authority.
(b) Date on which counter-signature is given by Government-Officer in respect of acquisition of land for Government Department.

4. Date of publication of preliminary notification under section 4 when proposals are for issue of notification under Section6.

<u>(e) Additional Information when Section 17 is sought to be applied.</u>
1. Reasons for applying urgency clause To be furnished by
and not resorting to normal procedure Asst. Commissioner.
2. Whether there are any standing To be furnished by
crops and f so, whether possession Revenue Inspector and
will be taken after crops are harvested Tahsildar.
3. Whether the land does not contain
any structures and comes within the ------Do-----
definition of arable or waste land.
* * * * * * * * *

F O R M "B"

Following information (in addition to the information in Form "A") Should be furnished when acquisition is one behalf of a company or a Society :-
(Tobe furnished by Tahsildar and Assistant Commissioner)
(i) Whether the company/Society is a "Company" within the meaning of Section
3 (e) of the Land Acquisition Act?
(ii) Whether it is willing to execute the agreement in the prescribed form? And if so, whether a draft execution of the agreement?

(iv) In case the compensation awarded by the Acquiring Officer or the court, exceeds the estimated cost, whether it would be possible to recover the same from the company, taking into account its financial position?

In case the land is required for housing by the Company/Society additional following additional information should be furnished :-

(v) Whether the housing scheme has been approved by Government and if not, whether it should be approved by Government?

(vi) Whether Government has agreed to bear either the whole or part of the cost of acquisition? If so, Government orders should be quoted.

(vii) What is the number of families to be housed/members of the Society?

(viii) Whether any of them have houses and or house sites, if so, where?

(ix) (Whether the site has been approved by Public Health Department.

F O R M "C"

Following information (in addition to the in Form "A") should furnished when acquisition is for a new or extension of the present village site :-
(To be furnished by Tahsildar and Assistant Commissioner)

(i) The number of applicants

(ii) Whether any of them have houses and/or houses sites and if so, where?

(iii) Whether they have deposited the cost of acquisition and if the compensation that may be awarded either by the Acquiring officer or the Court exceeds the amount of Deposit? Whether it would be possible to recover the excess amount?

(iv) Whether they are willing to surrender their present house sites? And if not why?

(v) Whether Government has agreed to bear the whole or part of the cost of acquisition ? If so, Government order should be quoted.

(vi) Whether the site has been approved by the Public Health Department?

In case the land is required for housing the Harijans, following information should be furnished : -
(vii) Whether they are willing to form a Co-operation Housing Society? If not, why?

(viii) Whether they are prepared to surrender their present house sites? If not, why?

(ix) Whether they are so poor and destitute that inspite of (vii) and (viii)
Above, should the acquisition be at the cost of Government has agreed to bear the cost and if not, why? ; or in that case should the land be acquired, and how the expenditure should be met?

(x) The Health Officer's certificate regarding suitable of the land for habitation should be enclose

Sl No 1204

Circular Number RDH.82 LQM 59

Date 09/24/59

Section Land Acquisition

Subject Selection of lands in the initiation
of acquisition proceedings under the
Land Acquisition Act.

Body

GOVERNMENT OF MYSORE

No. RDH.82 LQM 59. Mysore Government Secretariat,
"Vidhana Soudha"
Bangalore, Dated 24th Sep. 1959.

C I R C U L A R

Sub:- Selection of lands in the initiation of acquisition proceedings under the Land Acquisition Act.

While initiating acquisition proceedings in the selection of sites it is desirable, that generally, as far as possible, lands which are already brought under cultivation and on which food crops are grown should not be selected if waste land or any other land is available. If it becomes necessary to acquire agricultural lands, as between two or more lands having equal suitability, lands belonging to persons who are owning larger extents should be preferred in the selection of lands for the initiation of acquisition proceedings.

The Deputy Commissioners of Districts are requested to issue necessary instructions to all the officers dealing with land acquisition work within their jurisdiction.

(K. Balasubramanyam)
SECRETARY TO GOVERNMENT,
REVENUE DEPARTMENT.

Sl No 1200

Circular Number RDF 64 TLA 59

Date 04/02/59

Section Land Acquisition

Subject CIRCULAR

Body

GOVERNMENT OF MYSORE.

No. RDF 64 TLA 59 MYSORE GOVERNMENT SECRETARIAT
(Revenue Department),Dated Bangalore, 2nd April, 1959.
Chaitra, 1881.

C I R C U L A R.

Government is pleased to direct that the following amendments should be made in the Government Circular NO.RDF 64 LQU 58 dated 9th October, 1958 namely:-
1 The following paragraph should be substituted for clause (ix) of Form 'B' and clause(x) of Form 'C' of the annexure to the Government Circular.

"Where the area to be acquired is less than 2 acres or the number of house to be constructed is less than 50 houses, the certificate from the Public Health Department is not necessary. In such cases a certificate of the concerned Tahsildar will suffice. In other cases the Health Officer's certificate regarding suitability of the land for habitation should be enclosed." The certificate issued by the Block Health Officer is desired to be sufficient in respect of acquisitions for extension of village sites.

