
(2001) 06 PAT CK 0043
In the Patna High Court
Case No : C.W.J.C. No. 2755 of 1988

Ashish Sahkari Grih Nirman Samiti

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 20-06-2001

Acts Referred:

Citation : (2001) 06 PAT CK 0043

Final Decision : Dismissed

Judgement

S.N. Jha, J.—This batch of 24 cases has been heard together as a common dispute is involved. Except in CWJC No. 2875 of 1994 the Petitioners are aggrieved by acquisition of 56.1275/49.4525 acres of land under the provisions of the Land Acquisition Act (hereinafter called "the Act") for the Bihar Vitta Sewa Grih Nirman Sahyog Samiti (Bihar Finance Service House Construction Co-operative Society). They seek quashing of the notification dated 18.4.81 u/s 4 of the Act, the order dated 17.1.83 u/s 5A of the Act and the declaration dated 18.3.83 u/s 6 of the Act. CWJC No. 2875 of 1994 by the Bihar Finance Service House Construction Cooperative Society is like the counter case which was filed to restrain further transfers of the acquired land and construction thereon. In this judgment the said Bihar Finance Service Co-operative House Construction. Society shall be called the "Respondent Society" while the Petitioners of other cases shall be called the Petitioners.

2. Some of the Petitioners are Housing Co-operative Societies registered under the Bihar Co-operative Societies Act and/or their members, some are owners of the land while some are purchasers from the owners. To be precise, in CWJC Nos. 2962, 5904 and 6000 of 1983, 93, 953 of 1984 and 2755 of 1988 the Petitioners are Co-operative Societies and/or members, in CWJC Nos. 2849 of 1983, 904, 940, 1040, 1041, 1042 and 1618 of 1984 the Petitioners are owners, in CWJC Nos. 924, 957, 998, 1108, 2365, 2780 and 2963 of 1984, 11788 and 11789 of 1993 and 9515 of 1994 the Petitioners are purchasers from the owners.

3. The background of the dispute is that with a view to provide land for

construction of residential houses to the members of the Respondent society, on its request, the State Government got enquiry made and issued notification u/s 4 of the Act on 18.4.81. After the disposal of the objections by the Collector under the Act the State Government made the declaration under Section 6 on 18.3.83. The Respondent society entered into agreement with the State Government as per Section 41 of the Act and on demand deposited sum of Rs. 89,28,663 as the price determined under the award by the Collector.

4. The validity of the acquisition was challenged by the Petitioners on various grounds. The challenge was upheld and the declaration u/s 6 was quashed by a Division Bench of this Court on 22.2.90. The State Government was directed to hold enquiry u/s 40 of the Act read with Rule 4 of the Land Acquisition (Companies) Rules, 1963 as well as Section 5 A of the Act. . The said judgment titled Ashish Sahkari Grih Nirman Samiti and Others Vs. The State of Bihar and Others, Some of the members of the Respondent-society went to the . Supreme Court. The Supreme Court set aside the judgment of this Court and remitted the cases for effecting "individualised" justice observing that even when "illegalities in procedure keep staring", the High Court should not have upset the notification u/s 6 of the Act as a whole. The judgment of the Supreme Court titled Shyam Nandan Prasad and Others Vs. State of Bihar and Others, Though other parts of the judgment may be noticed later, the operative part containing the terms of the remand may be quoted at this very stage as under:

Having thus clarified the law governing the field, we would open doors for streams of equities and discretions to enter in the exercise of power by the High Court under Article 226 of the Constitution. As observed earlier, we are of the view that the High Court should not have upset the notification u/s 6 of the Act as a whole and should have individualised justice vis-a-vis each writ Petitioner before it, having regard to the equities interplaying in each case and to the regulations of its discretion keeping in view host of other factors which weigh with the High Court to deny, grant or mould relief even when illegalities in procedure keep staring. Thus for the view aforeexpressed, we allow these appeals, set aside the impugned orders of the High Court and remit all these matters back to it with the request that though it may take them up as a batch, it may give individual attention to each case, view the illegalities pointed out by the writ Petitioner in their right perspective. having regard to the time factor and confine the relief, if due, to him separately. We shall not be taken to have controlled the discretion of the High Court in administering individualised justice and amongst others it may, with the co-operation of the Society and of the State Government, as also the writ Petitioners examine the possibility of an equitable solution so that the fist of law and the discretion of the court do not hurt unbearably. We thus remit the matters to the High Court without any order as to costs.

