
(2009) 12 P&H CK 0059
In the Punjab And Haryana At Chandigarh

Amita Banta and Another

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 08-12-2009

Acts Referred:

Land Acquisition Act, 1894 — Section 5A, 6

Citation : (2010) 157 PLR 413 : (2010) 1 RCR(Civil) 412

Hon'ble Judges : Gurdev Singh, J;Adarsh Kumar Goel, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Adarsh Kumar Goel, J.—This order will dispose of Civil Writ Petition Nos.5878, 6038, 7922, 8515, 8886, 14858 of 2003, 9142, 9155, 9181, 11502 and 11637 of 2004, as all the writ petitions seek same relief of quashing of proceedings for acquisition of land initiated in pursuance of notification dated 13.8.2001 u/s 4 and notification dated 9.8.2002 u/s 6 of the Land Acquisition Act, 1894 (for short, "the Act").

2. Case set out in CWP No. 5878 of 2003 is that the writ petitioners purchased land adjacent to Hotel Bristol and DLF Gymkhana Club in Gurgaon in 1990. Acquisition proceedings were earlier initiated vide notification dated 5.10.1984 u/s 4 of the Act, which were challenged by filing CWP No. 1470 of 1985. During pendency of the writ petition, the acquisition proceedings were withdrawn and the writ petition was disposed of as infructuous on 1.5.2000.

3. Thereafter, proceedings were initiated vide impugned notifications. The stated purpose for acquisition is "development and utilization of land for residential and commercial Sector 28 at Gurgaon", by "Haryana Urban Development Authority". The land notified was 36.59 acres. The petitioners raised objections u/s 5-A of the Act, inter-alia, to the effect that land of the petitioners had 13000 square feet area for business purposes constructed at cost of Rs. 65 lacs. The petitioners were doing multi business activities and had licences under various laws. Similar

land on the other side of road, occupied by Sahara Mall, JMD and Shyam Lal Market was excluded from acquisition. It was also stated that there was policy not to acquire built up area. The objectors had applied for change of land use. The purpose of acquisition could not be fulfilled as the area surrounding the land was being used for commercial complex. The area covered by the notification was not a compact block but comprised scattered pieces of land as per site plan Annexure P. 10. No residential colony could be set up as proposed.

4. Grounds raised in the petition for challenging acquisition are that notification u/s 6 of the Act was issued without considering the objections of the petitioners. The notification was not duly published. It has been further stated that substantial portion of area had already been released from acquisition in favour of DLF Construction Company and other persons mentioned in para 17 of the petition, who had influence on Government. The public purpose of development was an eye-wash. The area was surrounded by land belonging to private builder M/s DLF Universal Limited and acquisition will advance its pecuniary interest with the help of HUDA. The site was not validly selected. No development plan was prepared in accordance with the Punjab Scheduled Roads and Controlled Areas Restrictions of Unregulated Development Act, 1963 (in short, "the 1963 Act") and Haryana Development and Regulation of Urban Areas Act, 1975 (in short, "the 1975 Act"). The acquisition amounted to benefiting a private builder by leaving out adjacent land from acquisition.

The petitioners also filed rejoinder placing on record further developments that land abutting and behind their land was exempted from acquisition on account of which notified public purpose did not survive. Substantial part of the land covered by the notification was released in favour of persons to whom licences Annexures P. 16 to P. 18 were granted under the provisions of the 1975 Act. There was no objective criteria for release and action of the State was discriminatory. Order of Director Urban Estate Development, Haryana for release of part of acquired land dated 2.5.2003 has been filed as Annexure P.20. Further affidavit dated 26.7.2004 was filed on behalf of the petitioners stating that during pendency of the petition, more land out of the acquired land was released, which was covered by licences Annexures P.23 to P.26. Most of the acquired land having thus been released, there was no purpose for continuing acquisition proceedings. Similar averments have been made in Paras 7 and 8 of replication dated 27.2.2004 in CWP No. 6038 of 2003, which are as under:

7. That para No. 7 of the written statement is totally wrong, incorrect and hence denied. The averments made in the corresponding para of the writ petition are reiterated being correct. It is further submitted that the instant proceedings for acquisition of the land in question have been initiated with malafide motive and in colourable exercise of powers. The land of the petitioners is surrounded on all sides by the lands which have already been released from the acquisition proceedings and for which licences have been granted to the influential persons for change of land use. Thus, the land of the petitioners cannot be put to any use

much less the purpose for which the same have been notified and thus the instant acquisition is motivated by ulterior considerations. As stated in the writ petition, the land of the petitioners is situated on the main Faridabad-Gurgaon Highway and it is adjacent to the Hotel Bristol and Gymkhana Club Gurgaon. The land immediately near to the land of the petitioners has now been exempted from the acquisition proceedings and no public purpose, whatever, can be served by acquiring the land of the petitioners. The land comprised in Khasra Nos. 100, 101, 102, 95, 96/1, 96/2 has now been excluded from the acquisition proceedings and change of land use licences have already been granted to the land owners. Further, the land surrounding the land of the petitioners, comprised in Khasra Nos. 99, 107, 108, 113 to 116 are already dotted with commercial complex buildings or under construction activities. True copies of the said permission/licences are annexed herewith as Annexures P. 8 to P. 10. It would be apparent from the perusal of these licences that the same were issued in June 2003 i.e. much after the filing of the instant writ petition. Thus, the specific averment of the petitioners in the instant writ petition that the adjoining land was being exempted from the array of acquisition and that they were being discriminated against in this regard, stands proved to be true. It would also be relevant to mention here that in similar circumstances a Division bench of this Hon"ble Court has quashed the acquisition proceedings vide order dated May 21, 2002 passed in CWP No. 12714 titled as Ghanshayam v. State of Haryana and a true copy of which is annexed herewith as Annexure P. 11. it may be relevant to mention here that in so far as licence No. 10, Annexure P. 9 is concerned, the same has been granted for land measuring less than one acre to joint owners of the same. Further vide letter No. 1-2003/3105 dated 2.5.2003, a true copy of which is also annexed herewith as Annexure P. 12, land belonging to different co-owners which was being acquired for development of sector 28, Gurgaon, for which Sector alone the land of the petitioners is being acquired, has since been released from the array of acquisition and a joint CLU has been granted to different persons/owners for commercial purposes. Thus, the land of the petitioners cannot be utilized for any purpose whatsoever inasmuch as the same is surrounded by the land on all sides for which change of land use licences have been granted to various private organizations. Further, the respondents have themselves formulated a policy to allow 100% change of land use for construction of Malls on the Gurgaon Mehrauli road in respect of the land of the petitioners as well as other adjoining lands. A true copy of the newspaper report to this effect dated 4.12.2003 is also annexed herewith as Annexure P. 13. The petitioners crave the indulgence of this Hon"ble Court that they also intend to take the benefit of the policy so formulated by the respondents, as aforesaid and they shall use the land in question in accordance with the policy/laws formulated by the state Legislature or HUDA in this regard.

8. That para No. 8 of the written statement is totally wrong, incorrect and hence denied. The averments made in the corresponding para of the writ petition are reiterated being correct. It may be further respectfully submitted here that as

already stated hereinabove, with regard to the lands situated in the nearby vicinity to the land of the petitioners, the state of Haryana has already granted permission for change of land use and has also exempted the same from the array of acquisition. Moreover, some other lands situated in the vicinity of the land of the petitioners are either occupied by the already existing commercial complexes or the same are under construction. The land in question of the petitioners is more valuable keeping in view its locational advantage and in fact the State of Haryana in its Urban estates Department has already formulated a policy to grant change of land use to such land owners but in colourable exercise of powers, the instant land is being sought to be acquired.

Facts in other petitions are identical.

5. In reply filed by Land Acquisition Collector on behalf of the State as well as himself, stand taken is that publication was duly made and objections were duly considered and validly rejected. Acquisition was as per development plan. The land released was not similarly situated. In reply to further developments, affidavit dated 25.10.2004 was filed on behalf of the respondents by District Town Planner, Gurgaon stating that after initiation of acquisition proceedings, applications were received under the provisions of the 1975 Act and as per policy of the State of the year 2000, acquired land could be released in favour of developers/colonizers who made application for grant of licence. Accordingly, before announcement of award dated 3.8.2004, land measuring 22.61 acres was released from acquisition and award for only 13.9 acres was announced. No award was announced for 22.61 acres of land. On the remaining land, there was proposal to construct multi level parking and service roads/green belts. Further affidavit dated 21.10.2004 was filed by the Land Acquisition Collector stating that in view of traffic jam on Mehrauli-Gurgaon road, Metro rail had been finalized and part of area covered by acquisition was required for planning roads etc.

6. Learned Counsel for the petitioner points out that as against 36.59 acres of land notified for the purpose of development by HUDA under the HUDA Act, the award was made only of 13.9 acres and there has been further release of more than 8 acres of land even after the award by way of licence dated 18.8.2005, a copy of which has been taken on record as Mark "X". It was, thus, submitted that stated public purpose for acquisition is mere pretence. Purpose of acquisition was not a public purpose but to benefit persons who were granted licence under the 1975 Act by the State authorities in their "discretion", in furtherance of policy of the State spelt out in affidavit dated 21.10.2004 on behalf of the State. The State has, thus, acted contrary to its declared purpose. No doubt, the declared purpose may have been a public purpose but action of the State is contrary to the said declaration. It was submitted that the purpose should not be viewed only from the declaration in the notification but also from the subsequent actions of the State, read with the policy of the State. Thus viewed, the purpose of the State was to use the power of acquisition ostensibly for public purpose of development by the State or its authorities but for real purpose of benefiting

private individuals by releasing substantial part of notified land to such persons as may be granted licences "in discretion" of the State Government or its authorities. Such action was vitiated by fraud and adoption of unfair and unwarranted procedure to deprive land owners affected by acquisition of their constitutional right of property. Exercise of power by the State withdrawing from acquisition was clearly beyond the scope of Section 48 of the Act and is not only ultravires the Act but is also hit by Articles 14, 21 and 300-A of the Constitution. The policy of the State amounted to exercise of legislative power by exercise of essential legislative functions beyond the scheme of the Act. No public purpose survived after 90% of notified land has been released.

7. Learned Counsel for the petitioners have referred to orders passed in various pending cases wherein clear trend of notifying land for public purpose and thereafter large scale release thereof contrary to declared purpose and without following objective norms having any statutory backing has been noticed. In CWP No. 1356 of 2004 (*Pardeep Yadav v. State of Haryana*), after noticing the said trend based on instances mentioned therein, it was observed that exercise of power of acquisition called for a close scrutiny by Court and may also call for independent investigation to check wrongful gain to individuals and wrongful loss to the State. It was further observed that the released land may have to be restored to the State or to the original owner by annulling the orders if the same were found to be vitiated by fraud, fixing accountability of the persons who may have abused the power. In order dated 21.8.2009, it was noticed that information furnished by State in this regard showed that out of 17000 acres of land notified for acquisition in the last three years, award was made only for 3876 acres and the remaining land was either expressly released or no award was announced.

