

(1976) 01 DEL CK 0004

In the Delhi High Court

Case No : Civil Writ Appeal No. 475 of 1971

Ali Hasan and Another

APPELLANT

Vs

LT. Governor and Others

RESPONDENT

Date of Decision : 30-01-1976

Acts Referred:

Citation : (1976) ILR Delhi 485

Hon'ble Judges : T.V.R. Tatachari, J; Prithvi Raj, J

Bench : Division Bench

Advocate : D.R. Dhamija, Harish Chandra and Anil Bhatnagar, for the Appellant;

Judgement

Prithvi Raj, J.

(1) The Delhi Administration issued notification dated 23rd April, 1968. u/s 4 of the Land Acquisition Act, 1894, (herein called "the Acquisition Act") seeking to acquire the land specified therein including the land bearing Rectangle No. 53. Field Nos. 19 and 20 each measuring 4 Bighas 16 bids was situate in the revenue estate of Khureji Khas of which the petitioners were non occupancy tenants, on the ground that the land was needed For a public purpose, viz., planned development of Delhi. This was followed by a declaration u/s 6 of the Acquisition Act (Annexure "D") couched in the following language

"Whereas it appears to the Lt. Governor Delhi that land is required to be taken by Government at the public expense for a public purpose, namely, for the planned development of Delhi, etc.

(2) The case of the petitioners is that the aforesaid declaration on the face or it lacks the requisite satisfaction of the appropriate Government and that the acquisition of their land on tentative and hypothetical basis ""whereas it appears" is wholly illegal and in contravention of section 6 of the Acquisition Act.

(3) Further, the case of the petitioners is that after the enactment of the Delhi Development Act, 1957, (herein called the Development Act") there could be no

planned development of Delhi except in accordance with the provisions of such development contained in that Act and in accordance with the Master Plan and the Zonal Development Plans for different areas; that in accordance with section 15 of the Development Act as amended by the Delhi Development (Amendment) Act, 1963, land could only be acquired for the planned development of Delhi if in the opinion of the Central Government the land was required for the said purpose; that being so. the Central Government has first to form the opinion that the land intended to be acquired is required for the purpose of development and then to proceed to acquire it in accordance with the provisions of the Acquisition Act, but before issuing the notification u/s 4 of the Acquisition Act in the present case the Central Government did not form the opinion as required by section 15 of the Development Act; and that for acquisition by the Central Government under the Development Act the notification u/s 4 of the Acquisition Act had to be issued by the Central Government being the appropriate Government within the meaning of section 4 of the Acquisition Act, but notification u/s 4 in the instant case (Annexure "B") was issued by the Lt. Governor.

(4) It is further contended that at the time notification u/s 4 of the Acquisition Act was issued by the Lt. Governor no delegation of power had been made in his favor by the Central Government, and that the declaration u/s 6 of the Acquisition Act was also required to be made by the Central Government while in the instant case the said declaration has been made by the Lt. Governor.

(5) Challenge to the notifications is further based on the ground that the land sought to be acquired was required not for development by the Delhi Development Authority but for transfer to Cooperative Society which was not legally permissible, as land could not be acquired for Co-operative Building Housing Society without complying with the provisions of Part Vii of the Acquisition Act.

(6) Shri K, N. Keshyap, Deputy Secretary, Land & Building. Delhi Administration, in his reply-affidavit filed on behalf of the Delhi Administration traversing the petitioners' allegations contends that before issuing the notification u/s 4 of the Acquisition Act the appropriate Government was satisfied that the land mentioned in the notification was needed for the purpose of bringing about planned development of Delhi, and that the declaration u/s 6 of the Acquisition Act was also issued after the appropriate Government was fully satisfied on consideration of the report of the Collector made by him under sub-section (2) of section 5-A of the Acquisition Act. He further contends that the land in dispute is being acquired for a public purpose, namely, planned development of Delhi under the Acquisition Act and not u/s 15 of the Development Act which does not in any way repeal or amend or rescind the. provisions of the Acquisition Act- According to Shri Keshyap the land in dispute has been notified for acquisition for the execution of the scheme of planned development of Delhi in accordance with the Master Plan. but the acquisition is being made u/s 4 of the Acquisition Act which is permissible notwithstanding the Development Act. All the lands, falling in

urbanisable limits of Delhi arc to be acquired, developed and re-settled in accordance with the Master Plan/Zonal Plans and as such the petitioners" land could not be left out from the purview of acquisition; that allotment of land to the Co-operative House Building Society was made in accordance with the scheme of large scale acquisition, development and disposal of land in Delhi, and that such allotment of land to Co-operative House Building Societies was legally permissible. The development of the land has to be carried out by the Societies themselves according to the standard of the development prescribed, where after in terms of the scheme perpetual lease is granted to the societies.