5. It would be appropriate at this stage to refer to some of the findings reached by this Court in the aforesaid judgment. This Court found that although there are

some materials on the record to show that there has been some enquiry u/s 5A of the Act, as amended by the Bihar Act 11 of 1961, .there is nothing on the record to show that any enquiry as contemplated under Rule 4 of the Land Acquisition (Companies) Rules, 1963 was ever held. No report of the enquiry under Rule 4(2) was forwarded by the State Government to the Land Acquisition Committee. The consent of the State. Government was violative of Rule 4(3). In the enquiry u/s 40 of the Act the Petitioners were not given opportunity to dispel the needs of the society. The enquiry u/s 5A of the Act was also vitiated as interested persons were not sent notices of the enquiry as required under the law, those who objected were not given proper opportunity of hearing. The record revealed casual observance of the procedure, in fact, .interpolation. Unless a proper enquiry as contemplated under Rule 4 of the Rules and Section 5A of the Act is held and report thereof is taken into consideration, and the Land Acquisition Committee appointed for the purpose is consulted and his opinion taken into consideration, the declaration u/s 6 of the-Act cannot be said to be in accordance with law and therefore the declaration must remain in abeyance until the compliance of these formalities.

6. The findings of this Court were noticed by the Supreme Court in paragraph 18 of the judgment. In paragraph 19 it observed:

On the layers and layers of common facts, leaving aside individual facts, the High Court steered a common course to effect a remand. In the circumstances, we feel that it was a possible view which the High Court could have taken but this view put settlement of the dispute beyond sight. Here the High Court seems to have erred in not, at least, restricting the terms of the remand. Persons who had not gone before the High Court in with petitions need not have been given relief. There should not have been a remand as wholesome, as it is. The declaration u/s 6 should have been allowed to be sustained pertaining to land other than the land of the writ Petitioners, concerned, their cases individually on both aspects need to have been seen by the High Court itself. And delay, if any, in the facts and circumstances of each case, in approaching the High Court could have had a determinative effect.

and accordingly, remitted the cases in the terms mentioned above.

7. Despite the limited scope of the remand some of the counsel for the Petitioners attempted to reiterate the submission discussed at length by this Court earlier. Their argument related to lacunae in the proceedings vitiating the declaration, as noticed above, viz. non-holding of enquiry, denial of opportunity to object, non-consideration of objections filed, non-application of mind etc. They submitted that though the Supreme Court set aside the judgment of this Court; it did not interfere with the findings on different aspects of the case. They in fact adopted the judgment as part of their argument. On behalf of the societies, their members and other purchasers, it was additionally argued that the purchases by the society/members/purchasers were bond fide. They were in possession of the lands and paying rent and municipal taxes after getting their names mutated"

and so on.

8. On behalf of the Respondent society it was submitted that it is not correct to say that though the judgment of this Court was set aside, the findings remained intact. Where the judgment is set aside, unless otherwise expressly stated, the findings also stand set aside as they are the foundation of the judgment and order and therefore it is not open to the Petitioners to rely on any finding recorded by this Court earlier. Even if it be assumed that the Supreme Court did not interfere with the findings, it remitted the cases for doing "indivisualised" justice after noticing the findings. The Supreme Court was conscious of the illegalities in procedure "staring at the, cases", but nonetheless set aside the order of this Court observing that (after remand) it may deny, grant, mould relief "having regard to the equities interplaying in each case". Thus, the Petitioners cannot succeed on the ground of procedural illegalities. It is only on equitable considerations that they can "succeed." Indeed, it was pointed out, some of the observations and findings of the Supreme Court are indicative of the acquisition being a *fait accompli* and not open to challenge.