In order dated 16.9.2009 in CWP No. 16363 of 2005 (*HMD Technologies v. State of Haryana*), it was noticed that after notifying huge track of land for public purpose of setting up Special Economic Zone by Haryana Industrial Development Corporation (a Government Corporation), major chunks of land were released to private parties even after award was made. Reference in the said order was also made to release of land to Shri H.S. Chatha who was elected as MLA and was also a Minister. In order dated 8.1.2009 in CWP No. 2227 of 2008 (*Haryana Rice Mills and Ors. v. State of Haryana and Ors.*), release of land in favour of Smt. Sumita Singh, MLA was made. Similar issue was considered, inter-alia, in order dated 7.1.2009 in CWP No. 3972 of 2008 (*Nir-mala Rani and Ors. v. State of Haryana and Ors.*), order dated 14.1.2009 in CWP No. 15370 of 2008 (*Malho Devi v. State of Haryana*), order dated 26.3.2009 in CWP No. 15777 of 2004 (*Rajyoga Education and Research Foundation v. State of Haryana and Ors.*), order dated 24.3.2009 in CWP No. 21308 of 2008 (*Inder Mohan Rai v. State of Haryana and Ors.*) and order dated 27.3.2009 in CWP No. 4857 of 2009 (*Sunder Lal v. State of Haryana*).

8. In support of their submissions, learned Counsel for the petitioners cited

following judgments:

i) Hindustan Petroleum Corporation Ltd. Vs. Darius Shapur Chenai and Others, , paras 15, 16, 18 and 28, to submit that Section 5-A confers valuable and important right which is akin to fundamental right. The purpose is to give opportunity to show that purpose of acquisition is not public purpose and that land acquired was not suitable for the purpose. Hearing must be effective and not a formality. Opinion for public purpose must be formed after application of mind and on relevant factors. Even though, reasons may not be indicated in the declaration u/s 6, the declaration must precede decision by the State Government. The Collector must submit his report alongwith record and thereafter the State Government must apply its mind. Counter affidavit filed on behalf of the Collector is not sufficient compliance of the requirement of law to show application of mind by the State. Collector cannot file counter affidavit on behalf of the State.

ii) Abhishek Gupta v. State of Haryana 2008 (3) LH (P&H), para 26 to submit that where reasons given by the State are not rational, exercise of power u/s 5-A will stand vitiated.

iii) Shri RRGupta v. Union of India and Ors. CWP No. 1639 of 1985 decided on 18.11.1988 (Del.) to submit that if there is non-compliance of requirement of Section 5-A, notification u/s 6 was liable to be quashed.

iv) Gopal Krishan Gutpa v. State of Haryana 1993(3) PLR 560 (P&H) to submit that personal hearing u/s 5-A was mandatory and must be meaningful and in absence thereof, acquisition was liable to be quashed.

v) State of Tamil Nadu and another Vs. A. Mohammed Yousef and others, to submit that acquisition must be preceded by a scheme and pre-scheme acquisition was premature, (the above view does not appear to have been approved in later judgment in State of Tamil Nadu v. L. Krishnar, (1996) 1 SCC 250 .

vi) Tulsi Co-operative Housing Society, Hyderabad, Etc. Etc. Vs. State of Andhra Pradesh and Others Etc. Etc., to submit that acquired land should be used for purpose for which the same was acquired.

vii) Municipal Corporation of Greater Bombay Vs. The Industrial Development Investment Co. Pvt Ltd., and others, , para 22 To submit that land acquired for a public purpose could be used for any other public purpose on account of change of circumstances or on land becoming surplus. It was also not necessary that the original purpose must continue till award was made. Reference was made to earlier judgment in Gulam Mustafa and Others Vs. The State of Maharashtra and Others, stating that once title was vested in the acquiring authority, it could use the excess land for any other public purpose.

viii) & (ix) Union of India and Others Vs. Nand Kishore, ; Jaipal Singh and Ors. v. state of Haryana and Anr. 1981 PLJ 392 (P&H) to submit that midstream change

of purpose was not permissible.

x) Suresh Verma v. The State of Punjab and Ors. AIR 1971 P&H 406 to submit that subsequent change of purpose, if bonafide, was permissible.

xi) The Industrial Development and Investment Co. Pvt. Ltd. and Another Vs. State of Maharashtra and Others, , para 4 to submit that purpose specified in the declaration must continue till land vests in the State (follows Union of India and Others Vs. Nand Kishore, .

xii) B.E.M.L. Employees House Building Co-operative Society Ltd. Vs. State of Karnataka and Others, to submit that the State could not discriminate in exercise of its statutory discretion in dealing with objections u/s 5-A.

xiii) State of Punjab and Another Vs. Gurdial Singh and Others, to submit that if real purpose of acquisition is different from the declared purpose, exercise of power may be vitiated by fraud or colourable exercise of power.

xiv) Ghansham v. State of Haryana and Ors. CWP No. 12714 of 2000, decided on 21.5.2002 (P&H) to submit that where land was not capable of being used for the declared purpose, the acquisition was liable to be quashed. In that case, the land was surrounded by land of private builder and thus was not fit for development for residential, commercial or institutional purposes for which the same was notified.

xv) & (xvi) Devinder Kumar Vs. State of Punjab and Others, ; State of Haryana and Ors. v. Cyan Chand Madhok (1972) 74 PLR 110, para 9, to submit that if some land was released on the ground that it had construction, there was no reason not to release other land having construction. (Relying on Chandra Bansi Singh and Others Vs. State of Bihar and Others, .

xvii) Union of India v. Bal Ram Singh to submit that residential area was allowed to be released on facts of the case.

(xviii) & (xix) Sube Singh and Others Vs. State of Haryana and Others, ; Jagdish Chand and Anr. v. State of Haryana and Anr. (2005) 10 SCC 162, to submit that policy of the State to exclude only A class construction was held to be arbitrary and the said policy was held to apply to B and C class structures also.

(xx) Jagdish Chand and Anr. v. State of Haryana and Anr. (2005) 10 SCC 162, to submit that proceedings for acquisition should be finalized expeditiously.

(xxi) Orders of this Court dated 21.8.2009 in CWP No. 1356 of 2004 (Pardeep Yadav v. State of Haryana); 16.9.2009 in CWP No. 16363 of 2005 (HMD Technologies v. State of Haryana); 8.1.2009 in CWP No. 2227 of 2008 (Haryana Rice Mills and Ors. v. State of Haryana and Ors.); 7.1.2009 in CWP No. 3972 of 2008 (Nirmala Rani and Ors. v. State of Haryana and Ors.); 14.1.2009 in CWP No. 15370 of 2008 (Malho Devi v. State of Haryana); 26.3.2009 in CWP No. 15777 of 2004 (Rajyoga Education and Research Foundation v. State of Haryana and Ors.); 24.3.2009 in CWP No. 21308 of 2008 (Inder Mohan Rai v. State of

Haryana and Ors.) ;27.3.2009 in CWP No. 4857 of 2009 (Sunder Lal v. State of Haryana); 1.7.2009 in CWP No. 8274 of 2009 (Chetna Estate Pvt. Limited and Ors. v. The State of Haryana and Ors.) and 8.1.2009 in CWP No. 5038 of 2006 (Purushottam and Ors. v. State of Haryana and Ors.), to submit that exercise of power of acquisition is vitiated when real purpose is other than declared purpose which could be inferred from exercise of power of release in terms of policies of the State of Haryana.

9. Learned Counsel for the State defended the acquisition proceedings and submitted that even if out of 36.59 acres of land notified for acquisition, about 23 acres was released before award and award was made for about 13 acres out of which about 8 acres was further released, the purpose of acquisition still survives with regard to remaining about 5 acres. With regard to the land which was released also, purpose of acquisition of development for residential/commercial purposes was achieved. The State had a policy of releasing land in respect of which licence was applied for and granted, which policy was permissible u/s 48 of the Act and had not been challenged as such. In any case, the land was validly acquired. After acquisition, the land could be used for a changed purpose. Part of land was now required for Delhi Metro project, which was certainly a genuine public purpose. It was further submitted that there was no non compliance of provisions of Section 5-A of the Act, as hearing was duly given and objections were duly considered. Declaration of public purpose in the notification was conclusive and the State had absolute discretion to withdraw from acquisition. Such withdrawal from acquisition and release of land from acquisition did not affect validity of acquisition.

10. In support of his submissions, learned Counsel for the State cited following judgments:

(i) Gulam Mustafa and Others Vs. The State of Maharashtra and Others, (ii) Mangal Oram and Others Vs. State of Orissa and Another, (iii) Shankar v. State of Haryana 1996 PLJ 263 (P&H), para 4. (iv) Union of India and Others Vs. Jaswant Rai Kochhar and Others, (v) Rudradhar R. Trivedi Vs. State of Maharashtra and another, (vi) Kulbir Singh v. State of Punjab 2001 (1) PLJ (P&H), to submit that land acquired for public purpose could be used for any other public purpose, vii) Collectors of 24 Parganas and Others Vs. Lalit Mohan Mullick and Others, , (viii) The Senior Superintendent of Post Offices, Coimbatore Division v. The coimbatore Diocese Society represented by its Procurator, Coimbatore and Ors. 1998 (1) LACC 520 (Mad.), para 7. (ix) Gandhi Grah Nirman Sahkari Samiti Limited and Ors. v. State of Rajasthan and Ors. 32 SCC 662 para 15 to submit that comparative utility of public purpose could not be seen and if acquisition was for a valid purpose, there could be no interference on the ground that land was already being used for some beneficial purpose.

11. Learned Counsel for the parties brought to our notice the contents of policies dated 6.1.2000, 6.3.2000 and 26.10.2007 and report dated 10.2.2009 which was filed by the Chief Secretary to the State of Haryana in pursuance of order

dated 8.1.2009 in CWP No. 5038 of 2006 (Purushottam and Ors. v. State of Haryana and Ors.). Relevant parts thereof are as under:

Policy dated 6.1.2000

Memorandum

Minister-in-Charge Town and Country

Planning Minister

Administrative Secretary Commissioner and

Secretary to Govt.

Haryana, Town and Country Planning Department

Sub: Release of land from acquisition where Developers/colonizers have purchased land Before the issue of notification u/s 4 of the Land Acquisition Act but submitted application for licence for commercial colonies thereof afterwards.

Xx xxx xxx xxxx

It has been felt that apart from providing accommodation for locating commercial officers, a licence for a commercial colony results into receipt of handsome amount to the State Treasury/Haryana Urban Development Authority and it will be in public interest to encourage establishment of such colonies. Earlier a decision was taken by the CMM (copy of memorandum and decision is placed at Annexure B and C) to release the land from acquisition where developers/colonizers have purchased land before the issue of notification u/s 4 of the Land Acquisition Act, but submitted applications for grant of licence for setting up of residential colony afterwards. But it is a general decision and it is felt that in view of the reasons explained above, the licences for commercial colonies should be treated differently.

It is therefore, proposed that if the department intends to issue licence for commercial colony with the internal concurrence of the Government over a land where the owner had purchased it before the notification u/s 4 of the Land Acquisition Act was issued, the release of such land may be allowed before issue of letter of intent.