(7) Defending the allotment of land to the Co-operative House Building Society, the case of the Administration is that the Co-operative House Building Societies arc registered under the Co-operative Societies Act and arc formed for the executive benefit of the members of the Society. Such Societies accordingly do not fall under the definition of "Company" registered under the Companies Act. The government of the petitioners that the acquisition is being made for a company. the Administration contends, is not sustainable. Further, the land in question was being acquired for the scheme of planned development of Delhi which is a public purpose and not at the instance of the Co-operative House Building Society. All the money that was needed for acquisition was disbursed out of the public funds set apart by the Government to meet the need for implementation of the Scheme and for carrying out the planned development of Delhi and for completing the acquisition of land required for the purpose in the larger interests of the general public.

(8) The impugned notifications under sections 4 and 6 were supported on the ground that they are in conformity with the requirements of law.

(9) The petitioners in their rejoinder controverted the submissions of the respondents and reiterated the contentions raised by them in the writ petition.

(10) At the time of arguments Shri D. R. Dhamija, learned counsel appearing for the petitioners, urged the following contentions only :

(I) that provisions of section 15 of the Development Act had not been complied with inasmuch as the Central Government did not form the opinion that the land was required for planned development of Delhi under the Development Act;

(II) that after coming into force of the Development Act no development can be carried out in the Union Territory of Delhi except under the said Act and, Therefore the land could be acquired for the planned development of Delhi under the Development Act only and not under the Acquisition Act; and

(III) that the Government was not satisfied within the meaning of section 6 of the Acquisition Act that the petitioners" land in fact was required for the purpose of planned development of Delhi.

(11) Taking up contentions (i) and (ii) the learned counsel for the petitioners contended that Development of Delhi after the enforcement of the Development

Act could only be carried out as envisaged by the said Act. The development of lands is provided in Chapter IV of the Development Act. It was urged that before any development could be carried out, it is incumbent upon the Central Government in terms of section 12(1) of the Development Act to declare by notification in the official Gazette any area in Delhi to be a development area for the purposes of the Development Act provided that no such declaration shall be made unless a proposal of such declaration had been referred by the Central Government to the Development Authority and the Municipal Corporation of Delhi for expressing their views thereon within thirty days of the receipt of the reference or within such further period as the Central Government may allow and the period so specified or allowed had expired. Under sub-section (2), goes the argument, save as otherwise provided in the Development Act, the Development Authority shall not undertake or carry out any development of land in any area which is not a development area while sub-section (3) stipulates that after the commencement of the Development 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 provisions of the Development 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 that behalf, in accordance with the provisions made by or under the law governing such authority or until such provision" 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, and in force immediately before the commencement of the Development Act. It is also submitted that sub-section (4) of section 12 prohibits undertaking or carrying out of any development in any area after coming into operation of any of the plans, viz., the Master or Zonal, unless such development is in accordance with the said plans. It was strenuously argued that from a combined reading of the provisions of various sub-sections of section 12 of the Development Act it is evident that development in Delhi after the Development Act was enforced in Delhi could not be carried out apart from the said Act, and that there would be occasion for such development outside the provisions of the said Act. That being so, lands for the purposes of carrying out development could only be acquired in terms of section 15(1) of the Development Act if in the opinion of the Central Government, any land is required for the purpose of development or for any other purpose under the Development Act, and the Central Government may in that case acquire such lands under the provisions of the Act. In other words, it was submitted that before acquiring the land for the purposes of development under the Development Act, formation of the opinion by the Central Government that the land was required for the purposes of development or for any other purpose under the Development Act was a pre-condition and it is only on the formation of such an opinion that the Central Government is empowered u/s 15(1) to acquire

such land under the provisions of the Development Act.