9. It is worth mentioning here that at an earlier stage of these proceedings, after remand, the Court made endeavours for some amicable settlement between the parties. Unfortunately, the efforts did not reach any conclusion. Though at the stage of final round of hearing counsel for some of the Petitioners and intervenor expressed their willingness for an amicable settlement, considering that transfers have been made and many transferees and members of the Petitioner-societies have made constructions on different portions of the land even during the pendency of these cases, any amicable settlement did not appear to be feasible. This Court accordingly, heard the cases on merit observing that depending on the result, any construction made during pendency of the cases and in contravention of the interim orders of this Court may have to be demolished.

10. Adverting to the submission of the counsel for the parties I am inclined to agree with the counsel for the Respondent society that not much would turn on the infirmities in procedure in the process of acquisition. This Court had passed, if I may say so with respect, a detailed and eloquent judgment pointing out illegalities which went to the root of the matter. It even found interpolation in the record. But in the opinion of the Supreme Court the illegalities did not justify quashing of the declaration u/s 6 of the Act as a whole. It opined that quashing of the declaration as a whole resulted in granting relief to even such persons who did not approach or belatedly approached this Court. The Supreme Court noticed the fact, as is evident from paragraph 9 of the judgment, that soon after the issuance of declaration u/s 6 on 18.3.83 and preparation of the award for Rs. 89,28,663, the amount was deposited by the Respondent society in January 1984, and held that the cases therefore called for indivisualised justice "having regard to the equities interplaying in each case and host of other factors which weigh with the" High Court to deny, grant or mould relief even when illegalities in procedure keep staring, observing that having thus clarified the law governing

the field we would open the doors for streams of equities and discretions to enter in the exercise of powers by the High Court under Article 226 of the Constitution. It is well known that jurisdiction of the High Court under Article 226 of the Constitution is equitable and discretionary, and in appropriate cases it may decline to interfere notwithstanding the illegalities in the action, if such interference is likely to result in injustice or perpetuate some wrong. Apparently, the Respondent society for whose benefit the acquisitions have been made, having deposited a huge amount as price of the land-too has a case. And it may not be proper to deny its members a chance to have a piece of land in Patna Town on technical grounds of illegalities in procedure. It is unfortunate that on account of this litigation not only the members of the Respondent society have been deprived of their legitimate expectation but also created uncertainties for the members of the Petitioner societies and other purchasers, many of whom have constructed houses on the land allotted/purchased by them.

11. It is thus clear, regard being had to the terms of the remand order, that the Petitioners cannot succeed on technicalities. What this Court is now supposed to do or consider is, procedural illegalities notwithstanding, whether the Petitioners are entitled to the reliefs. As observed above, the illegalities per se may not warrant exercise of writ jurisdiction in all cases-where it results in some wrong or injustice or where equity lies on the side of the Respondent. The present cases stand on a lower footing from the Petitioners' point of view. The Supreme Court has almost made it clear that the illegalities notwithstanding, while considering the question of grant of relief the claim of the Respondent society has to be taken into account-to quote the words of the Supreme Court "having regard to the equities interplaying". The Court observed (portion quoted above) that the view taken by the High Court was a possible view but. that view put the settlement of the dispute beyond sight, that is, quashing of the declaration as a whole had resulted in putting on hold the claim of the Respondent society as a whole for ever.