Policy dated 6.3.2000

It has also been observed that the resources of HUDA have reduced in the recent past, and acquisition activity and development of residential sectors has become costly and time consuming affair due to litigation and, therefore, it would be appropriate to assign a greater role to private sector. But as per decision taken by the CMM in their meeting held on 30.7.98 even if the department finds that the application for grant of licence for residential colony fulfils policy/technical parameters, the land is to be released from acquisition only on the recommendations of the Chief Administrator, HUDA. This results into procedural

delay. Since the department of Town and Country Planning, Haryana is responsible for integrated development of urban areas, therefore with a view to avoid procedural delays, it is proposed that on the analogy of decision taken by the CMM on 6.1.2000, the land purchased by the colonizer before issuance of notification u/s 4 of the Land Acquisition Act, 1894 where the Director Town and Country Planning, Haryana decides to issue licence for residential colony and obtained the concurrence of the Government for the same, may be released from acquisition.

Policy dated 26.10.2007

5. Any land in respect of which an application u/s 3 of the Haryana Development and Regulation of Urban Areas Act, 1975 has been made by the owners prior to the award for converting the land into a colony, may also be considered for release subject to the condition that the ownership of the land should be prior to the notification u/s 4 of the Act.

6. That the Government may also consider release of land in the interest of integrated and planned development for the lands where the owners have approached the Hon"ble Courts and have obtained stay dispossession.

Provided that the Government may release any land on the grounds other than stated above u/s 48(1) of the Act under exceptionally justifiable circumstances for the reasons to be recorded in writing.

Report of the Chief Secretary dated 10.2.2009 :

Within the framework of the Act of 1975, the Government has from time to time formulated several policies which inter alia also relate to issues pertaining to acquisition of land under the Land Acquisition act, 1894 and its release during the acquisition process. Land being a sensitive and a dynamic sector, the policies pertaining to release of land from acquisition have also evolved with the passage of time during the past 18 years period. Specific policies pertaining to release of land from acquisition vis a vis the applications for grant of licence have been in vogue since 1991.

14. Once some land falls within the urbanization limits defined in the development Plan, notified under the provisions of Act No. 41 of 1963, the land use changes from the existing agriculture use to some urban land use, viz, Residential, Commercial, Institutional, Open Space etc. It is only a matter of time when the agriculture use of the said land gets converted to the prescribed land use as per the Development Plan, either through a state agency like HUDA or HSIDC or through some private licensee.

"Change of Land Use" (CLU) permission for a use in conformity to the Development Plan can also be undertaken by the land owner.

15. The land owner, whose land falls within the urbanisable limits, is entitled to best possible price that his land can fetch. The policies of the Government have,

therefore, been aimed at empowerment of the land owner, whose land comes under urbanisable limits. In order to gain technical competence for development of a colony and be eligible for grant of licence, such land owners, however, enter into an agreement with colonizers of their choice. The licence is still granted in favour of the land owner who is free to enter into an agreement with a colonizer offering him the best terms.

12. In the light of pleadings and submissions made, following questions arise for consideration:

(i) Whether notified purpose of acquisition is non-existent when 90% of notified land has been released contrary to the scheme of law?

(ii) Whether in absence of public purpose, acquisition proceedings are vitiated by colourable exercise of power and are ultra-vires the Act, apart from being hit by Articles, 114, 21 and 300-A of the Constitution?

(iii) Whether there is no valid consideration of objections u/s 5-A of the Act, vitiating notification u/s 6 of the Act?

(iv) Whether release of land from acquisition under policy of State is not covered by Section 48 of the Act and whether such policy is consistent with the scheme of the Act?

13. It can hardly be disputed that validity of acquisition depends on existence of "public purpose". Acquisition without public purpose is not only ultravires the Act but also Articles 14, 21 and 300A of the Constitution. Section 6(3) of the Act makes declaration to be conclusive evidence of existence of public purpose but where decision making process is questioned, such declaration is subject to judicial review. Exercise of power of acquisition has to be bonafide and for permissible purpose. Section 48 of the Act allows the Government to withdraw from acquisition before taking possession. Exercise of such power like any other power of a public authority is subject to judicial review. Such power is executive and not legislative power and can be exercised as per declared legislative policy. In exercise thereof, no policy can be laid down which may be in conflict with the scheme of the Act.

In absence of express guidelines u/s 48 of the Act, the guidelines have to be read into the said provision from the scheme of the legislation. Once land is declared to be needed for a particular public purpose, the affected party is entitled to raise objections as to existence of the said public purpose, suitability of land for acquisition and such objections have to be considered fairly. Normally, before the land vests in the State, the State cannot go back from the declared public purpose. Section 48 of the Act does not enable the Government to frame a policy to go back from the declared public purpose. No law can be read as conferring unguided discretion lest it violates guarantee of equal protection of laws under Article 14 of the Constitution. (See In Re: The Special Courts Bill, 1978, .

14. The Court has to see not the form of action but the effect thereof, as held in *Rustom Cavasjee Cooper Vs. Union of India (UOI)*, and *Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another*, . In *Maneka Gandhi (supra)*, while discussing the approach for judging the validity of State action, the doctrine that object and form of State action alone can determine the extent of protection available, was rejected. It was held that the approach of the Court is to see not merely object and form of the State action but its effect. Following observations from *R.C. Cooper (supra)* were relied upon:

...it is not the object of the authority making the law impairing the right of a citizen nor the form of action that determines the protection he can claim; it is the effect of the law and of the action upon the right which attract the jurisdiction of the Court to grant relief. If this be the true view, and we think it is, in determining the impact of State action upon constitutional guarantees which are fundamental, it follows that the extent of protection against impairment of a fundamental right is determined not by the object of the Legislature nor by the form of the action, but by its direct operation upon the individual's right.

We are of the view that the theory that the object and form of the State action determine the extent of protection which the aggrieved party may claim is not consistent with the constitutional scheme. ...

15. At this stage, it will be appropriate to discuss the concepts of public purpose, exercise of power by public authority, scope of power u/s 48 and judicial review thereof in the light of leading judgments.

Public Purpose:

16.1 In *The State of Bihar Vs. Sir Kameshwar Singh*, , it was observed:

...The sovereign power to acquire property compulsorily is a power to acquire it only for a public purpose, there is no power in the sovereign to acquire private property in order to give it to private persons.

Public purpose is a content of the power itself.

Reference in this connection may be made to Willoughby's *Constitutional Law* (page 795). Therein it is stated:

As between individuals, no necessity, however great, no exigency, however imminent, no improvement, however valuable, no refusal, however unneighbourly, no obstinacy, however unreasonable, no offers of compensation, however extravagant, can compel or require any man to part with an inch of his estate.

It was further observed in para 52:

...There can be no manner of doubt that acquisition of private property by legislation under Entries 33, 36 and 42 can only be made either for purposes of the Union or for purposes of the State or for a public purpose and that it is

unnecessary to state in express terms in the statute itself the precise purpose for which property is being taken, provided from the whole tenor and intendment of the Act it could be gathered that the property was being acquired either for purpose of the State or of purposes of the public and that the intention was to benefit the community at large. ...

16.2 The above observations were reiterated in *Sooraram Pratap Reddy and Others Vs. District Collector, Ranga Reddy Distt. and Others*, . Same view was taken in *Hindustan Petroleum Corporation Ltd. Vs. Darius Shapur Chenai and Others*, , paras 15,16,18 and 28, *Secy. Jaipur Development Authority v. Daulat Mai Jain* (1997) SCC 35 and *R.L. Arora Vs. State of Uttar Pradesh and Others*, .

16.3 In *Chairman, Indore Vikas Pradhikaran Vs. Pure Industrial Cock and Chem. Ltd. and Others*, , it was observed:

53. The right to property is now considered to be not only a constitutional right but also a human right. 54. The Declaration of Human and Civic Rights of 26-8-1789 enunciates under Article 17:

17. Since the right to property is inviolable and sacred, no one may be deprived thereof, unless public necessity, legally ascertained, obviously requires it and just and prior indemnity has been paid.

Further under Article 17 of the Universal Declaration of Human Rights, 1948 dated 10-12-1948, adopted in the United Nations General Assembly Resolution it is stated that: (i) Everyone has the right to own property alone as well as in association with others, (ii) No one shall be arbitrarily deprived of his property.

55. Earlier human rights were existed to the claim of individuals right to health, right to livelihood, right to shelter and employment, etc. but now human rights have started gaining a multifaceted approach. Now property rights are also incorporated within the definition of human rights. Even claim of adverse possession has to be read in consonance with human rights. As President John Adams (1797-1801) put it:

Property is surely a right of mankind as real as liberty.

Adding,

The moment the idea is admitted into society that property is not as sacred as the laws of God, and that there is not a force of law and public justice to protect it, anarchy and tyranny commence.

56. Property, while ceasing to be a fundamental right would, however, be given express recognition as a legal right, provisions being made that no person shall be deprived of his property save in accordance with law.

16.4 In *Devinder Singh v. State of Punjab* (2008) 1 SCC 728, it was observed:

43. Expropriatory legislation, as is well known, must be strictly construed. When the properties of a citizen are being compulsorily acquired by a State in exercise

of its power of eminent domain, the essential ingredients thereof, namely, existence of a public purpose and payment of compensation are principal requisites therefor. ...

16.5 In *Smt. Somavanti and Others Vs. The State of Punjab and Others*, , the Hon"ble Supreme Court observed:

40. Though we are of the opinion that the courts are not entitled to go behind the declaration of the Government to the effect that a particular purpose for which the land is being acquired is a public purpose we must emphasise that the declaration of the Government must be relatable to a public purpose as distinct from a purely private purpose.

If the purpose for which the acquisition is being made is not relatable to public purpose then a question may well arise whether in making the declaration there has been, on the part of the Government a fraud on the power conferred upon it by the Act. In other words, the question would then arise whether that declaration was merely a colourable exercise of the power conferred by the Act, and, therefore, the declaration is open to challenge at the instance of the party aggrieved. To such a declaration the protection of Section 6(3) will not extend. For, the question whether a particular action was the result of a fraud or not is always justiciable, provisions such as Section 6(3) notwithstanding.

16.6 "Public purpose" is defined u/s 3(f) of the Act as under:

3(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 by lease, assignment or outright sale with 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 person residing in areas affected by natural calamities, or to persons displaced or 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, 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.

16.7 The definition of "Public purpose" came up for consideration before the Hon"ble Supreme Court in H.M.T. House Building Co-operative Society Vs. Syed Khader and others, and in paras 20, 21 and 22, it was observed:

20. Now the question which is to be answered is as to whether in view of the definition of "public purpose" introduced by the aforesaid amending Act 68 of 1984 in Section 3(f)(vi), is it open to the appropriate Government to acquire land for cooperative society for housing scheme without making proper enquiry about the members of the Society and without putting such housing cooperative society to term in respect of nature of construction, the area to be allotted to the members and restrictions on transfer thereof ?