(B.T. NAYAK),
Under Secretary to Government,
Revenue Department.

Sl No 1207

Circular Number RDH 6. LAM 60

Date 01/16/60

Section Land Acquisition

Subject CIRCULAR

Body GOVERNMENT OF MYSORE

No. RDH 6. LAM 60 Mysore Government Secretariat,
Bangalore, Dated, 16th Jan 1960.

C I R C U L A R.

Some instances have come to the notice of Government where the local officers had taken action to put companies in possession of lands required by them, before the proceedings under the Land Acquisition Act were completed or even initiated. In some cases, the companies in question had not even executed the Agreement required under Section 41 of the Act and subsequent protracted correspondence relating to the actual causes of the Agreement had resulted in inordinate delay in finalising the acquisition proceedings and payment of compensation. The Deputy Commissioners of Districts are therefore requested to note that companies for whom lands are being acquired under the provisions of the Land Acquisition Act, should not be put in possession of the lands until the acquisition proceedings are completed, after getting the necessary Agreement executed. If, in any case, it is proposed to put a company in possession of lands, pending completion of acquisition proceedings, specific orders of Government should be obtained before handing over possession of the lands.

As the provisions of the Land Acquisition Act could be resorted to for acquisition of lands for a company only subject to certain conditions, all requests made direct to the Deputy Commissioners for acquisition of land by companies should be submitted to Government for orders before initiating acquisition proceedings.

(K. BALASUBRAMANYAM)

SECRETARY TO GOVERNMENT
REVENUE DEPARTMENT.

Sl No 1209

Circular Number RD 10 GMD 60

Date 04/06/60

Section Land Acquisition

Subject CIRCULAR

Body

GOVERNMENT OF MYSORE

Mysore Government Secretariat,
"VIDHANA SOUDHA",
No. RD 10 GMD 60.

Bangalore, Dated 6th April 1960.

Chaitra, 17th Saka 1882.

C I R C U L A R

It has come to the notice of Government that in good many cases where Agricultural lands have been acquired on behalf of either the State or a Local Body and for which compensation has not been paid, the owners of such lands are not given any relief in respect of the assessment over such lands although they are not in actual possession and enjoyment of the land. Similarly, there have been some instances where agricultural lands, though not regularly acquired, are used for non-agricultural purposes, but the proportionate abatement of assessment over such lands is not given effect to with the result that the assessment is booked in the names of the Khatedars although they are not in possession of the land. Government have examined the position and feel that such a course would mean a great hardship to the Khatedars. As such, Government is pleased to direct as under.

All the officers concerned should note that taking possession of private lands without initiating land acquisition proceedings is illegal and may involve Government in litigation. Therefore, no private land should be taken possession of without initiating land acquisition proceedings. As regards the cases wherein possession of land has already been taken, prior to the issue of this Circular, the assessment will have to be brought on demand every year until acquisition proceedings are completed and the land is shown in Government accounts as Government land or the land of the person on whose behalf it is acquired. At the same time, it would not be correct to ask the former owners to pay the assessment for the periods during which they have not been in possession of the lands. The best course, therefore, is to allow the demand to be shown in accounts until the acquisition proceedings are completed and then the amount may be written off by the Deputy Commissioner.

As regards the cases wherein land acquisition proceedings are initiated and the possession of the land is taken without passing the award and paying the compensation, Kami Eksala (annual abatment) to the extent of assessment over the land taken possession of should be granted by the Nazim Jamabandi (Jamabandi Officer) at the time of annual Jamabandi after ascertaining the fact. When the entire land acquisition proceedings are Finalised and the phodi work is also completed and Kami Jasti Patraks (intimation of rectification of Survey records) are issued then, on the strength of these papers, permanent abatement, in respect of the total assessment over the lands acquired, should be sanctioned by the jamabandi officer.

(D. NAGSETTI)
Under Secretary to Government,
Revenue Department.

TAKING POSSESSION OF PRIVATE LANDS WITHOUT INITIATING LAND ACQUISITION PROCEEDINGS IS ILLEGAL

Sl No 1210

Circular Number RDH 112 LQM 60

Date 08/19/60

Section Land Acquisition

Subject CIRCULAR

Body

GOVERNMENT OF MYSORE

No. RDH 112 LQM 60. Mysore Government Secretariat,
Vidhana Soudha,
Bangalore, Dated the 19th August 1960.

C I R C U L A R

In Circular No. RDH 82 LQM 59 dated 24-09-1959 instructions have been issued to the effect that if it becomes necessary to acquire agricultural lands as between two or more lands having equal suitability, lands belonging to persons owning larger extents should be preferred in the selection of lands for the initiation of acquisition proceedings. It has however been observed in some cases that inspite of the above instructions, proposals are being submitted to Government for acquisition of lands belonging to persons who own smaller extent although the lands belonging to persons who own larger extents and of equal suitability are available for acquisition.

The Deputy Commissioners of all Districts are, therefore, requested to instruct all the Officers dealing with land acquisition in their districts to ensure that the instructions issued in the circular mentioned above are strictly followed in all cases of land acquisition.

(K. Seshagiri Rao)
Under Secretary to Government
Revenue Department.