(12) In the instant case. it was submitted, the provisions of section 15 of the Development Act had not been complied with inasmuch as the Central Government did not form the opinion that the land ought to be acquired was required for planned development under the Development Act. Prior to the amendment of the Development Act in 1963, Shri Dhamija contended, section 15(1) of the Development Act itself provided procedure for acquisition of land under the said Act and it was a complete procedure without reference to the Acquisition Act. In 1963, however, the Development Act was amended. In section 15(1), after amendment. Shri Dhamija submitted, the Central Government may acquire land under the Acquisition Act but only for the purposes of the Development Act.

(13) The stand of the respondents, however, is that the two Acts. namely, the Acquisition Act and the Development Act are independent and land could be acquired under either of them. only condition being that such acquisition is conforming to the provisions of the Act under which it is acquired.

(14) On behalf of the Administration Shri Harish Chandra strongly urged that the Development Act is no way repealed or amended in any manner the provisions of the Acquisition Act and that the two Acts can co-exist. That being so. the Government could proceed under either of the two Acts.

(15) The question accordingly which falls for determination is whether the Development Act is in abrogation of acquisition of land for planned development of Delhi under the Acquisition Act In other words, whether the Development Act has repealed the Acquisition Act expressly or impliedly in so far as its operation in Delhi regarding acquisition of land for planned development of Delhi is concerned, or whether the two Acts can co-exist.

(16) The Acquisition Act was passed in 1894 with a view to amending the law for the acquisition of land for public purpose and for Companies and for determining the amount of compensation to be made on account of such acquisition. The object of the Acquisition Act accordingly is to acquire the land needed for public purpose and for companies. Besides, the Acquisition Act provides the procedures for determining the amount of compensation to be made on account of such acquisition.

(17) The Development Act was passed in 1957, in order to check haphazard constructions and to regulate and control the building activities in Delhi for the development of Delhi according to plan and matters ancillary thereto. The said Act also provided for payment of compensation to the owners of the property for its compulsory acquisition by providing procedure as contained in section 16 to 20 of the unamended Development Act.

(18) The Development Act was amended in 1963 deleting sections 16 to 20. While introducing the Bill for amending the same, the statement of objects and

reasons, amongst others, stated as follows:

"IT is (also) felt that the provisions of the Delhi Development Act, 1957 regarding acquisition and disposal of land operate to the disadvantage of the public and Government consider that the land for development of Delhi should be acquired under the ordinary law, viz., Land Acquisition Act, 1894".

(19) It would, Therefore, be seen that the legislature with a view to streamlining the procedure for acquisition, eliminated sections 16 to 20 of the original Act feeling that the procedure incorporated therein operated to the disadvantage of the public and instead incorporated in sub-section (1) of section 15 the procedure of the Acquisition Act for acquiring lands. There can be no manner of doubt that development is one thing and acquisition is another. Development in Delhi after the enforcement of the Development Act has to be in conformity with the said Act, but it will not be correct to say that land could be acquired after coming into force of the Development Act under the said Act only and that the same could not be acquired under the Acquisition Act. The only repeal brought about by the Development Act is contained in section 60(1) which provides that as from the date of the constitution of the (Development) Authority (a) the united Provinces Town Improvement Act, 1969, shall cease to have effect in the Union Territory of Delhi; and (b) the Delhi (Control of Building Operations) Act, 1955, shall stand repealed-

(20) The Development Act has not repealed the application of the Acquisition Act within the Union Territory of Delhi. It cannot, Therefore, be said that by virtue of the amendment made in the Development Act in 1963 the applicability of the Acquisition Act to the Union Territory of Delhi as regards acquisition of land for planned development of Delhi stood repealed by implication. The Courts ordinarily would not lean in favor of implied repeals. There can be no doubt that the Acquisition Act is a general Act passed by the Central Legislature and its operation extends to the whole of the country while the Development Act is a special Act, operation of which is confined to the four corners of the Union Territory of Delhi. Maxwell on Interpretation of Statutes, 10th Edition, page 184, states that when any provision or provisions in a general Act are incorporated in a special Act, the provisions of the latter would prevail over any of the former with which they were inconsistent.

(21) Further, Maxwell on Interpretation of Statutes 12th Edition says at page 191, "A later Statute may repeal an earlier one either expressly or by implication. But repeal by implication is not favored by the Court as Acts of Parliament are established with such gravity, wisdom and universal consent of the whole realm" and they ought not by any constrained construction out of the general and ambiguous words of a subsequent Act to be abrogated. Further, if earlier and later statutes can reasonably be construed in such a way that both can be given effect to, this must be done.