12. Working out equities sometimes is a difficult exercise. And where the claims pitted against each other are similar, the exercise becomes more difficult. Except the Petitioners in the "owner" category, all other parties--be they purchasers or members of the Housing Societies on either side--need land for housing purpose. It was with that avowed object that the societies were formed, the persons concerned took their membership or purchased lands individually. The need being similar on both sides, whose need was or is more pressing is indeed a baffling question. The ownership of land provides security and status. In *Jilubhai Nanbhai Khachar, etc. etc. Vs. State of Gujarat* and another, etc. etc., the Supreme Court referred to *Waman Rao and Ors Vs. Union of India (UOI) and Others*, and observed, there is strong linkage between ownership of land and person's status in social system. Private ownership entails political and legal power. Control over property amounts to control over people and their lives. Dominion over things is an imperium over fellow human beings. Property therefore accords status. Due to its lack man suffers from economic

disadvantage and disabilities to gain social and economic equality leading to his servitude. Providing facilities and opportunities to hold property furthers the basic structure of egalitarian social order guaranteeing economic and social equality. In other words, it removes disabilities and inequalities, accords status, social and economic and dignity of person.

13. Counsel for the Petitioners generally agreed that acquisition of lands of such of the persons who have not approached this Court or approached it late may not be interfered with. In fact, the Supreme Court has said so. Shri Chittaranjan Sinha and Shri Abhay Kumar Singh however, struck a somewhat different note. They submitted that in view of the findings recorded by this Court earlier regarding interpolation in record verging on fraud, the delay aspect becomes insignificant. To claim equity it must be shown that the person has acted in good faith. Fraud and equity do not co-exist and therefore, in the facts of the case, the Respondent society does not deserve any indulgence. In support of the contention Shri Sinha placed reliance on Baban Misra and Others Vs. Bishwanath Pande and Others, Ram Chand and Others Vs. Union of India (UOI) and Others, Haryana Urban Development Authority and Another Vs. Roochira Ceramics and Another, and Manisha Kamendu and Others Etc. Vs. State of Bihar and Others, Shri Abhay Kumar Singh submitted that the delay in approaching the Court is not fatal in all cases. The delay may be a ground for refusing relief where it is likely to result in manifest injustice or where some parallel rights have been created in the meantime or in public interest. He placed reliance on M/s. Dehri Rohtas Light Railway Company Limited Vs. District Board, Bhojpur and District Board, Shahabad and others, and Dr. Kashinath G. Jalmi and another Vs. The Speaker and others, He also referred to a passage at page 32 of Commentaries on Equity Jurisprudence by Justice Story (1920 Edition).

14. In defence of the acquisition Shri Ravi Shanker Prasad appearing first for the Respondent society submitted that the laid down requirements for acquisition of land for Companies in Part VII of the Act stood satisfied. There are averments to the effect that there had been negotiation and endeavours for private acquisition which did not materialise. Enquiry under Rule 4 of the Land Acquisition (Companies) Rules was held. The report was duly considered by the Land Acquisition Committee and the State Government. As per the decision five acres of land was to be set apart for the landlosers. Not a single objector took any plea regarding non compliance of the provisions of Part VII. Objections were of general nature that the acquisition was not for the public purpose, that they would be rendered homeless and so on. He referred to documents on record of CWJC Nos. 2849/83, 2962/83 and 2755/88. I shall advert to the relevant documents later in this judgment.

15. Shri Ram Balak Mahto appearing next for the Respondent society referred to the judgment of the Supreme Court in the instant cases and submitted that the Supreme Court has clarified that the Respondent society is a public company and the acquisition was for public purpose in terms of Section 3(f) of the Act, that the

requirement of law is satisfied if a proper enquiry either u/s 5A of the Act or Rule 4 of the Rules read with Section 40 of the Act is held, that enquiry under Rule 4 of the Land Acquisition (Companies) Rules is an additional enquiry. In the instant case there has been proper enquiry both u/s 5A and Rule 4. He too referred to documents. He submitted that the Petitioners having contravened the interim orders of this Court by making constructions on the land do not deserve any relief.