Sl No 1213

Circular Number RDH 125 LQM 60

Date 09/19/60

Section Land Acquisition

Subject CIRCULAR

Body GOVERNMENT OF MYSORE.

No. RDH 125 LQM 60 Mysore Government Secretariat,
Vidhana Soudha,
Bangalore, dated 19th September 1960.
Bhadrapada 28(Saka) 1882.

C I R C U L A R.

It has been noticed in several cases pertaining to land acquisition that proposals for issue of notifications have been received from the Revenue Authorities two or three years after the local bodies or other institutions proposed the acquisition of the lands. Owing to the delay in issuing preliminary notification under the Land Acquisition Act, the compensation may have to be computed on the basis of the market value as on the date of the publication of the preliminary notification instead of the market value obtaining at the time when the acquiring body originally proposed the acquisition. As a general rule, the notification under Section 4 of the Land Acquisition Act should issue immediately on receipt of the proposal from the acquiring body, so that speculative transactions taking place after the proposed acquisition becomes known in the locality may not unduly step up the compensation payable.

All Revenue Authorities concerned are, therefore, requested to take expeditious action to move the concerned authorities or Government as the case may be on receipt of proposals for acquisition from the acquiring bodies for issue of preliminary notification under the Land Acquisition Act.

(K. SESHAGIRI RAO)
Under Secretary to Government,
Revenue Department.

Sl No 1217

Circular Number RDH 21 LQM 61

Date 02/20/61

Section Land Acquisition

Subject CIRCULAR

Body GOVERNMENT OF MYSORE

No. RDH 21 LQM 61. Mysore Government Secretariat,
Vidhana Soudha,
Dated, Bangalore, 20th February 1961.
Magha 28, Saka Era, 1882.

C I R C U L A R

Sub:- Acquisition of lands for public purpose.

The work relating to Land Acquisition which was being dealt by the respective Department of Government at Secretariat level was centralised in the Revenue Department of the Government in July 1959. Since then, over 12,000 cases of Land Acquisition has been sanctioned by Government. The scrutiny of these cases has revealed many common deficiencies which are analysed below. On account of these defects, proposals for acquisition have had to be returned for supplying omissions and as a result, there has been considerable correspondence and loss of time. In order to avoid all these the more common defects are indicated in the following paragraphs, with the object of seeing that they are in future avoided:

(1) Initiating acquisition proceedings either (a) too pre-maturely without even Obtaining sanction wherever necessary, to the proposal, of the competent authority or even before obtaining acquisition charges in advance from acquiring bodies, such as (Local Bodies, Companies, Corporations or other autonomous bodies) or, (b) belatedly, long after considerable time from the date of sanction to the proposal.

(2) Omission to obtain a token grant from the local bodies or other Departments of Government when (a) the acquisition is on behalf of specific community or class of persons and the persons of that community or, (b) there is not cost, for example, when

the land or lands, is or are, given free of cost for a specific purpose.

(3) Failure to indicate the source to meet the cost of acquisition. The detailed head of account (Budget Head), Major, Minor and Sub-head etc., should invariably be indicated in the body of the letter and in the Proforma.

(4) Recommendation for use of Emergency procedure contemplated in Section 17 of the Land Acquisition, Act, in cases where such procedure is not really warranted. The necessity for invoking the Emergency procedure should clearly be established. Further, it should be restricted to lands which are either waste or arable and not extended to lands on which there are buildings, structures or wells etc.

(5) The number of the page and the date of the Gazette in which the Preliminary Notification has been published should invariably be indicated while forwarding proposals for the issue of Final Notification.

(6) All the items and blank spaces in the draft notifications (such as the purpose of acquisition etc.) are not filled up. The draft notifications should be scrutinised carefully before they are sent to Government.

(7) In the case of construction of buildings, Projects, Irrigation works etc., it should be clearly stated whether competent sanction has already been accorded.
(8) When it is proposed to acquire lands on behalf of a Company or Society, the required agreement as per the provisions of the Act is not taken from the acquiring bodies. Immediately after publication of the Preliminary Notification a draft agreement should be obtained from the acquiring body and sent to Government along with the proposals for issue of Final Notification.

The Land Acquisition Officers concerned may kindly be given suitable instructions with reference to the above points so as to ensure that the proposals for acquisition of lands reach Government in a complete form and thus can be dealt with expeditious.

(K. Seshagiri Rao)
Under Secretary to Government,
Revenue Department.

Sl No 1211

Circular Number RDH-92-LQM-60

Date 08/29/60

Section Land Acquisition

Subject CIRCULAR

Body

GOVERNMENT OF MYSORE

No. RDH-92-LQM-60 Mysore Government Secretariat,
Vidhana Soudha,
Bangalore, dated 29th August 1960.
Bhadrapada (Saka) 1882.