21. According to us, in Section 3(f)(vi) the expression "housing" has been used along with educational and health schemes. As such the housing scheme contemplated by Section 3(f)(vi) shall be such housing scheme which shall serve the maximum number of members of the society. Such housing scheme should prove to be useful to the public. That is why the Parliament while introducing a new definition of "public purpose", said that any scheme submitted by any cooperative society relating to housing, must receive prior approval of the appropriate Government and then only the acquisition of the land for such scheme can be held to be for public purpose. If requirement of Section 3(f)(vi) is not strictly enforced, every housing co-operative society shall approach the appropriate Government for acquisition by applying Section 3(f)(vi) instead of pursuing the acquisition under Part VII of the Act which has become more rigorous and restrictive.

In this background, it has to be held that the prior approval, required by Section 3(f)(vi), of the appropriate Government is not just a formality; it is a condition precedent to the exercise of the power of acquisition by the appropriate Government for a housing scheme of a cooperative society.

22. In the present case, a hybrid procedure appears to have been followed. Initially, the appellant society through M/s. S. R. Constructions purported to acquire the lands by negotiation and sale by the land holders. Then from terms of the agreement dated 17-3-1988, it appears that the procedure prescribed in Part-VII was to be followed and the lands were to be acquired at the cost of the appellant society treating it to be a "company". The allegation made on behalf of the appellant society that the housing scheme had been approved by the

appropriate Government on 7-11-1984 shall not be deemed to be a prior approval within the meaning of Section 3(f)(vi) but an order giving previous consent as required by Section 39 of Part-VII of the Act. In the agreement dated 17-3-1988 it has been specifically stated "And whereas the Government having caused inquiry to be made in conformity with the provisions of the said Act and being satisfied as a result of such inquiry that the acquisition of the said land is needed for the purpose referred to above has consented to the provisions of the said act being in force in order to acquire the said land for the benefit of the society members to enter in the agreement hereinafter contained with the Government.

But, ultimately, the lands have been acquired on behalf of the appropriate Government treating the requirement of the appellant society as for a public purpose within the meaning of Section 3(f)(vi). It is surprising as to how respondent M/s. S. R. Constructions entered into agreement with the appellant society assuring it that the lands, details of which were given in the agreement itself, shall be acquired by the State Government by following the procedure of Sections 4(1) and 6(1) and for this, more than one crore of rupees was paid to M/s. S. R. Constructions (respondent No. 11).

16.8. Following the observations in H.M.T (supra), in The Vyalikaval House Building Co-Op. Society by its Secretary Vs. V. Chandrappa and Others, , the Hon"ble Supreme Court upheld quashing of acquisition on the ground that the same was for colourable exercise of power. The finding of the High Court extracted in para 3 of the said judgment was as under:

The irresistible inference flowing from the facts and circumstances of these cases is, whereas the power conferred under the Land Acquisition Act is for acquiring lands for carrying out housing scheme by a housing society, in each of the cases the acquisition of lands is not for a bona fide housing scheme but is substantially for the purpose of enabling the concerned office bearers of respondent- societies and their agents to indulge in sale of sites in the guise of allotment of sites to the Members/Associate members of the society to make money as alleged by the petitioners and therefore it is a clear case of colourable exercise of power. Thus the decision of the Government to acquire the lands suffers from legal mala fides and therefore the impugned Notifications are liable to be struck down.

Approving the said findings, relying upon earlier judgment in H.M.T (supra), it was observed:

8. Similarly, in H.M.T. House Building Co-operative Society Vs. M. Venkataswamappa and others, in which the present appellant was one of the societies, which challenging the order of the Division Bench of the High Court of Karnataka, their Lordships dismissed the SLP following the judgment in H.M.T. House Building Cooperative Society (supra). In paragraph 3 of the judgment while dealing with the facts of this society their Lordships observed that this society had advertised inviting persons who want to have mansions in the city of

Bangalore and had also given the names and addresses of the representative at Dubai.

16.9 In *Padma v. Hiralal Motilal Desarda and Ors.* AIR 2002 SC 3252, the issue considered by the Hon'ble Supreme Court was whether City and Industrial Development Corporation to whom land was allotted by the State after acquisition could transfer the same to professional builders for development. It was observed that land allotted to CIDCO could not have been parted with by sole consideration of money making. CIDCO was not a commercial concern. The land had to be utilized according to plan.

It was observed:

...the constitutional court acts as the sentinel on the qui vive discharging its obligation as custodian of the constitutional morals, ethics and code of conduct - well defined by series of judicial pronouncements. The Court is obliged to see while scrutinising the conduct and activities of a public body constituted with the avowed object of serving the society to see that its activities bear no colour except being transparent, are guided with the object of public good and are within the four corners of law governing the same. The holder of every public office hold a trust for public good and therefore his actions should all be above board. ?

Xx xx xxxx xxxx

31. It is not disputed that CIDCO is supposed to carry out its activities on "no profit no loss" basis and that is the basis on which CIDCO, as per its own case, has been acting until it decided to part with the chunk of developable land by bulk sale which proposal was obviously in departure from the policy of serving on "no profit no loss" basis such people as were craving for a roof over their heads. The High Court while dealing with this aspect of the matter has assigned several convincing reasons why the very concept of sale of bulk land cannot sail with CIDCO, either in law or in propriety. Assuming that an extraordinary situation which there was none had warranted a policy decision for bulk sale the decision should have been of the Board and accompanied by reasons. In the present case, if only the proposal would have been placed before the Board of CIDCO in all probability it would have been discarded. It is pertinent to note that good number of officials, through whose hands the proposal passed while travelling up, were not agreeable to and had their own reservations on the proposal of such bulk sale. What prevailed with one or two of those placed at the higher rung or bureaucratic ladder in permitting such bulk sale in hot haste defies explanation for the simple reason that in the decisions available on the note sheets of the record looked into by the High Court no reasons have been assigned in favour of endorsing the proposal for bulk land sale. We are not prepared to accept even for a moment that there was no demand of land. Even if the development plan for the developable land was not approved by the State Government there is nothing which had prevented the CIDCO from carving out small middle level and larger

plots which those who can afford would have certainly been prepared to take and build small, middle level or spacious houses or bungalows for their own residential requirements. This find support from the overwhelming demand of land which the High Court has noted and which demand the CIDCO had found out of proportion as compared to the availability of land with it. The decision for bulk land sale cannot be said to have been taken in public interest. The High Court has rightly observed in its judgment that some public institutions who were allotted large pieces of land have developed parks and gardens but they are not open for free access by people generally. The local residents and children must have place enough to be used as parks, gardens and for entertainment which not only act as lungs and ventilators for suffocating growth of population but also add luster and beauty to the township. The utility of such pieces of land acting as buffer for maintaining ecological balance and environmental demands needs no emphasis. We entirely agree with the reasons of the High Court and the observations made by it while recording its strong disapproval of bulk sale.

32. There is yet another angle of looking at the propriety of the questioned bulk sale of land by CIDCO and the manner in which it was done. The land acquired and entrusted to CIDCO cannot just be permitted to be parted with guided by the sole consideration of money-making. CIDCO is not a commercial concern whose performance is to be assessed by the amount it earns. Its performance would be better assessed by finding out the number of needy persons who have been able to secure shelter through CIDCO and by the beauty of township and quality of life for people achieved by CIDCO through its planned development schemes. So long as such objectives are fulfilled CIDCO's operation on "No-profit-No Loss" basis cannot be found fault with. There should have been no hurry on the part of CIDCO in disposing of the balance land and that too guided by the sole consideration of earning more money. Even that object the CIDCO has not been able to achieve for at the end it has parted with land at a price less than Rs. 1500/- per square meter - the reserved price. Even if a sale of left-over land was a felt-necessity it should have satisfied at least two conditions: (i) a well-considered decision at the highest level; and (ii) a sale by public auction or by tenders after giving a more wide publicity than what was done so as to attract a larger number of bidders.

16.10 In *Akadasi Padhan Vs. State of Orissa*, , it was observed:

29. ...It seems to us that when the State carries on any trade, business or industry, it must inevitably carry it on either departmentally or through its officers appointed in that behalf. In the very nature of things, the State as such, cannot function without the help of its servants or employees and that inevitably introduces the concept of agency in a narrow and limited sense.

If the State cannot act without the aid and assistance of its employees or servants, it would be difficult to exclude the concept of agency together. Just as the State can appoint a public officer to carry on the trade on its behalf, so it can appoint an agent to carry on the trade on its behalf. Normally and ordinarily, the

trade should be carried on departmentally or with the assistance of public servants appointed in that behalf. But there may be some trades or businesses in which it would be inexpedient to undertake the work of trades or businesses departmentally or with the assistance of State servants. In such cases, it would be open to the State to employ the services of agents, provided the agents work on behalf of the State and not for themselves.

17. Exercise of Power by a Public Authority

Concept of Colourable exercise of power

17. In *Collector (District Magistrate) Allahabad and Another Vs. Raja Ram Jaiswal*, it was observed:

25. It is well settled that where power is conferred to achieve a certain purpose, the power can be exercised only for achieving that purpose. Section 4(1) confers power on the Government and the Collector to acquire land needed for a public purpose.....

26. Where power is conferred to achieve a purpose it has been repeatedly reiterated that the power must be exercised reasonably and in good faith to effectuate the purpose. And in this context "in good faith" means "for legitimate reasons"! Where power is exercised for extraneous or irrelevant considerations or reasons, it is unquestionably a colourable exercise of power or fraud on power and the exercise of power is vitiated. If the power to acquire land is to be exercised, it must be exercised bona fide for the statutory purpose and for none other. If it is exercised for an extraneous, irrelevant or non-germane consideration, the acquiring authority can be charged with legal mala fides. In such a situation there is no question of any personal ill-will or motive. In *Municipal Council of Sydney v. Campbell* 1925 AC 338 at p. 375 it was observed that irrelevant considerations on which power to acquire land is exercised, would vitiate compulsory purchase orders or scheme depending on them. In *State of Punjab and Another Vs. Gurdial Singh and Others*, acquisition of land for constructing a grain market was challenged on the ground of legal mala fides. Upholding the challenge this Court speaking through Krishna Iyer, J. explained the concept of legal mala fides in his hitherto inimitable language, diction and style and observed as under:

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. If the use of the power is for the fulfilment of a legitimate object the actuation or catalysation by malice is not legicidal. The action is bad where the true object is to reach an end different from the one for which the power is entrusted, goaded by extraneous considerations, good or bad, but irrelevant to the entrustment; 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. In a broad, blurred sense, Benjamin Disraeli was not off the mark even in Law when he stated: "I repeat.....that all power is a trust - that we are accountable for its exercise - that, from the people, and for the people, all springs, and all must exist. (underlining ours)

17.1 In *Bhikhubhai Vithlabhai Patel v. State of Gujarat*, (2008) 49 4 SCC 144, it was observed:

32. ...The powers of public authorities are therefore essentially different from those of private persons. A man making his will may, subject to any rights of his dependants, dispose of his property just as he may wish. He may act out of malice or a spirit of revenge, but in law this does not affect his exercise of his power. In the same way a private person has an absolute power to allow whom he likes to use his land, to release a debtor, or, where the law permits, to evict a tenant, regardless of his motives. This is unfettered discretion. But a public authority may do none of these things unless it acts reasonably and in good faith and upon lawful and relevant grounds of public interest. The whole conception of unfettered discretion is inappropriate to a public authority, which possesses powers solely in order that it may use them for the public good. There is nothing paradoxical in the imposition of such legal limits. It would indeed be paradoxical if they were not imposed.