(22) The question accordingly would be whether the provisions in section 15(1)

of the Development Act are in any manner inconsistent with the provisions of the Acquisition Act.

(23) The Legislature when it intends to repeal a statute is expected to do so expressly, at any rate by use of some such words which could be treated as equivalent to express repeal. It is only when the co-existence of the two enactments is destructive of the object with which the latter Act was enacted, the provisions contained in the earlier Act are to be treated as repealed impliedly.

(24) While introducing the Development (Amendment) Bill, the Minister stated that "There are in it certain provisions relating to land acquisition procedure. In actual procedure the land was acquired by the Government under the provisions of the normal Land Acquisition Laws. This was done in order to give better compensation to the people whose lands were acquired. None of the provisions relating to the acquisition of the land were ever utilized and practically all the lands that were needed have already been acquired. As such those provisions which are redundant and which have never been utilized are proposed to be struck off". [See page 5941 of Lok Sabha Debates (3rd Edition) Volume XXIV-6th Sessions No. 21 26, 1963].

(25) It would, Therefore, be seen that in introducing the Amendment Bill the intention was that provisions contained under sections 16 to 20 of the Development Act which the Parliament considered redundant should be struck off and not that the provision of the Acquisition Act should be repealed.

(26) It would be relevant to note that sub-section (1) of section 15 prior to its amendment read as follows :-

"15.(1) If in the opinion of the Central Government any land is required for the purpose of development, or for any other purpose, under this Act. the central Government may acquire such land by publishing in the Official Gazette a notice specifying the particular purpose for which such land is required and stating that the Central Government has decided to acquire the land in pursuance of this section". After amendment section 15(1) reads as under :

"15.(1) If in the opinion of the Central Government, any land is required for the purpose of development, or for any other purpose, under this Act. the Central Government may acquire such land under the provisions of the Land Acquisition Act, 1894".

(27) Under the Amended Development Act. the acquisition has to be made with reference to the procedure prescribed under the Acquisition Act. Section 16 to 20 of the Development Act being redundant have been deleted. In section 15, both before and after the amendment, the opinion of the Central Government is a prerequisite to determine that any land was required for the purpose of development or for any other purpose under the Development Act before proceeding to acquire the land. It, Therefore, cannot be urged that after the amendment any sweeping or substantial change has been introduced in section

15(1) of the Development Act by making its provisions in any way inconsistent with the provisions of the Acquisition Act and thus impliedly repeal the provisions of the Acquisition Act.

(28) Lands in Delhi had been acquired for the planned development of Delhi prior to the amendment of section 15 of the Development Act by resort to the provisions of the Act, as is clear from the observation of the Minister while introducing the Delhi Development (Amendment) Bill that "In actual procedure the land was acquired by the Government under the provisions of the normal land acquisition laws". The amendment, Therefore, in our opinion, docs not change the complexion of the acquisition of land in Delhi., It is open to the Delhi Administration to acquire lands under the Acquisition Act as therefore despite the existence of the Development Act and the provisions contained in section 15(1) thereof.

(29) Reference may now be made to some decisions referred to by the counsel In Patna Improvement Trust Vs. Smt. Lakshmi Devi and Others, an argument was raised that if land was sought to be acquired for the purposes of Patna Improvement Trust then it could be acquired in accordance with the provisions of the Bihar Town Planning and Improvement Trust Act, 1951, as the said Act vested in the Improvement Trust the duty of carrying out the provisions of the said Act in enforcing the improvement scheme in any local area and not under the Acquisition Act on the ground that the Bihar Act had replaced the Land Acquisition Act in regard to acquisition of land for the purpose of Improvement Trust. It was also urged that the Bihar Act was a complete Code for the acquisition of land for the purposes of the Trust. It was accordingly contended that the two Acts were inconsistent Acts and could not operate in the same field. The contention was repelled by the Supreme Court holding that section 71 of the Bihar Act had modified the Acquisition Act for the purposes of the acquisition of land for the Trust under the Acquisition Act subject to the modifications specified in the Schedule to the Bihar Act. For the purposes of acquiring land for the Trust the machinery of the Acquisition Act as modified was contemplated. It was accordingly held that Bihar Act did not exclude the Acquisition Act. On the contrary it made it applicable, but subject to its modifications and exceptions.