C I R C U L A R

It has been noticed that the proposals sent by the Revenue Officers in Land Acquisition cases, are not accompanied with full information in respect of the proposed acquisition in spite of clear circular instructions issued vide circular No.RDF-64-LQU-58 dated 9-10-1958. These incomplete proposals add to avoidable correspondence and delay in the disposal of cases. Some of the noticeable defects are as noted below:-

a) Not having competent sanction for the land acquisition.

b) No indication to show whether there is adequate provision towards acquisition charges.

c) No indication of the Budget Head to which the cost of acquisition is to be debited.

d) Not insisting upon payments of deposit in advance of Acquisition charges from the Company, Society, Local Bodies etc.

e) Non-execution of the Agreement from the Company, Society or other Bodies on whose behalf acquisition proceedings are undertaken.

f) Writing of draft notifications in pencil, and in some Cases even if they are written in ink, duplicate copies are not being sent.

With a view to facilitating speedy disposal of cases pertaining to the acquisition of lands, it is directed that in future, proposals for acquisition of lands should be sent with all the relevant information and particulars as directed in Circular dated 9-10-1958 and also with particulars as in Form D (enclosed).

It is further made clear that such of the proposals which are not accompanied with the above proforma and in which the above noticed defects are existing, in future, will not receive consideration and would be returned.

By Order and in the name of the
Governor of Mysore,

(K. SESHAGIRI RAO),
Under Secretary to Government, Revenue Dept.

Sl No 1228

Circular Number RDH. 22. LLB 60

Date 11/02/62

Section Land Acquisition

Subject Land Acquisition cases on behalf of Local Bodies – entering into agreement – Form of agreement.

Body Subject: Land Acquisition cases on behalf of Local
Bodies – entering into agreement – Form
of agreement.

PROCEEDINGS OF THE GOVERNMENT OF MYSORE

ORDER No. RDH. 22. LLB 60.

Bangalore, dated
2nd November
1962.

READ :
Letter No. LAQ. 4146/60-61 dated 27-7-1960 from the
Divisional Commissioner, Mysore Division, Mysore.

PREAMBLE :

The Divisional Commissioner, Mysore Division, Mysore has requested approval of Government to the draft agreement form to be executed, when the acquisition is on behalf of Local Bodies.
ORDER :
Sanction is accorded to the proposal of the Divisional Commissioner, Mysore Division. All Local Bodies and Municipalities in the State of Mysore should execute agreement (with such additions and alterations as are necessary in individual cases) whenever acquisition is on their behalf. The agreement form need not be published I the official Gazette. The form of agreement to be executed is annexed to the Government Order.
By order and in the name of the
Governor of Mysore.
(K. Seshagiri Rao)
Under Secretary to Government,
Revenue Department.

AGREEMENT

An agreement made the ……………………………………..day of ……………...1996, between thre Municipality/Taluk Development Board/Village Panchayat hereinafter referred to as the Municipality/Taluk Development Board/Village Panchayat of the none part and the Governor of Mysore (hereinafter referred to as « The Government » which expression shall unless the context does not so admit include his successors in office and assigns) of the other part.
Whereas the Mun icipality/Taluk Development Board /Village Panchayat is desirous of acquiring all that land situate in the village of
Taluk in the District of known by the name of as the case may be) containing by superficial measurement more or less, which said land is now in the occupation of and is delineated in the Survey (or Government) map of as (part of) the filed (or estate, or plot, etc., as the case may be) No. and bounded on the North by , on the South by , on the East by and the West by together with the trees, houses, and all other things whatsoever

standing on the same or attached to same or permanently fastened to anything attached to the same or permanently fastened to anything attached to the same ; and whereas the Municipality/Taluk Development Board/Village Panchayat has applied to the Government of Mysore to acquire the said land on this behalf under the provisions of the Land Acquisition Act 1894 as amended by Mysore Act 17 of 1961 (hereinafter referred to as the said Act) ; and whereas Government has consented to acquire the said land under the said Act on behalf of the Municipality/Taluk Development Board/Village Panchayat on the Municipality/Taluk Development Board/Village Panchayat agreeing in the manner hereinafter appearing ;

THESE PRESENTS WITNESS that the Municipality/Taluk Development Board/Village Panchayat both hereby bind itself to pay to Government the cost of the acquisition of the said land and all such charges as many be incurred by Government or by any officer of Government in respect of the said acquisition at such time or times as the Deputy Commissioner of (hereinafter referred to as the Deputy Commissioner) shall require, on the amount of the said cost or charges being certified by the Deputy Commissioner and both agree that in the event of its making default in any such payment it shall be lawful for Government in addition to other remedies open to recover the same as arrears of land revenue ; And the Government both hereby agree with the Municipality/Taluk Development Board/Village Panchayat that as soon as all costs and charges of the said acquisition shall be paid by it or recovered from it as aforesaid, the said land together with the trees, houses and other things standing thereon or attached thereto, or permanently fastened to anything attached thereto, shall vest in the Municipality/Taluk Development Board /Village Panchayat and be thenceforth held by it for the purposes of the Municipal Act District Development Board Act/Village Panchayat Act like any other property vested in the Municipality/Taluk Development Board/Village Panchayat under (here the appropriate section of the Act constituting the particular Local Body has to be entered) of the Municipal Act/Taluk Development Boarc Act/Village Panchayat Act (free of all claims aor charge whatsoever on the part of Government).
N WITNESS WHEREOF (the officers and members representing the particular Local Body has to be mentioned) for and on behalf of the Municipality/Taluk Development Board/Village Panchayat set their hands/his hand and the common seal of the Municipality/Taluk Development Board/Village Panchayat has been affixed hereto in the presence of –
1.
2.
And the Deputy Commissioner of
has on behalf of the Governor of Mysore hereto set his hand and the seal of his office the day and the year first above written.
Signed and delivered by President and Vice President/Chairman and Vice-Chairman and two councillors/members of the Municipality/ Taluk Development Board/Village Panchayat and sealed with the common seal of the Municipality/ Taluk Development Board /Village panchayat, in the presence of—