17.2 In *Kasturi Lal Lakshmi Reddy, Represented by its Partner Shri Kasturi Lal, Jammu and Others Vs. State of Jammu and Kashmir and Another*, , it was observed:

10. ...The discretion of the Government has been held to be not unlimited in that the Government cannot give largess in its arbitrary discretion or at its sweet will or on such terms as it chooses in its absolute discretion. There are two limitations imposed by law which structure and control the discretion of the Government in this behalf. The first is in regard to the terms on which largess may be granted and the other, in regard to the persons who may be recipients of such largess.

17.3 In *Lucknow Development Authority Vs. M.K. Gupta*, , it was observed:

8. ...Under our Constitution sovereignty vests in the people. Every limb of the constitutional machinery is obliged to be people oriented. No functionary in exercise of statutory power can claim immunity, except to the extent protected by the statute itself. Public authorities acting in violation of constitutional or statutory provisions oppressively are accountable for their behaviour before authorities created under the statute like the commission or the courts entrusted with responsibility of maintaining the rule of law... .

17.4 In *Ramana Dayaram Shetty Vs. International Airport Authority of India and Others*, it was observed:

10. ...Whatever be the concept of the rule of law whether it be the meaning given by Dicey in his "The Law of the Constitution" or the definition given by

Hayek in his "Road to Serfdom" and "Constitution of liberty" or the exposition set forth by Herry Jones in his "The Rule of Law and the Welfare State", there is, as pointed out by Mathew, J., in his article on "The Welfare State, Rule of Law and Natural Justice" in Democracy, Equality and Freedom "substantial agreement in juristic thought that the great purpose of the rule of law notion is the protection of the individual against arbitrary exercise of power, wherever it is found". It is indeed unthinkable that in a democracy governed by the rule of law the executive Government or any of its officers should possess arbitrary power over the interests of the individual. Every action of the executive Government must be informed with reason and should be free from arbitrariness. That is the very essence of the rule of law and its bare minimal requirement. And to the application of this principle it makes no difference whether the exercise of the power involves affection of some right or denial of some privilege.

11. To-day the Government, in a welfare State is the regulator and dispenser of special services and provider of a large number of benefits, including jobs contracts, licences, quotas, mineral rights etc. The Government pours forth wealth, money, benefits, services, contracts, quotas and licences. The valuables dispensed by Government take many forms, but they all share one characteristic.

They are steadily taking the place of traditional forms of wealth. These valuables which derive from relationships to Government are of many kinds. They comprise social security benefits, cash grants for political sufferers and the whole scheme of State and local welfare. Then again, thousands of people are employed in the State and the Central Government and local authorities.

Licences are required before one can engage in many kinds of businesses or work. The power of giving licences means power to withhold them and this gives control to the Government or to the agents of Government on the lives of many people. Many individuals and many more businesses enjoy largess in the form of Government contracts. These contracts often resemble subsidies. It is virtually impossible to lose money on them and many enterprises are set up primarily to do business with Government. Government owns and controls hundreds of acres of public land valuable for mining, and other purposes. These resources are available for utilisation by private corporations and individuals by way of lease or licence. All these mean growth in the Government largess and with the increasing magnitude and range of governmental functions as we move closer to a welfare State, more and more of our wealth consists of these new forms.

Some of these forms of wealth may be in the nature of legal rights but the large majority of them are in the nature of privileges. But on that account, can it be said that they do not enjoy any legal protection? Can they be regarded as gratuity furnished by the State so that the State may withhold, grant or revoke it at its pleasure? Is the position of the Government in this respect the same as that of a private giver? We do not think so. The law has not been slow to recognise the importance of this new kind of wealth and the need to protect individual interest in it and with that end in view, it has developed new forms of

protection. Some interests in Government largess, formerly regarded as privileges, have been recognised as rights while others have been given legal protection not only by forging procedural safeguards but also by confining/structuring and checking Government discretion in the matter of grant of such largess. The discretion of the Government has been held to be not unlimited in that the Government cannot give or withhold largess in its arbitrary discretion or at its sweet will. It is insisted, as pointed out by Professor Reich in an especially stimulating article on "The New Property" in 73 Yale Law Journal 733, "that Government action be based on standards that are not arbitrary or unauthorised." The Government cannot be permitted to say that it will give jobs or enter into contracts or issue quotas or licences only in favour of those having grey hair or belonging to a particular political party or professing a particular religious faith. The Government is still the Government when it acts in the matter of granting largess and it cannot act arbitrarily. It does not stand in the same position as a private individual.

12. It must, therefore, be taken to be the law that where the Government is dealing with the public, whether by way of giving jobs or entering into contracts or issuing quotas or licences or granting other forms of largess, the Government cannot act arbitrarily at its sweet will and, like a private individual, deal with any person it pleases, but its action must be in conformity with standard or norm which is not arbitrary, irrational or irrelevant. The power or discretion of the Government in the matter of grant of largess including award of jobs, contracts quotas, licences etc., must be confined and structured by rational, relevant and non-discriminatory standard or norm and if the government departs from such standard or norm in any particular case or cases, the action of the Government would be liable to be struck down, unless it can be shown by the Government that the departure was not arbitrary, but was based on some valid principle which in itself was not irrational, unreasonable or discriminatory...

17.5 In Shiv Sagar Tiwari Vs. Union of India and others, , it was observed:

1. The administrative law has of late seen vast increase in discretionary powers. But then, the discretion conferred has to be exercised to advance the purpose to subserve which the power exists. Even the Minister, if he/she be the repository of discretionary power, cannot claim that either there is no discretion in the matter or unfettered discretion. This proposition was rejected emphatically by the House of Lords in the landmark decision of *Padfield* 1968 AC 997. This apart, as pointed out in *United States v. Wunderlich* 55 342 US 98:

Law has reached its finest moments when it has freed man from the unlimited discretion of some ruler, some ruthless master. It is more destructive of freedom than any of man's other inventions.

17.6 In *V. Purushotham Rao v. Union of India* (2001) 10 SCC 305, it was observed:

26. ...When a State property as distinct from a private property is being dealt

with by a Minister then it is of paramount importance that such public property must be dealt with for public purpose and in the public interest. The disposal of a public property undoubtedly partakes the character of a trust and therefore, in the matter of such disposal, there should not be any suspicion of a lack of principle. The exercise of discretion must not be arbitrary or capricious or for any extraneous considerations. ...

17.7 In *B.E.M.L. Employees House Building Co-operative Society Ltd. Vs. State of Karnataka and Others*, , it was observed:

7. ...Wide the discretion may be, but not wild. All exercise of statutory discretion must be based on reasonable grounds and cannot lapse into arbitrariness or caprice which is anathema to the rule of law envisaged in Article 14 of the Constitution.

17.8 In *S.G. Jaisinghani Vs. Union of India (UOI) and Others*, , it was observed:

14. In this context it is important to emphasize that the absence of arbitrary power is the first essential of the rule of law upon which our whole constitutional system is based. In a system governed by rule of law, discretion, when conferred upon executive authorities, must be confined within clearly defined limits. The rule of law from this point of view means that decisions should be made by the application of known principles and rules and in general, such decisions should be predictable and the citizen should know where he is. If a decision is taken without any principle or without any rule it is unpredictable and such a decision is the antithesis of a decision taken in accordance with the rule of law. (See Dicey- "Law of the Constitution -Tenth Edn., Introduction cx). "Law has reached its finest moments," stated Douglas, J. in *United States v. Wunderlich*. (1951) 342 US 98, "when it has freed man from the unlimited discretion of some ruler.....Where discretion is absolute man has always suffered. It is in this sense that the rule of law may be said to be the sworn enemy of caprice. Discretion as Lord Mansfield stated it in classic terms in the case of *John Wilkes*. (1770) 4 Burr 2528 means sound discretion guided by law. It must be governed by rule not by humour it must not be arbitrary, vague and fanciful"

Scope of Judicial review of exercise of power by public authority.

18.1 In LPA No. 179 of 2008, *State of Haryana v. Ashok Chopra*, 56 decided on 24.9.2008, a Bench of this Court, while deciding appeal against judgment of Single Bench quashing acquisition on account of arbitrary use of policy of release observed:

10. ...The process of acquisition was, thus, used to enable colonizers to take over the private land for their purpose instead of public purpose and the State became party to that by releasing such land in favour of colonizers who were not even owners at the time of acquisition. No reasoned order had been passed on the objection of the petitioner that his land was not fit for acquisition or that he was entitled to parity with others. The policy of exemption had been thus arbitrarily

applied and benefit given only to some land owners without application of mind uniformly and without fair opportunity to similarly placed other land owners.

Xx xx xxx xxx

xxx

We do not find any merit in the contention that there is absolute power of the State or that exercise of discretion by the State can never be interfered with by this Court. In exercise of its power of judicial review Court can certainly see that the Executive acts lawfully, bonafide and within the limit of its power. If there is abuse or misuse of power, jurisdiction of this Court can certainly be invoked. Rule of law has to be prevail and it is the basic requirement of Article 14 that the State acts fairly, reasonably and in good faith.

We may refer to well known observations of the Hon''ble Supreme Court on this issue:

. ...Needless to say that Courts in India, which function under a written Constitution which confers fundamental rights on citizens, have exercised, far greater powers than those exercised by Courts in England where there is no written constitution and there are no fundamental rights. Therefore the decisions of courts in England as regards powers of the Courts, "surveillance", as Lord Pearce calls it, or the control which the judiciary have over the Executive, as Lord Upiohn put it, indicate at least the minimum limit to which Courts in this country would be prepared to go in considering the validity of orders of the Government of its officers. @Z_PARA = In that sense the decision of the House of Lords in padfield v. Minister of Agriculture Fisheries and Food 1968 AC 997 is a landmark in the history of the exercise by Courts of their power of surveillance. 13. The Executive have to reach their decisions by taking into account relevant considerations. They should not refuse to consider relevant matter nor should take into account wholly irrelevant or extraneous consideration. They should not misdirect themselves on a point of law. Only such a decision will be lawful. The courts have power to see that the Executive acts lawfully. It is no answer to the exercise of that power to say that the Executive acted bona fide nor that they have bestowed painstaking consideration...." Hochtief Gammon Vs. State of Orissa and Others,

...That Court has power, by the prerogative writ of mandamus, to amend all errors which tend to the oppression of the subject or other misgovernment, and ought to be used when the law has provided no specific remedy, and justice and good government require that there ought to be one for the execution of the common law or the provisions of a statute..." Comptroller and Auditor-general of India, Gian Prakash, New Delhi and Another Vs. K.S. Jagannathan and Another, .

...The Constitution enshrines and guarantees the rule of law and Article 226 is designed to ensure that each and every authority in the State, including the Government acts bona fide and within the limits of its power and we consider

that when a Court is satisfied that there is an abuse or misuse of power and its jurisdiction is invoked, it is incumbent on the Court to afford justice to the individual. *S. Pratap Singh Vs. The State of Punjab*, .