(30) In the instant case, by the amendment of the Development Act, the said Act did not exclude the Acquisition Act. On the contrary, the Acquisition Act is made applicable for acquiring any land if in the opinion of the Central Government the land was required for the purposes of development or for any other purpose under the Development Act.

(31) In Civil War No. 584-D of 1963 (Babu Lal v. Chief Commissioner of Delhi and others) decided on 27th February, 1969(2), a contention was raised that the Development Act as originally enacted impliedly repealed the provisions of the Acquisition Act in regard to all acquisitions made for the purposes of planned development of Delhi with the result that the Amendment Act, 1963, could not revive or infuse life into the provisions of the Acquisition Act for the purposes of

validating the acquisition proceedings under the Acquisition Act. The argument was mooted on the basis of implied repeal urging that the provisions of sections 16 to 20 of the Development Act were repugnant and in direct conflict with the provisions of the Acquisition Act and as such must be deemed to have impliedly repealed all the relevant provisions of the Acquisition Act. Taking I into consideration all the concepts and principles associated with repeals, the Division Bench (I.D. Diia, C.J. and Rangarajan, J.) dealing with the contention observed "Generally speaking the test is that when the two enactments are inconsistent or repugnant the latter will be read as having impliedly repeated the other to the extent of the inconsistency or repugnancy but only to such extent- The Courts of course lean against implying a repeal with the result that unless two provisions are so plainly repugnant to each other that effect cannot be given to both at the same time, a repeal is not to be implied". In the light of the above principle the Bench held that there was no express repeal by the Development Act of any of the provisions of the Acquisition Act.

(32) In *Attorney General v. Great Eastern Railway Company*, 1871-72, Law Reports (Chancery Appeals) 475(3), it was held that it is only when one finds something expressly different in the two Acts, that which is under the Special Act must over-rule that which is under the General Act.

(33) A Full Bench of this Court in *M.C.D. v. Har Narain*, (Cr. 163 of 1967) decided on 30th May, 1969(4), observed that "the question whether one Act repeals the other is directly one of legislative intent. The Courts must in this behalf endeavor to effectuate that intent, for otherwise the laws will stand denuded of their vital force- The repeals by implication are not favored. It is a rule announced in numerous decisions that the legislature when it intends to repeal a statute may be expected to do so expressly or by use of some such words as can be treated as an equivalent to an express repeal. The intention to repeal must appear with cogent force. It is true that even if an Act does not contain an express repealing clause a Statute may by construction be held to have been repealed. Generally, the rule of repeal by implication is founded on the ground that the last expression of the legislation ought to prevail". Further, "if two statutes by any fair course of reason are capable of being re-conciled that must be done and the Statutes allowed to stand. The legislature is presumed to have passed laws with deliberation and full knowledge of the existing ones on the subject". It was further observed that it is only if the co-existence of the two enactments is destructive of the object with which the latter Act was passed the Court would treat the earlier provisions as impliedly repealed.

(34) In the instant case the Development Act cannot be said to be destructive of the Acquisition Act. The object of the Acquisition Act is to acquire land for a public purpose and the planned development is a public purpose for which land could be acquired under the Acquisition Act. The object of the Development Act is to acquire land under the Development Act if in the opinion of the Central Government any land was required for the purposes of development or for any

other purpose under that Act. The purpose sought to be achieved i.n acquiring the land under the Development Act for the purposes of development or for any other purpose is also a public purpose. It would thus be seen that the object of the two Acts is the same, namely, to acquire land for a public purpose, namely, for the planned development of Delhi under the Acquisition Act and for the purposes of development "r for any other purpose under the Development Act, and that their co-existence is not destructive of the earlier Act.

(35) In *Municipal Council Palai Vs. T.J. Joseph and Others*, , it was observed that it is undoubtedly true that the legislature can exercise the power of repeal by implication, but it is an equally well-settled principle of law that there is a presumption that the legislature enacts laws with a complete knowledge of all existing laws pertaining to the same subject, and the failure to add a repealing clause indicates that the intent was not to repeal the existing legislation. Of course, this presumption will be rebutted if the provisions of the New Act arc so inconsistent with the old ones that the two cannot stand together.