1.
2. Common seal of the

And signed and delivered by
Chief Officer in the presence of-
1.
2.
and the common seal of the Municipality/Taluk Development Board/Village Panchayat has been affixed in the presence of-
1.

2. Common seal of the Municipality/ Taluk Develoment Board/ Village Panchayat.
Two members of the standing committee of the Municipality/Taluk Development Board/Village Panchayat.
Signed sealed and delivered by the Deputy Commissioner of,
In the presence of :-
1.
2.
Official Seal.

Sl No 1233

Circular Number RDH 10 LVP 63

Date 02/18/63

Section Land Acquisition

Subject Land Acquisition Cases – Hearing of
Objections and report to Government.

Body GOVERNMENT OF MYSORE

N. Narasimha Rao, Mysore Government Secretariat,
Secretary to Government, Vidhana Soudha,
Revenue Department. Bangalore, dated 18th Feb 1963.
Magha 29, S.E. 1884.

D.O. No. RDH 10 LVP 63.

Dear Shri
Sub: Land Acquisition Cases – Hearing of
Objections and report to Government.

I notice that there is a good deal of avoidable delay in the disposal of Land Acquisition cases mainly on account of incomplete reports furnished by the Enquiry Officers and the Deputy Commissioners' offices. I note below the particulars in reports are incomplete:-

(a) Section 5 (A) of the Land Acquisition Act requires that the objector should be heard in person by the Deputy Commissioner (or Officer in whom the Deputy Commissioner's powers are vested). In a good number of cases while the objections are dealt with at some length and reports are furnished sometimes after local inspections also, there is no specific mention in the reports that all the objectors have been actually heard either in person or through counsel or that notices were served on them and that they failed to turn up. This is a vital piece of opinion without which the question cannot be decided. The records have had to be returned in several instances for a specific report that the objectors were actually heard.

(b) In some cases, the recommendations will be that the objections have been heard and may be overruled as they are untenable and in some of these cases there will be a brief report also. But it is invariably noticed that the efforts do not cover all the objections raised by the land owners. Further it is absolutely necessary that the Government should have before it a complete list of reasons on the basis of which each of the objections are proposed to be over-ruled. While the objections may be untenable, the recommendation for overruling each one of the objections has to be substantiated by reasons.

(c) In other cases the objections refer to the compensation proposed to be awarded on the basis of the valuation under taken at the time of the preliminary enquiries relating to the acquisition. Sometimes these go back to several years. These objections are often disposed of saying that as these refer to the quantum of compensation, they will be considered at the time of the award. Though the question of fixing compensation is to be finalised at the time of framing the award, in the case of acquisitions in respect of local authorities in particular, the pleas for enhanced compensation have a special significance. It is seen that in a number of cases the final award will be a very much larger amount than that originally estimated and will sometimes go up several times the amount deposited. The local authority on whose behalf the acquisition is undertaken will be utterly unable to meet the demand, and recommendations are then made for special grants from land revenue assignment. While small increases over the amount deposited do not matter and can be found either by the local authority or by grants, where there is a large difference in valuation, the Enquiry Officers should devote some attention to the point whether the local authority concerned, will be in a position to meet the demand for compensation that may be made on it and furnish a report. It is also necessary to see whether in cases where the acquisition proposals are allegedly on the basis of party factions there has been a deliberate under valuation of the land.

2. I shall be obliged therefore if you will see to it that in making recommendations for the disposal of objections in acquisition cases full reports giving due attention to all these factors are furnished to Government. The records should invariably contain a sketch of the existing gaothan, land proposed to be acquired and that suggested by the landowners and a certificate of suitability, from Sanitary point of view from the District health Officer, wherever necessary.

Yours sincerely,

Sl No 1223

Circular Number RDH 36 LQM 62

Date 04/03/62

Section Land Acquisition

Subject Land Acquisition Cases-Further instruction regarding Acquisition of lands for the Municipalities and Local Bodies.

Body GOVERNMENT OF MYSORE
No. RDH 36 LQM 62. Mysore Government Secretariat,
Vidhana Soudha,
Bangalore, dated 3rd April 1962.

C I R C U L A R

Sub: Land Acquisition Cases-Further instruction regarding Acquisition of lands for the Municipalities and Local Bodies.