...The basic requirement of Article 14 is fairness in action by the State and we find it difficult to accept that the State can be permitted to act otherwise in any field of its activity, irrespective of the nature of its function, when it has the uppermost duty to be governed by the rule of law. Nonarbitrariness, in substance, is only fair play in action. We have no doubt that this obvious requirement must be satisfied by every action of the State or its instrumentality in order to satisfy the test of validity....

Xx xx xxx xxxx

Xx XX XXX XXX

14. ... *Kumari Shrilekha Vidyarthi and Others Vs. State of U.P. and Others*, .

...In requiring statutory powers to be exercised reasonably, in good faith, and on correct grounds, the Courts are still working within the bounds of the familiar principle of ultra vires. The Court assumes that Parliament cannot have intended to authorize unreasonable action which is therefore ultra vires and void....." *Express Newspapers Pvt. Ltd. and Others Vs. Union of India (UOI) and Others*, .

18.2 In *Khudiram Das Vs. The State of West Bengal and Others*, , it was observed:

11. This discussion is sufficient to show that there is nothing like unfettered discretion immune from judicial reviewability. The truth is that in a Government under law, there can be no such thing as unreviewable discretion. "Law has reached its finest moments" said justice Douglas,

"When it has freed man from the unlimited discretion of some ruler, some.... official, some bureaucrat....Absolute discretion is a ruthless master. It is more destructive of freedom than any of man's other inventions." *United States v. Wunderlich*, (1951) 342 US 98.

18.3 In *A.K. Roy and Others Vs. Union of India (UOI) and Others*, , it was observed:

7. Counsel drew our attention, with great emphasis, to the statements in Montesquieu's "Esprit deslois" (1748) and Blackstone's "Commentaries on the Laws of England" (1765) which are reproduced in "Modern Political Constitutions" by C.F. Strong (8th edition) at page 211. According to Montesquieu, "when the legislative and executive powers are united in the same person or body of persons there can be no liberty, because of the danger that the same monarch or senate should enact tyrannical laws and execute them in a tyrannical manner". Blackstone expresses the same thought by saying that "wherever the right of making and enforcing the law is vested in the same man or one and the same body of men, there can be no public liberty". Reliance was

also placed on views and sentiments expressed to the same effect in Walter Begehot's "The English Constitution" (1867), Wade's "Administrative Law" (3rd edition) pages 323-324, "Constitutional Laws of the British Empire" by Jennings and Young, "Law and Orders" by C. K. Allen (1945) and Harold Laski's "Liberty in the Modern State" (1961). According to Laski,

...if in any State there is a body of men who possess unlimited political power, those over whom they rule can never be free. For the one assured result of historical investigation is the lesson that uncontrolled power is invariably poisonous to those who possess it. They are always tempted to impose their canon of good upon others, and, in the end, they assume that the good of the community depends upon the continuance of their power. Liberty always demands a limitation of political authority, and it is never attained unless the rulers of a state can, where necessary, be called to account. That is why Pericles insisted that the secret of liberty is courage.

Finally, counsel drew on Jawaharlal Nehru's Presidential Address to the Lucknow Congress (April 12, 1936) in which he referred to the rule by ordinances as "the humiliation of ordinances" (Selected Works of Jawaharlal Nehru, Volume 7, page 183).

8. We are not, as we cannot be, unmindful of the danger to peoples liberties which comes in any community from what is called the tyranny of the majority. Uncontrolled power in the executive is a great enemy of freedom and therefore, eternal vigilance is necessary in the realm of liberty... .

18.4 In Common Cause, A Registered Society Vs. Union of India and Others, , it was observed:

35. No doubt it was open to the House of the People (Lok Sabha) to take up the issue of the abuse of discretionary quota by the petitioner in his capacity as the Minister of State for Petroleum, and his conduct could have been debated and scrutinised on the floor of the House, but the mere fact that this was not done would not mean that the allotments of petroleum outlets by him were immune from judicial scrutiny by this Court under Article 32 of the Constitution.

Therefore, even if the matter was not raised on the floor of the Lok Sabha, it would be amenable to the jurisdiction of this Court under Article 32 of the Constitution.

Xx xx xx xxx xx

79. The entire case-law was reviewed by R.M. Sahai, J. in his illuminating judgment in N. Nagendra Rao and Co. Vs. State of Andhra Pradesh, , in which the case of Smt. Nilabati Behera alias Lalita Behera Vs. State of Orissa and others, , was followed and it was observed, inter alia, as under:

25. But there the immunity ends. No civilised system can permit an executive to play with the people of its country and claim that it is entitled to act in any

manner as it is sovereign. The concept of public interest has changed with structural change in the society. No legal or political system today can place the State above law as it is unjust and unfair for a citizen to be deprived of his property illegally by negligent act of officers of the State without any remedy. From sincerity, efficiency and dignity of State as a juristic person, propounded in nineteenth century as sound sociological basis for State immunity the circle has gone round and the emphasis now is more on liberty, equality and the rule of law. The modern social thinking of progressive societies and the judicial approach is to do away with archaic State protection and place the State or the Government on a par with any other juristic legal entity. Any watertight compartmentalisation of the functions of the State as "sovereign and non-sovereign" or "governmental and non-governmental" is not sound. It is contrary to modern jurisprudential thinking. The need of the State to have extraordinary powers cannot be doubted. But with the conceptual change of statutory power being statutory duty for the sake of society and the people the claim of a common man or ordinary citizen cannot be thrown out merely because it was done by an officer of the State even though it was against law and negligent. Needs of the State, duty of its officials and right of the citizens are required to be reconciled so that the rule of law in a welfare State is not shaken. Even in America where this doctrine of sovereignty found its place either because of the "financial instability of the infant American States rather than to the stability of the doctrine's theoretical foundation", or because of "logical and practical ground", or that "there could be no legal right as against the State which made the law" gradually gave way to the movement from "State irresponsibility to State responsibility". In welfare State, functions of the State are not only defence of the country or administration of justice or maintaining law and order but it extends to regulating and controlling the activities of people in almost every sphere, educational, commercial, social, economic, political and even marital.

The demarcating line between sovereign and non-sovereign powers for which no rational basis survives has largely disappeared.

Therefore, barring functions such as administration of justice, maintenance of law and order and repression of crime etc. which are among the primary and inalienable functions of a constitutional Government, the State cannot claim any immunity.

81. For the reasons stated above, we are of the view that the allotment of petrol outlets by the petitioner cannot be treated as an "act of the State" and the rule of immunity invoked by Mr. Parasaran cannot be accepted.

18.5 In I.R. Coelho (Dead) By LRs. Vs. State of Tamil Nadu and Others, , it was observed:

43. The principle of constitutionalism is now a legal principle which requires control over the exercise of Governmental power to ensure that it does not

destroy the democratic principles upon which it is based. These democratic principles include the protection of fundamental rights. The principle of constitutionalism advocates a check and balance model of the separation of powers, it requires a diffusion of powers, necessitating different independent centers of decision-making.

Xx xx xxx xxxx

56. ...In early years, the scope of the guarantee provided by these rights was considered to be very narrow. Individuals could only claim limited protection against the State. This position has changed since long. Over the years, the jurisprudence and development around fundamental rights has made it clear that they are not limited, narrow rights but provide a broad check against the violations or excesses by the State authorities. The fundamental rights have in fact proved to be the most significant constitutional control on the Government, particularly legislative power. This transition from a set of independent, narrow rights to broad checks on state power is demonstrated by a series of cases that have been decided by this Court

xx xx xx xxxx

109. Dealing with Articles 14, 19 and 21 in Minerva Milk case, it was said that these clearly form part of the basic structure of the Constitution and cannot be abrogated. It was observed that three Articles of our constitution, and only three, stand between the heaven of freedom into which Tagore wanted his country to awake and the abyss of unrestrained power.

Xx xxx xxxx xxxxxx

129. Equality, rule of law, judicial review and separation of powers form parts of the basic structure of the Constitution. Each of these concepts are intimately connected. There can be no rule of law, if there is no equality before the law. These would be meaningless if the violation was not subject to the judicial review. All these would be redundant if the legislative, executive and judicial powers are vested in one organ. Therefore, the duty to decide whether the limits have been transgressed has been placed on the judiciary.

130. Realising that it is necessary to secure the enforcement of the Fundamental Rights, power for such enforcement has been vested by the Constitution in the Supreme Court and the High Courts. Judicial Review is an essential feature of the Constitution.

Scope of power u/s 48

19. Once it is to be held that acquisition is permissible only for public purpose, exercise of power u/s 48 has to be guided by that consideration. Power of acquisition cannot be enlarged to achieve a purpose other than notified public purpose by recourse to policy making u/s 48. Moreover, this power is in the nature of exemption and not source of general policy making. Its exercise has to

be restricted to situations not in contemplation at the time of issuing notification. Otherwise, the said provision will have the effect of exercising power of acquisition for purpose other than public purpose and acquisition itself will be vitiated.

19.1 The Court can take judicial notice of the fact that land in urban areas is a scarce commodity. Even though, right of property is subject to the power of taking the property for public purpose, the same cannot be taken for profiteering or racketeering by using the device of notification under the Act. Once notification under the Act is issued, irreversible consequences follow and if thereafter the land is not used for the notified purpose, exercise of power of acquisition cannot be held to be bonafide.

19.2 Effect of withdrawal from acquisition is to confer immense advantage to person in whose favour such power is exercised which is not permissible except for unforeseen hardships to State or individual and not for profit to individual or even to the State. Acquisition cannot be justified when the real purpose is to acquire control over the property for its disposal at discretion. Once the land is vested in the State, power of transfer of public property can be exercised in accordance with legal procedures but before acquisition is completed, the State has no power to dispose of the said property by using the power of acquisition and then power of withdrawing therefrom u/s 48, except in the manner just mentioned. Thus, making of a policy to release land midway in respect of which power of acquisition has been exercised only on the ground that some steps envisaged under a policy are taken by which any individual or even State may be benefited, would amount to exercise of power of acquisition for a purpose other than public purpose. Such exercise of power will also be contrary to notified public purpose.

19.3 The policy of release is sought to be defended on the ground that the same will also advance the purpose of development, though by private persons. Neither this is the declared purpose of acquisition nor development by private persons can be treated at par with the development by the State. On the principle of Akadasi Padhan (supra), private party can be treated as agent of the State only if the property continues to remain with the State. Value of the land after initiation of acquisition proceedings increases manifold and except for cases of unforeseen hardship, withdrawal from acquisition in favour of any person amounts to conferment of undue benefit in favour of such person. Sometimes, such person may not be original owner and sometimes, he may have acquired land just before initiation of acquisition proceedings. On account of acquisition proceedings, a person who is unable to obtain licence or is unable to get discretion of the State for withdrawal from acquisition may be forced to transfer his land in favour of any other person who may be able to get a licence by invoking discretion of the State and thereafter make gains. This apart from being unauthorized by law results in unfair advantage to those in whose favour the power is exercised at the cost of original owners who may lose their right for a

purpose other than a public purpose. Right to property can be taken away by law for a public purpose such as for housing schemes for poor or landless or other needy persons which may be covered u/s 3(f) of the Act. There is no application of mind on the question as to who is benefited by policy of release - common man or property dealers, builders or developers. In absence of any clear evidence that such action of the State will advance public purpose, policies for release in favour of persons taking licence cannot be held to be covered by Section 48 of the Act. Apart from this, such a policy amounts to exercising legislative power and performance of essential legislative functions beyond the policy laid down under the Act.