(36) In *Shri Bhagwan Dutt Vs. Smt. Kamla Devi and Another*, , it was held that if the two Acts can stand together, repeal is not to be implied.

(37) The law on the subject of implied repeal appears to be that the Courts usually lean against an implied repeal. The provisions of an earlier Act are treated as impliedly repealed when the co-existence of the two enactments is destructive of the object with which the latter Act was passed. However, if two statutes by a fair course of construction are capable of being reconciled, that must be done and both the statutes allowed to stand. Failure to add a repealing clause in the subsequent Act normally indicates the legislative intent not to repeal the earlier existing enactment. Applying the above principles we are of the opinion that the Development Act does net impliedly repeal the Acquisition Act, and that the two Acts can coexist because of the purpose sought to be achieved by them, the Acquisition Act being not destructive of the object with which the latter Act, i.e., the Development Act, was passed.

(38) The Parliament passed the Development Act with complete knowledge of the Acquisition Act and since the object of the two Acts is the same, namely, acquisition of land for a public purpose under the Acquisition Act and for the purpose of development or for any other purpose under the Development Act which also is a public purpose, the Acquisition Act having not been repeated in section 60 of the Development Act is a sufficient indication that the Parliament did not intend to repeal the Acquisition Act.

(39) The Development Act even after amendment cannot be said to be an Act which is inconsistent with the provisions of the Acquisition Act so as to render the operation of the said Act repugnant in the field of acquisition of land. On the contrary, for the purposes of acquiring land for the Development Authority, the machinery of the Acquisition Act for acquiring land has been adopted. We are accordingly of the opinion that the two enactments, i-e., the Development Act

and the Acquisition Act, cannot be said to be inconsistent with or repugnant to each other, and that effect could be given to both at the same time.

(40) Section 12 in Chapter Iv of the Development Act deals with and refers to development of land, and the said section does not speak of acquisition of land. Acquisition and disposal of land is provided separately in Chapter V of the Development Act. Section 15 of the Development Act provides for acquisition of land for development under the Development Act. But the actual acquisition of land has to be made under the Acquisition Act as contemplated u/s 15(1) of the Development Act in cases where the Central Government forms the opinion that any land is required for the purposes of development or for any other purpose under the Development Act. Even in such a case, acquisition of land for the planned development of Delhi has to be under the Acquisition Act and not under the Development Act. The Development Act being in no way repugnant to the Acquisition Act and the two Acts being capable of co-existing, the mere fact of the Development Act being on the Statute Book would not in any manner derogate or destroy action being taken under the Acquisition Act for the acquisition of land for a public purpose, namely, planned development of Delhi by the Administrator without reference to section 15(1) of the Development Act. Thus, it is open to the Administrator to acquire land for the public purpose e planned development of Delhi under the Acquisition Act without any reference to section 15(1) of the Development Act. It being open to the Lt. Governor to acquire any land u/s 4 of the Acquisition Act without reference to section 15(1) of the Development Act, the question of formation of opinion by the Central Government as contemplated in section 15(1) of the Development Act, in the circumstances, does not arise.

(41) The other submission of Shri Dhamija that after the amendment of the Development Act in 1963, land could be acquired only under the provisions of the Development Act sought to be based on section 30, though specious, is without any substance. Section 30 of the Delhi Development (Amendment) Act, 1963, validates all the acquisitions made for the purposes of the principal Act. The said section reads as follows :

"If any acquisition of land has been made under the provisions of the Land Acquisition Act, 1894 (I of 1894), for any purposes of the principal Act or any notification has been issued or order has been made or any proceeding has been instituted or any action has been taken in connection with acquisition of any land for such purpose, such acquisition, notification, order, proceeding or action shall not be deemed to be invalid merely on the ground that it was made, issued, instituted or taken under the said provisions".

(42) A bare reading of the said section shows that what was validated was acquisition made "for any purposes of the principal Act". It is, Therefore, futile to contend that because of the existence of the validating section in the Delhi Development (Amendment) Act, 1963, it would be proper to hold that lands could be acquired for the planned development of Delhi only under the

Development Act. The question, as already posed above, is whether in the instant case land is being acquired for the purposes of the Development Act or independently under the Acquisition Act for the planned development of Delhi.