Instructions have been issued in Circular No. RDF 156 LQU 58 dated 13-1-1959 and RDH 35 LQM 61 dated 5-4-1961 laying down the procedure to be followed by the Corporations or Local Bodies etc., when lands are acquired on behalf of these bodies. It has been brought to the notice of Government that instructions issued in these circulars are not being followed strictly by the Municipalities and Local Bodies. This has resulted in sanctioning loans by Government to the Local Bodies to enable them to satisfy claims for compensation against them in land acquisition cases. To avoid such contingencies, it is hereby directed that all the Land Acquisition Officers and other officers concerned should not initiate acquisition proposals on behalf of the Municipalities and Local Bodies unless the cost of acquisition is deposited in advance in the Treasury.

(K. Seshagiri Rao)
Under Secretary to Government,
Revenue Department.

Sl No 1265

Circular Number LAW 31 LSB 66

Date 04/14/66

Section Land Acquisition

Subject Valuation of trees in Land Acquisition Cases

Body GOVERNMENT OF MYSORE

No. LAW 31 LSB 66. Mysore Government Secretariat,
Vidhana Soudha,
Bangalore, dated 14th April 1966.

C I R C U L A R

Sub : Valuation of trees in Land Acquisition Cases.
Ref : Govt. Circular No.LAW 29 LSB 63, dated 18-3-1964.

In paragraph (1) of the Circular No. LAW 29 LSB 63 dated 18-3-65 cited above the Land Acquisition Officers were instructed to have the value fixed for the trees, wells and other structures by setting their estimates prepared by the Public works Department Officers, so as to put the matter beyond all rasons of speculation etc., It has been brought to the notice of Government that the Executive Engineers who were requested to evaluatethe trees as indicated in the circular have expressed their nability on the ground that they have no data for the same. The subject was discussed by the Divisional Commissioner, Belgaum in the meeting of the Deputy Commissioners, and it was resolved to request the Government to modify the order in regard to the valuation of trees, and the such valuation may be directed to be made by the Land Acquisition officers with the help of the local Forest Officers.

Therefore, in partial modification of the circular above cited, it is directed that the Land Acquisition Officers, may have the value of the trees and other details thereof prepared and fixed with the help of the local Forest Officers, instead of by the Public Works Department Officers.

(R. Sanjeevulu)
Under Secretary to Government,
Law Department.

Sl No 386

Circular Number RD 111 AQW 89

Date 05/02/91

Section Land Acquisitions

Subject Release of L.A. notification to the local newspapers-issue of guidelines-reg.

Body **[83]**
RD 111 AQW 89 Dt. 2-5-91 (c)

Sub: Release of L.A. notification to the local newspapers-issue of guidelines-reg.

Ref: Circular No. RD 115 AQW 89 dated 27-1-88

In Government circular dated 27-1-88 cited above while approving the list of news papers for each districts certain guidelines were issued for releasing the L.A. Notifications to those local news papers. The following were the guidelines prescribed in the circular dated 27-1-88 cited above.

1. The newspaper should be recognised one and registered by the Department of information and Publicity Department.
2. It should be in the Media list of information and publicity Department for releasing Government advertisements.
3. It should have minimum circulation of 2000 copies in the District.
4. It should adhere to the guidelines prescribed by the Department of information and publicity.
5. It should charge only the rates prescribed by the paper or rates of the information and publicity Department whichever is less.
6. The L.A. notification should be released to the approved papers on rotation basis.

The Editors of several news papers of the district are representing Government for inclusion of their paper in the approved list of Revenue Department for releasing L.A. Notification to their papers and also the Editors of other papers who have already been included in the approved list for a particular district for release of L.A. notification are repeatedly representing to the Government for approval and inclusion of their paper in the list of the district viz., neighbouring district stating that their paper is in circulation in the neighbouring district. This matter has been examined by the Government in detail and the following guidelines for approval of local newspapers for releasing LA notification are issued.

1. The newspaper shall be the one recognised and registered by the Department of information and publicity.
2. It shall be in the media list of information and Publicity Department for releasing

Government Advertisements.
3. The newspapers shall be in circulation of minimum 2000 copies per day in the district except Bangalore district and in respect of Bangalore district papers, they shall be in circulation of minimum of 7000 copies per day.
4. In any district, if the circulation of any prominent paper is not 2000, the paper which has got the maximum number of circulation shall be considered.
5. Under no circumstances the paper which does not originate from that particular district shall be given advertisement of Land Acquisition Notification.
6. In case the neighbouring districts are also to be considered, the paper shall originate in that district also, in other words it should be got printed in that particular district having circulation of equivalence to that of the other districts.
7. The release of L.A. Notifications to the approved newspapers shall be on rotation basis.
8. The district committee constituted in G. O. No. HD 62 PIA 79 dated 4-8-81 constituted for verification of circulation of papers may meet periodically and send the verification report to Government for revision of approved list periodically and allow new enterents.
The Deputy Commissioners of the district are hereby requested to follow the above guidelines / instructions scrupulously in this matter and take necessary action to update the approved list of newspapers and to release the L.A. notifications to such of the approved newspapers subject to strict scrutiny of above guidelines.


RD 111 AQW 89.tif

Sl No 276

Circular Number RD 224 AQW 87

Date 05/11/89

Section Land Acquisitions

Subject Permission to cancel the notification issued under section 4(1) of the hand Acquisition Act Clarification regarding.