19.4 This aspect has been discussed in order of this Court in Chetna Estate (supra) and to avoid repetition, it will be worthwhile to reproduce the said discussion:

18. It is clear that while provisions of the Act read with Articles 14, 19, 21 and 300-A of the Constitution permit property of a person to be taken only for advancing public purpose. The State, while purporting to take property of a person for public purpose for development by HUDA, in effect has a different purpose in mind of licensing of developers, builders or property dealers. This action may invalidate acquisition. It has been brought to our notice while hearing some other cases including CWP No. 1356 of 2004 that after initiating acquisition proceedings ostensibly for a legitimate public purpose, substantial part of the land so notified has been released to builders, property dealers, developers, colonizers. While exercise of power of release is subject matter of other writ petitions, question which requires consideration is whether acquisition itself is vitiated when the same is not for declared public purpose of development by HUDA which declaration is conclusive u/s 6(3) of the Act but to advance policy of the State to encourage development of acquired land by private builders.

19. The policy of the State has created a situation whereby it has enabled itself to exercise power of acquisition contrary to ostensible and declared purpose. While the purported object is acquisition for development by State agencies but in implementing the policy for giving licences, the effect is to exercise power of acquisition for private builders which is not legally permissible. By initiating acquisition proceedings, the original owners may be forced to part with the land. Since the purpose for which in effect, power is exercised, is not permissible under the law, this amounts to fraud on exercise of power. Fraud not only vitiates acquisition proceedings but also exercise of power of release as both have been inter-linked. The power of licence under the 1975 Act can have no connection or nexus with the acquisition proceedings except to use the power of acquisition for prohibited purpose and to legitimize the same. In such situation, action of the State may be liable to be quashed. Wherever power of release has already been exercised by unlawfully using power of acquisition, the released land may have to be restored to the State to prevent unjust enrichment. In those cases, mere quashing of acquisition may perpetuate illegal release and conferment of illegal

benefits. However, that is the issue being considered in cases where power of release is at issue.

20. It is not a case of acquisition under Chapter VII of the Act for which different procedure is applicable, as held by the Hon''ble Supreme Court in *Devinder Singh v. State of Punjab*, (2008) 1 SCC 728. What cannot be done directly is sought to be done indirectly. Exercise of power apparently for public purpose of development by State is sought to be used for extraneous purpose.

Xx xx xxx xx xx

26. The power of excluding land from notification u/s 4 while issuing notification u/s 6 can be exercised, which may not defeat the declared public purpose. Exercise of power for issuing licences for earning development charges or releasing land to builders may not be consistent with the declared public purpose and doing so may vitiate the acquisition itself apart from vitiating the release. The power of licensing of colonizers under the 1975 Act cannot be linked to the power of land acquisition. @Z_PARA = 27. Since it is acknowledged case of the State in the report of the Chief Secretary and its policies that grant of licence under the 1975 Act is linked to land acquisition proceedings, we are, prima-facie, of the view that exercise of power of acquisition linked to advancing policies for giving licence under 1975 Act may be illegal. Since the said power is being exercised at large scale covering thousands of acres of land, we have already called upon the State of Haryana to furnish details in CWP No. 1356 of 2004 of all lands released after initiating acquisition proceedings in last three years.

19.5 In *Amarnath Ashram Trust Society and Another Vs. Governor of U.P. and Others*, , it was observed''-

10. ...Even though Section 48 of the Act confers upon the State wide discretion it does not permit it to act in an arbitrary manner. ...

19.6 In *State Govt. Houseless Harijan Employees Association v. State of Karnataka and Ors.* (2001 (1) SCC 610, it was observed that after publication of notification u/s 6, declaration of public purpose was conclusive and the State could not reopen the matter.

19.7 In *The Consumer Action Group and Another Vs. State of Tamil Nadu and Others*, , while discussing scope of power of exemption, the Hon''ble Supreme Court observed:

16. *P.J. Irani Vs. The State of Madras*, (Constitution Bench). In this case Section 13 of *Madras Buildings (Lease and Rent Control) Act, 1940* is similar to the provisions we are considering conferred power of exemption. This Court held:

It was not possible for the statute itself to contemplate every such contingency and make specific provision therefore in the enactment. It was for this reason that a power of exemption in general terms was conferred on the State Government which, however, could be used not for the purpose of discriminating

between tenant and tenant, but in order to further the policy and purpose of the Act which was, in the context of the present case, to prevent unreasonable eviction of tenants.

17. In *The Registrar of Co-operative Societies, Trivandrum and Another Vs. K. Kunjabmu and Others*, this Court was considering Section 60 of the Madras Co-operative Societies Act 1932, which empowered the State Government to exempt existing society from any of the provisions of the Act or to direct that such provisions shall apply to such society with specified modifications. This Court held:

The Legislature may guide the delegate by speaking through the express provision empowering delegation or the other provisions of the statute, the preamble, the scheme or even the very subject matter of the statute. If guidance there is, wherever it may be found, the delegation is valid. ...Section 60 empowers the State Government to exempt a registered society from any of the provisions of the Act or to direct that such provision shall apply to such society with specified modifications. The power given to the Government under S. 60 of the Act is to be exercised so as to advance the policy and objects of the Act, according to the guidelines as may be gleaned from the preamble and other provisions which we have already pointed out, are clear.

18. ...In the fast changing scenario of economic, social order with scientific development spawns innumerable situations which Legislature possibly could not foresee, so delegatee is entrusted with power to meet such exigencies within the in built check or guidance and in the present case to be within the declared policy. So delegatee has to exercise its powers within this controlled path to subserve the policy and to achieve the objectives of the Act. A situation may arise, in some cases where strict adherence to any provision of the statute or rules may result in great hardship, in a given situation, where exercise of such power of exemption is to remove this hardship without materially effecting the policy of the Act, viz., development in the present case then such exercise of power would be covered under it. All situation cannot be culled out which has to be judiciously judged and exercised, to meet any such great hardship of any individual or institution or conversely in the interest of society at large. Such power is meant rarely to be used. So far decisions relied by the petitioner, where the provisions were held to be ultra vires, they are not cases in which Court found that there was any policy laid down under the Act. In *A.N. Parasuraman Etc. Vs. State of Tamil Nadu*, Court held Section 22 to be ultra vires as the Act did not lay down any principle or policy. Similarly, in *Kunnathat Thathunni Moopil Nair Vs. The State of Kerala and Another*, Section 7 was held to be ultra vires as there was no principle or policy laid down.

19.8 Thus, the power of exemption has to be exercised in exceptional cases and where situation could not be foreseen having regard to Scheme of the Act.

19.9 In *Tamil Nadu Housing Board Vs. Keeravani Ammal and Others*, , it was held

that once land was acquired, the same could be returned only on then market value. It was observed-

15. We may also notice that once a piece of land has been duly acquired under the Land Acquisition Act, the land becomes the property of the state. The state can dispose of the property thereafter or convey it to anyone, if the land is not needed for the purpose for which it was acquired, only for the market value that may be fetched for the property as on the date of conveyance. The doctrine of public trust would disable the state from giving back the property for anything less than the market value. In *State of Kerala and others Vs. M. Bhaskaran Pillai and another*, in a similar situation, this Court observed:

The question emerges whether the Government can assign the land to the erstwhile owners? It is settled law that if the land is acquired for a public purpose, after the public purpose was achieved, the rest of the land could be used for any other public purpose. In case there is no other public purpose for which the land is needed, then instead of disposal by way of sale to the erstwhile owner, the land should be put to public auction and the amount fetched in the public auction can be better utilized for the public purpose envisaged in the Directive Principles of the Constitution. In the present case, what we find is that the executive order is not in consonance with the provision of the Act and is, therefore, invalid.

Under these circumstances, the Division Bench is well justified in declaring the executive order as invalid. Whatever assignment is made, should be for a public purpose. Otherwise, the land of the Government should be sold only through the public auctions so that the public also gets benefited by getting a higher value.

b Power u/s 48 is not legislative power

19.10 Scope of power u/s 48 is to deal with an exceptional situation which may be unforeseen. The said provision does not envisage exercise of any policy making which may amount to review of exercise of power of acquisition or which may render acquisition to be for purpose other than public purpose. The said provision does not envisage creation of a norm not envisaged under the scheme of the statute. Difference between legislative and executive power is well known.

19.11 In *Union of India (UOI) and Another Vs. Cynamide India Ltd. and Another etc.*, , para 7, it was observed:

7. ?The distinction between the two has usually been expressed as "one between the general and the particular". "A legislative act is the creation and promulgation of a general rule of conduct without reference to particular cases-, an administrative act is the making and issue of a specific direction or the application of a general rule to a particular case in accordance with the requirements of policy". "Legislation is the process of formulating a general rule of conduct without reference to particular cases and usually operating in future; administration is the process of performing particular acts, of issuing particular

orders or of making decisions which apply general rules to particular cases." It has also been said

Rule making is normally directed toward the formulation of requirements having a general application to all members of a broadly identifiable class" while, "an adjudication, on the other hand, applies to specific individuals or situations". But, this is only a broad distinction, not necessarily always true. Administration and administrative adjudication may also be of general application and there may be legislation of particular application only. ...

19.12 In *Vasu Dev Singh v. Union of India* (2006) 12 SCC 753, it was observed:

118. A statute can be amended, partially repealed or wholly repealed by the legislature only. The philosophy underlying a statute or the legislative policy, with the passage of time, may be altered but therefore only the legislature has the requisite power and not the executive. The delegated legislation must be exercised, it is trite, within the parameters of essential legislative policy. The question must be considered from another angle. Delegation of essential legislative function is impermissible. It is essential for the legislature to declare its legislative policy which can be gathered from the express words used in the statute or by necessary implication, having regard to the attending circumstances. It is impermissible for the legislature to abdicate its essential legislative functions. The legislature cannot delegate its power to repeal the law or modify its essential features.

20. We may now deal with the judgments relied upon by the learned Counsel for the parties to the extent the same have not been earlier discussed. The judgments relied upon on behalf of the petitioners mainly deal with the decision on objections u/s 5-A and application of mind by the State before finalizing notification u/s 6. Some of the judgments also deal with the question of midstream change of purpose before finalizing acquisition proceedings and question whether acquisition proceedings can be allowed to continue, when the declared purpose is neither intended nor possible to be achieved on account of release of substantial land from acquisition. Since we are in agreement with these propositions, we do not consider it necessary to enter into detailed discussion of individual judgment.

21. As regards judgments relied upon by learned Counsel for the State, the same deal with use of land for a purpose other than purpose for which the same was notified, after the same is vested in the State or in some cases where change of purpose becomes necessary on account of unforeseen situation. In the present case, this question does not arise as question is of change of purpose before land is vested in the State and in none of the judgments, it has been laid down that State can make a policy for releasing land acquired for a declared purpose with the real object of releasing the land from acquisition for different objectives and when such objectives neither relate to unforeseen situations nor advance the notified public purpose. None of the judgments relied upon on behalf of the

State, has, thus, bearing on the issue which we are dealing with. The judgments are, thus, distinguishable.