(43) Reference may here be made to Civil Writ No. 333-D of 1961 (Krishan Kumar Chopra v. Union of India and others) decided on 9th May, 1969(7), by one of us (T.V.R. Tatachari, J., as he then was). In that case, a contention was raised that planned development of Delhi mentioned in the notification u/s 4 of the Acquisition Act was not the same as the purpose for development of Delhi according to plan mentioned in the Preamble to the Development Act. It was also submitted that if it be held that the two purposes are the same, then the said purposes having been provided for in a special Act, namely, Delhi Development Act, it could no longer be a public purpose within the meaning of the Act. Repelling the contention, it was held that the planned development of Delhi was not different from development of Delhi according to plan, and that the expression "public purpose" had been used in the Acquisition Act in its generic sense of including any purpose in which even a fraction of the community might be interested or by which it might be benefited; that the purpose of planned development of Delhi was clearly a public purpose within the meaning of the Acquisition Act, and that the mere fact that it was also a purpose for which the Development Act was enacted would not mean that it was not a public purpose within the meaning of the Acquisition Act.

(44) Another contention raised in the above writ petition was that after the amendment of section 15 of the Development Act it is the Central Government alone that could acquire the land for the purpose of the said Act and the Chief Commissioner of Delhi was not a competent authority to acquire any land. This contention was repelled holding that before the passing of the Seventh Constitution (Amendment) Act, 1956 Delhi was a part C State which was to be administered by the President under Article 239(1) of the Constitution of India acting to such extent as he thought fit through the Chief Commissioner or Lt. Governor to be appointed by him. The President on 19th August, 1954, exercising powers under Article 239(1) of the Constitution issued notification directing the Chief Commissioner of Delhi to exercise the powers and discharge the functions of the Central Government under the provisions of the Acquisition Act. After the enactment of the Seventh Constitution (Amendment) Act, 1956, Delhi was designated as a Union Territory which under Article 239(1) shall be administered by the President through an Administrator to be appointed by him with such designation as the President may specify. The President on 1st November, 1956, in pursuance of the amended Article 239(1) issued a notification to the effect that "any powers and functions which were, before 1-11-1956", powers and functions of the Chief Commissioner of the State of Delhi shall on and after 1-11-1956 be exercised and discharged by the Chief Commissioner of the Union Territory of Delhi. Since according to section 3(8) of the General Clauses Act, 1897, the Central Government shall in relation to any thing done or to be done after the commencement of the Constitution mean the

President and shall include in relation to the Administration of a Union Territory, the Administrator thereof, and since the Chief Commissioner was empowered by the President to execute the powers and discharge the functions of the J Central Government under the provisions of the Acquisition Act, it was held that he was an authority competent to issue notification u/s 4 of the Acquisition Act.

(45) This view was again reiterated in Civil Writ No. 828-D of 1963 (M/s. Delhi Chemicals and Pharmaceutical Works v. Union of India) A decided on 28th May, 1969(8), wherein it was contended that planned development of Delhi was provided for in the special Act, namely, the Development Act and as such it could no longer be a public purpose within the meaning of Acquisition Act. Repelling the contention, it was held that the planned development of Delhi was a public purpose within the meaning of the Acquisition Act, and that the mere fact that it was also the purpose for which the Development Act was enacted did not mean that it ceased to be a public purpose within the meaning of the Acquisition Act. Another contention urged in that case was that even if "planned development of Delhi" was a public purpose within the meaning of the Acquisition Act, since acquisition of land for the said purpose was provided for in a special statute, viz., the Development Act, the acquisition should have been made under the said Act, and that in any case it was the Central Government that should have acquired the land and not the Chief Commissioner of Delhi. In a consideration of both the Acts, it was observed that it was open to the Chief Commissioner to acquire land for the planned development of Delhi being a public purpose under the Acquisition Act. It was also urged in that case that both under the old and the new section E15 of the Development Act it was the Central Government that was empowered to acquire land for the purpose of Development of Delhi under the Development Act, and that the Chief Commissioner was not competent to make the acquisition. This contention was negatived on the ground that since the Chief Commissioner was empowered by the President to exercise the powers and functions of the Central Government under the provisions of the Acquisition Act by virtue of the notification dated 19th August, 1964, the Chief Commissioner had the same powers as the Central Government for the purposes of the Acquisition Act.