Body **[116]**
RD 224 AQW 87 dt. 11-5-89 (c)

Sub: *Permission to cancel the notification issued under section 4(1) of the hand Acquisition Act Clarification regarding.*

The Deputy Commissioner Hassan in his letter Dt. 13-10-87 has requested the Government to accord permission to cancel the notification issued under section 4(1) of the L.A.Act as the case has vitiated for not issuing the notification Under Section 6(1) of the L.A.ACT within one year from the date of issue of notification under section 4(1). The point that whether it is necessary to issue a cancellation or withdrawal notification in order to nullify the preliminary notification issued under section 4(1) of the Act since that notification vitiates as per proviso to section 6 of the Act, has been examined and

following clarification is issued.
As per the first proviso to section 6 of the L.A. Act, no declaration in respect of any particular land covered by the notification under section 4 sub-section (1) shall be made after the expiry of one year from the date of preliminary notification, excluding the period covered by the stay order of the court.
Consequent to non-issue of final notification within one year from the date of issue of preliminary notification, the preliminary notification issued under section 4 (1) of the L.A.Act will become in effective and the whole acquisition proceedings stand vitiated. Hence it is hereby clarified that it is not necessary to issue the cancellation/withdrawal notification in order to nullify the effect of preliminary notification because the entire acquisition preceedings initiated consequent to issue of 4(1) notification are deemed to have vitiated for not having complied with the first proviso to section 6 of the Land Acquisition Act.

RD 224 AQH 87.tif

Sl No 232

Circular Number RD 46 AQW 95

Date 10/30/95

Section Land Acquisitions

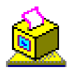
Subject Land Acquisition Act 1894-Instructions regarding taking over possession of Land in land acquisition proceedings.

Body **[17]**
RD 46 AQW 95 Dt. 30-10-95 (C)

Sub: Land Acquisition Act 1894-Instructions regarding taking over possession of Land in land acquisition proceedings.

It has become a usual practice to take possession of the land under section 15 and 16 of the Karnataka Irrigation Act 1965 and then to send the requisition for acquisition of such land to the concerned land acquisition officers. Often it has been done, so many years after taking possession of the land. This has resulted in huge payment of avoidable interest. The matter of taking over possession before initiation of acquisition proceedings has been once again examined by the department of Law and Parliamentary Affairs and it is clarified as follows:
"That neither the Karnataka Irrigation Act 1965 nor the Land Acquisition Act 1894 (as amended in 1984 provides for taking over possession of land before issue of 4(1) notification and such an act is invalid in the eyes of law".
Therefore all the Deputy Commissioners and Land Acquisition Officers in the State are hereby directed not to take possession of any land without first issuing the 4(1)

notification whether under section 15 and 16 of the Karnataka Irrigation Act 1965 or under section 17 of the Land Acquisition Act 1894 (as amended in 1984)
Therefore all the Deputy Commissioners and Land Acquisition Officers in the State are hereby directed to take notice of the legal position and act accordingly. Any violation in this regard would be viewed seriously and the concerned Land Acquisition Officers will be held resoponsible for any lapses.



RD 46 AQW 95.tif

Sl No 386

Circular Number HUD 256 KHB 92

Date 01/21/94

Section Land Acquisitions

Subject Issues connected with acquisition of land/purchase of land for implementation of Ashraya Housing Scheme.

Body **[41]**
HUD 256 KHB 92 Dt. 21.01.94 [O]

Sub: *Issues connected with acquisition of land/purchase of land for implementation of Ashraya Housing Scheme.*

Read
1) G.O. No. HED 407 KHB 90, Dated: 24-06-91.
2) G.O. No. HUD 535 KHB 91, Dated: 04-11-91.
3) G.O. NO. HUD 535 KHB 91, Dated 30-12-91.
4) Circular No. HUD 407 KHB 92 dated 10-7-92.
5) D.O. Letter No. HUD 256 KHB 92, Dated: 19-8-93.

Preamble:
In the Government Orders read at (1) and (2) above, orders, have been issued to distribute sites under Ashraya Scheme for the siteless/houseless families in the State whose annual income does not exceed Rs. 8,400/- per annum. In the rural areas the sites measuring 30 X 40 are granted free of cost, while in the urban areas the sites measuring 20 X 30 are given at 50% of the sital cost. Accordingly from the inception of the scheme 6,44,627 sites have been distributed in the State till the end of December 1993. (Rural 5,98,065 and in Urban 46,562).
During District level Meetings taken by the Chief Minister, several M.L.A.s had raised issues connected with the availability of lands for speedy implementation of the massive Ashraya Housing Scheme taken up by the Government. The Chief Minister had directed that all issues pertaining to the Ashraya programme should be resolved quickly.
Under the existing method with regard to land acquisition/purchase of lands at negotiated rates, the dispensation available to the Deputy Commissioners is as follows:
a) to acquire lands for house sites under the Karnataka House sites Act, 1972.