22. We now proceed to answer the questions posed for consideration in para 12 above.

Re: (i)

23. It has not been disputed that almost 90% of the notified land has been released in favour of persons who applied for licence under the provisions of the 1975 Act. Stand of the State to justify the same is that the said release in favour of private builders advances notified public purpose of "development". Further stand taken by State is that it has absolute discretion to withdraw from acquisition u/s 48. Thus, public purpose did exist and continues to exist even after such release. It is further submitted that the State has liberty to change the public purpose even during acquisition. It cannot be said that no public purpose survives for the remaining 10% of notified land. Further, part of land was now required for Metro Rail Project and multi-level parking. Policy of the State to so release the land from acquisition was within the purview of power of State u/s 48 and was consistent with the scheme of the Act. The said policy advances the notified purpose of development which includes development by private builders on whom control was exercised by way of licences even if the title of the said land was not with the State. This stand has already been noticed in para 9 above.

23.1 We are of the considered view that stand of the State cannot be upheld. Neither the plea that notified purpose was not required to be adhered to can be accepted, nor can the plea be upheld that release to builders who obtained licence without the title being with the State, amounts to development by State. Accepting such a plea will be contrary to the concept of public purpose under the scheme of the Act as discussed above in para 16.

23.2 Under the scheme of the Act, acquisition can be either for public purpose as defined u/s 3(f) or for a company (Section 4). Procedure in both cases is different and stands on different footing. (see *Devinder Singh v. State of Punjab* (2008) 1 SCC 728, para 16). Section 6(3) makes the declaration of purpose in the notification to be conclusive, subject to judicial review. u/s 5-A, objections can be filed as to existence of declared public purpose and acquisition can proceed further if declared purpose is genuine. Jurisdiction to issue notification u/s 6 is available only to acquire land for specified public purpose. The said purpose must continue to exist unless unforeseen situation arises. Plea on behalf of the State that purpose can change anytime even before completion of acquisition and vesting of land in State, cannot be accepted. Declaration of public purpose being open to judicial review, affected party is not debarred from alleging and showing absence of such purpose. If there is policy not to adhere to declared public purpose as shown by stand of the State and its actions, the Court has no option but to hold that public purpose is non-existent. From admitted facts of the present case, declared public purpose is established to be non-existent. Action of

the State has to be consistent with declared public purpose. Policy of release in question allows acting against declared purpose. Submission that release is also advancement of public purpose has no merit. Development by State and development by a private party stand on different footing.

As held in *Akadasi Pradhan* (supra), where title does not continue with the State, development by a private party cannot be treated at par with development by State. Further, power of acquisition is not available for advancing a purpose other than "public purpose". Concept of public purpose has been discussed at length in para 16 above. If purpose of acquisition is taken to be advancement of policy of release, the said purpose is not permissible public purpose nor is declared to be so in the impugned notification. The Act being expropriatory legislation has to be strictly construed. What cannot be done directly cannot be done indirectly. Further, the Act being on concurrent list subject, field being occupied by Central law, the State cannot go beyond the concept of "public purpose" under the Act.

Plea of need for metro/multi-level parking was taken in affidavit dated 21.10.2004 but even thereafter on 4.5.2005, about 8 acres of land has been released from acquisition, as noted in para 6 above. There is, thus, force in contention of learned Counsel for the petitioners that such a plea is being taken only to negative the plea of the petitioners.

Question (i) has to be answered in the affirmative against the State, to the effect that notified purpose of acquisition is nonexistent.

Re: (ii)

24. While dealing question (i) above, we have found that notified public purpose was non-existent. Contention of learned Counsel for the petitioners that the real purpose was not the notified one but the one manifested by subsequent action of release of 90% of land, as already mentioned, cannot be brushed aside. The plea of the State that the policy of release advances notified public purpose cannot be upheld. Reference to law laid down in judgments of the Hon'ble Supreme Court referred to in para 17 shows that if a public authority does not act within the scope of its power, its actions are vitiated by the concept of fraud on power or colourable exercise of power. Discretion conferred by law is not arbitrary or unguided and authority to whom power is given for a purpose is accountable for exercise of its power as per such purpose. Since power of acquisition has not been exercised for public purpose, the same is vitiated by concept of colourable exercise of power. Exercise of such power is not only ultravires the Act but is also hit by Articles 14, 21 and 300-A. Question (ii) is, thus, answered in the affirmative and against the State.

Re: (iii)

25. As held in Para 18 of judgment of the Hon'ble Supreme Court in *Hindustan Petroleum* (supra), decision on objections u/s 5-A at the level of State has to be shown by an affidavit of a person associated with the decision making at the

State level. In the present case, no such affidavit has been filed by any of the functionaries who may have dealt with the decision making at the State level to show application of mind to the objections u/s 5-A preceding notification u/s 6. Only Collector has filed affidavit which is hardly relevant to show application of mind at the level of State Government. Allegation that there was no consideration to the objection that in same circumstances, substantial part of notified land was not acquired, has not been rebutted. Question (iii) has to be answered against the State.

Re: (iv)

26. We have already observed in para 19 above that power u/s 48 is executive power and not source of laying down norms beyond the Scheme of the Act. The power is not unlimited, uncanalised and unguided. If it was so read, the provision itself may be rendered unconstitutional. The said power, having regard to the scheme of the Act, has to be confined to exceptional situations. Otherwise the same will defeat the object and purpose of the Act to acquire land strictly for public purpose and not otherwise. It is not permissible to use the pretext of public purpose for any other purpose. State cannot be heard to say that once acquisition is declared for legitimate public purpose, irrespective of its further actions, acquisition will be valid. If acquisition is not permissible for a purpose other than public purpose, Section 48 cannot be source of power to act beyond the Scheme of the Act. There is no discretion beyond the purpose for which power is conferred.

In para 19, we have discussed the legal position as to scope of power u/s 48. The State has acted clearly beyond the scope of Section 48 in making policies and acting thereon. Action in first initiating acquisition proceedings without public purpose and thereafter in unauthorisedly withdrawing from acquisition selectively on an irrelevant ground of grant of licence under the 1975 Act, is not legally permissible. If public purpose of development by State existed, where is question of a policy of withdrawal from acquisition which amounts to abandoning the notified purpose. If there is no public purpose, land should not have been notified under the Act. Initiating acquisition process and then abandoning it has its consequences. It enables assumption and exercise of power not supported by law which is against rule of law and Constitution. As already observed, it also amounts to exercise of legislative power repugnant to a Central law on a subject in concurrent list. Scope of Section 48, like any other power of exemption, is limited to unforeseen situations. Such power has to be exercised on objective parameters consistent with Article 14. There must be genuine assessment of extent of land needed and existence of purpose of acquisition. State cannot deal with property of citizen casually and initiate acquisition proceedings without compelling public necessity and thereafter, abandon acquisition to the extent of 90% in favour of developers, even if such developers are original owners. State can have its policies of development by private persons independent of proceedings under the Act, if legally permissible. Linking policy of licences under

the 1975 Act to proceedings under the Act is beyond the power available to the State under the Act. The Court is not concerned with policy making so long as the executive acts within the framework of law. If the State exceeds its constitutional power, this Court, in exercise of power of judicial review, can annul all illegal acts.

The policy has neither been notified nor contemplates exercise of power on objective norms. Its exercise depends on its discretion of granting licence or "recommendation" of officers without there being declared norms for such recommendation. This does not meet parameters of Article 14 as already discussed in paras 17 and 18. Thus, even if the State had competence to lay down a policy, its validity would have required notified objective norms. We have already held that the policy is even otherwise outside the scope of Section 48 and the executive power of the State.

Objection of learned Counsel for the State that in absence of specific prayer for quashing the policy of release, the Court must go by the policy, cannot be accepted. The State itself has taken the defence of policy of release to justify the impugned proceedings.

Such defence cannot be accepted merely because prayer for quashing policy of release has not been made. Since this legal issue directly arises from the stand of the State itself, the Court has to test correctness of such defence which involves validity of policy in question.

Question (iv) has, thus, to be answered against the State.

27. We may now sum up our conclusions as under:

- a) In view of withdrawal by the State from 90% of the acquired land without any exceptional or unforeseen situation or legally permissible objects, the notified purpose of acquisition did not exist and can be held to be a pretence.
- b) In absence of existence of notified public purpose, acquisition proceedings are liable to be quashed being vitiated by colourable exercise of power.
- c) There was no valid consideration of objections, u/s 5-A. Section 5-A read with Section 6 requires consideration of objections about existence of public purpose and fitness of the land for acquisition not only by Collector but also by the State and such consideration must be shown by filing affidavit by a person associated with the decision making at the State level, which has not been done. There is, thus, no valid consideration of objections, as required by law.
- d) Power of withdrawing from acquisition u/s 48 can be exercised only for an unforeseen or un contemplated situation and not by a planned policy which may be in conflict with declared public purpose or scheme of the Act. Release of land by the State under its policy is beyond the scope of Section 48. The same can be annulled and appropriate direction issued to bring out situation existing prior to illegal actions of the State.

28. Question now is as to what should be the final order. The guiding principle has to be *Ubi jus ibi remedium* - Wherever there is a wrong, there is a remedy. For moulding relief the Court may have different options. The Court may quash acquisition proceedings if the same are vitiated by colourable exercise of power. In doing so, the Court cannot ignore that release becomes final and the person in whose favour acquisition proceedings are withdrawn may be immensely benefited on account of wrong exercise of discretion in his favour. He may retain benefits taken illegally. This may have to be undone. Fraud vitiates all proceedings.

29. To prevent illegal benefit being retained, the Court may quash release or withdrawal from acquisition if the same is held to be vitiated by fraud. The Court may require the State to recall such release and also to ascertain whether release was for any extraneous consideration and how wrongful gain or wrongful loss can be readjusted. Released land may be restored to the State or sold in public auction. The State itself may recall its illegal actions. It may not be possible to lay down any rigid rule as to how relief can be moulded by Court in an individual fact situation. If order of release is to be cancelled, it may be necessary to hear the affected party by the Court or the authority passing the order.

30. As noticed earlier, this Court has taken cognizance in *Pardeep Yadav* (supra) of general issue of exercise of power of acquisition to unauthorisedly advance policy of release in the last three years. As noted in para 7, as per figures furnished by the State of Haryana, out of 17000 acres of land notified for acquisition, award has been made only for 3876 acres i.e. for less than 25% of acquired land. In many cases referred to in para 7 above, operation and effect of release has been put in issue and stayed and prima facie view has been expressed that such release itself is liable to be quashed and land is liable to be restored to the State to be disposed of by public auction so that loss caused to the State and unlawful gain made by beneficiaries can be undone.

31. In the present case, parties in whose favour power of release has been illegally exercised not being before Court, this aspect is left open to be dealt with in appropriate proceedings.

32. In view of findings recorded above, impugned acquisition cannot be upheld. Accordingly, these petitions are allowed and all proceedings in pursuance of notifications dated 13.8.2001 u/s 4 and dated 9.8.2002 u/s 6 of the Act, are quashed.