(46) The view taken in Civil Writ No. 828-D of 1963 was challenged in a letters patent appeal, reported in Delhi Chemical and Pharmaceutical Works and Another Vs. Union of India and Others, wherein the contention that since the Development Act was an enactment passed to provide for "the development of Delhi according to plan and for matters ancillary thereto, land could be acquired u/s 15 of the Development Act only, was negatived sustaining the plea of the Government that land in that case was acquired under the Acquisition Act and not under the Development Act.

(47) On behalf of the petitioners in the present case it was next urged that the area in which the land sought to be acquired is situated was not declared a development area on the date the impugned notifications were issued. The land

as such, it was contended, could not be acquired even under the Acquisition Act for carrying out any development in the area which is yet to be declared a development area. Normally, development under the Development Act is undertaken or carried out in a development area on the permission for such development having been taken in writing from the Development Authority. It may, however, be mentioned that development is also permissible in an area other than development area according to section 12(3)(ii) with the approval or sanction of the local authority of the area concerned. That being so, the Central Government is not precluded from acquiring the land for a public purpose, namely, for the planned development of Delhi under the Acquisition Act. Section 12 of the Development Act which is concerned only with the development has nothing to do with the acquisition of the land. Acquisition generally precedes development. The Central Government can acquire any land under the Acquisition Act and develop it after obtaining approval of the local authority. Contentions No. 1 and 2 being without merit are rejected.

(48) This brings us to the third and the last contention of the petitioners, namely, that the Government was not satisfied within the meaning of section 6 of the Acquisition Act that the petitioners' land in fact was required for the purposes of planned development of Delhi. The precise submission was that the declaration u/s 6 of the Acquisition Act in respect of the land in question could be issued on the satisfaction of the Central Government after considering the report made by the Collector u/s 5-A of the Acquisition Act and that such satisfaction was required to be expressed in terms in the declaration.

(49) We do not see any merit in this submission. It having already been held in an earlier part of this judgment that "it was open to the Lt. Governor to acquire land in question u/s 4 of the Acquisition Act without reference to section 15(1) of the Development Act, the Lt. Governor was competent to make the declaration u/s 6 on being satisfied after perusal of the report of the Collector u/s 5-A of the Acquisition Act that the land in question is needed, for a public purpose. In *Rai Bahadur Ganga Bishnu Swaika and Others Vs. Calcutta Pinjrapole Society and Others*, , the Supreme Court held that there being no statutory forms and section 6 not requiring the declaration to be made in any particular form, the mere fact that the notification issued u/s 6 does not ex facie show the Government's satisfaction, would not render the notification invalid or not in conformity with section 6 of the Acquisition Act. The impugned declaration u/s 6 of the Acquisition Act, therefore, cannot be said to be bad merely because the words used in the declaration are "Whereas it appears to the Lt. Governor" instead, of stating that "Whereas the Lt. Governor is satisfied".

(50) Before parting with this case we may also note an objection of the Administration regarding the maintainability of the writ petition on the ground that the petitioners after receipt of notices under sections 9 and 10 of the Acquisition Act had pursued their remedy by seeking enhancement in the amount of compensation offered. We see no merit in this contention. The petitioners

challenge the jurisdiction of the Delhi Administration to acquire the land, and if initial jurisdiction was lacking, the mere fact that the petitioners had sought their remedy seeking enhanced compensation would by itself be not sufficient to hold that the petition was not maintainable. The argument of Shri Harish Chandra was that having participated in the proceedings before the Collector and in claiming compensation the petitioners had acquired in the jurisdiction exercised by the Collector. We are unable to sustain this submission. In "the case, United Commercial Bank v. Their Workmen, Air 1951 S.C. 239, it was held that consent cannot give jurisdiction in respect of a subject-matter though it might cure an irregularity. The act of the petitioners in participating in the proceedings before the Collector and claiming compensation would not confer jurisdiction on the Collector in case the acquisition of the land independently of the Development Act could not be sustained though this is not the position in the instant case. In an earlier part of this judgment, while repelling contentions (i) and (ii), we have held that the land could be acquired under the provisions of the Acquisition Act.

(51) In the view that we have taken, another contention advanced on behalf of the Administration that the petition suffers from laches in that the petitioners sat on the fences to take their chance in seeking compensation after receipt of notices under sections 9 and 10 of the Acquisition Act, is not required to be gone into.

(52) In view of our discussion on the various points noted above, the writ petition fails and is hereby dismissed, leaving the parties to bear their respective costs.