b) To purchase private lands on the basis of negotiations subject to 30% above, the average sale value of land in the concerned locality on the basis of figures furnished by the Sub-Registrar in confirmity with the G.O. No. HUD 535 KHB 91, Dated 30-12-91.
c) to regulate the purchase of land the following ceiling costs in respect of sites in rural and Urban acreas indicated below:

Maximum Ceiling Cost (including demarcation) per site:

Rural Urban
As per Government Circular
No. HUD 407 KHB 92, Dt: 10-7-92 Rs. 750/- Rs. 1,500/-
As per D.O. Letter No. HUD 256 KHB 92.
Dt: 9-8-92 Rs. 1500/- Rs. 3,000/-
Dimension of the site in rual areas prescribed by Government is 30 X 40 and in urban areas 20 X 30. Applying the rates indicated at (2) above, the ceiling cost Per acre for purchase of land in rural and Urban areas will be Rs. 30,000 and Rs. 1,00,000 respectively including demarcation charges.
Many M.L.As during the course of district level meeting expressed the view that minimum cost of dry land around villages will be Rs. 25,000/- and land in the vicinity of major town-cities would exceed Rs. 1.00 lakh per acre. In the light of the views expressed at these meetings, the Government has to take a view as to whether Ceiling limits prescribed for negotiated purchase of land for forming house sites need to be reviewed keeping in view the current market prices.
At present, the TFCs headed by M.L.A. consisting of B.D.O. (Member-Secretary), Tahasildar, Assistant Executive Engineer of Public Works Department and Karnataka Housing Board Engineer and 4 non-official members decided whether land is to be obtained by negotiations and if the land cannot be obtained at the ceiling rates prescribed above, the matter is referred to Government through Deputy Commissioner. To deal with such matters on a case to case basis will entail delay and lack of uniformity in decision making and, therefore, there is a need to fix some broad principles which should regulate purchase of land by negotiation having regard to the fact that land value differs from place to place.
Further, in the existing Government Order there is no specific instruction to review the illegal allotments contrary to the Government Orders or to cancel such allotments.
Therefore, Government has examined all aspects of the issue and hence the following order:

ORDER

In the above circumstances and with a view to fix ceiling limit on the cost of purchase of private lands, Government are pleased to classify the areas where lands are proposed to be purchased, as under.

Places	Sital dimension	Negotiable rate	Maximum ceiling cost per Acre.
(1)	(2)	(3)	(4)
1) Revenue Villages	30x40	30% above the average S.R. Rate of same classification	Rs. 25,000-00
2) Hobli Head quarters and Mandal Head	30x40	-do-	Rs. 50,000-00

quarters i.e., Erstwhile TMCs.			
3) Town Municipal Council areas	20 x 30	-do-	Rs. 50,000-00
4) City municipality areas	20 x 30	-do-	Rs. 75,000-00
5) Corporation areas other than CM areas	20 x 30	-do-	Rs. 1,00,000-00 2. The Task Force Committee has to examine the feasibility of purchasing private land by negotiation applying the rates indicated at column (3) and (4) above and thereafter submit the recommendation to Deputy Commissioners. The Deputy Commissioners may accord approval after ensuring that the purchase is in confirmity with the ceiling fixed in this Government order and is reasonable with reference to location and market value. If the rates indicated in Column (3) exceeds the existing ceiling cost indicated at Column (4), then the higher rate shall prevail.

3. Government are also pleased to authorise the Deputy Commissioners to approve proposals for purchase of lands on the basis of amounts determined by LAO/Civil Courts in respect of lands acquired within a vicinity (a radius of 2 Kilo Metres) from the area where sites are proposed to be formed. The Deputy Commissioner should a certificate indicating the amounts fixed by the Land Acquisition Officer.
4. It is further ordered that if the beneficiaries identified do not fulfil eligibility norms fixed in G.O. No. HUD 407 KHB 90, dated 24-6-91 and HUD 535 KHB 91, dated 4-11-91, it shall be brought to the notice of the Deputy Commissioners by the Member Secretary of the TFC within 15 days of the meeting. The Deputy Commissioners will be the first Appellate Authority and the final Appellate Authority will be the Divisional Commissioner.
5. As suggested by the Deputy Commissioner, Dakshina Kannada sital dimension of Ashraya sites in rural areas has been increased from 30 x 40 to 5 cents in Dakshina Kannada District only.
6. Further the restriction imposed in the G.O.No. HUD 407 KHB 90, dated 24-6-91 to recover 50% of he sital cost in urban areas of the State is discontinued with effect from 1-2-94. In future Ashraya sites in Urban area will be having a dimension of 20 x 30 and will be distributed free of cost.
7. This order issues with the concurrence of Finance Department vide U.O. Note No. FD 613. Exp. 3/93, dated 28-04-1993.

HUD 256 KHB 92.tif

Above guidelines be kept in mind by all the concerned. This Circular is also available at the Revenue Department Internet site
http://www.revdept.kar.nic.in.
(RAJEEV CHAWLA)
Additional Secretary to Government
Revenue Department (Land Reforms)
To,
All Deputy Commissioners.
Foot Notes
For any suggestions / clarifications, please send mail to **Mr. Rajeev Chawla (Additional Secretary)**