16. Before adverting to the documents I may quote some of the findings of the Supreme Court at one place as under:

The High Court quashed the declaration u/s 6 remitting back the matter to the State Government for reconsideration on two counts, one such count being violative of the mandatory provisions of Section 5-A (Para-3). The other count on which the High Court made the remand was the supposed violation of Section 40 of the Act and Rule 4 of the Land Acquisition (Companies) Rules, 1963 (Para-12)...Section 40 provides that the consent of the appropriate Government shall not be available unless it is satisfied either on the report of the Collector u/s 5-A Sub-section (2) or by an enquiry of the kind conceived of in Section 40 itself is held. Either of the two reports, that is, one made by the Collector under Sub-section (2) of Section 5-A and the other as a result of the deliberation u/s 40, are on a par for adoption by the appropriate Government to give consent u/s 39 (Para 12).....The importance of such enquiry and report as contemplated u/s 40, in the light of Section 41, is to serve a double purpose as it may steer an acquisition if Section 5-A was dispensed with because of urgency u/s 17 and secondly to provide a safe alternative should there be any fault in the conduct of enquiry u/s 5-A of the Act. So one or the other must be kept handy and "if per chance one is defective, when both existing, the other can be deployed to satisfy the requirement of law (Para 15)...Since the society is not a private Company, by process of exclusion it becomes u/s 3 of the Companies Act, a "public company"...All the same, the Society as a public company would require to satisfy in an enquiry u/s 40 of the Act that it requires the land for any of the purposes mentioned in Clauses (a), (aa) and (b) before -it can obtain consent of the appropriate Government on the basis thereof and enter into an agreement as envisaged u/s 41 (Para 15)....Rule 4 is mandatory and essential to be complied with (Para 17)....The acquisition of land for a Company is in substance for a public purpose as all those activities mentioned in Section 40 such as constructing dwelling houses and workmen employed by it and construction of some work for public utility etc. serve the public purpose (Para-21)....

17. It is worth pointing out here that this Court on the previous occasion had held that an enquiry is essential both under Rule 4 of the Rules and Section 5A of the Act, and without enquiry u/s 5A declaration u/s 6 cannot be made, and secondly that there is nothing on the record to show conclusive that the Respondent society has "trapping force" of a public company. Neither the Collector under the Act nor the State Government had made any attempt to find

out the true character of the Society. The findings on both the points being at a tangent with those of the Supreme Court would no more stand in the way of the society. The Supreme Court has held that enquiry under Rule 4 is an additional enquiry and sufficient in case of acquisition for companies, and that the Respondent Society is a public Company albeit by legal fiction. It has also held that the purpose of acquisition was a "public purpose".

10. In fairness to the Petitioners I may mention that in *State of Gujarat and Another Vs. Patel Chaturbhai Narsibhai and Others*, the Supreme Court had held that enquiry under Rule 4 in the case of Companies is different from the enquiry u/s 5A. In the instant case, the Supreme Court noticed the aforesaid decision in paragraph 17 of the judgment and though it held that Rule 4 is mandatory and essential to be complied with, earlier in the judgment it had held, as noticed above, that the appropriate Government may give its consent u/s 40 on being satisfied either on the report of the Collector u/s 5A(2) or after enquiry of the kind conceived of in Section 40 itself. However, being inter-party judgment, whatever has been held and observed therein, in my opinion, is binding on the parties. Thus if the enquiry under Rule 4 of the Land Acquisition (Companies) Rules read with Section 40 of the Act was proper and in accordance with law, it would be sufficient compliance" of the requirement.

19. Before moving on to the next " aspect, I must make passing reference to the decisions in *Central Government Servants Cooperative Society v. Sheikh Wahabuddin and Ors.* 1981 BBCJ 98 (SC), *R.L. Arora Vs. State of U.P.*, and *Srinivasa Cooperative House Buildings Society Ltd. Vs. Madam Gurumurthy Sastry and Others*, cited on behalf of the Petitioners. While decisions in the first two cases related to the Scope of Rule 4 and Section 40, in the third case it was held on facts that the Housing society was not a company and the purpose of acquisition was private. Since these cases are being heard on remand I do not think it is possible to enlarge; the scope of enquiry or adjudication beyond the terms of the remand order. There being a concluded inter-party finding regarding the nature and character of the Respondent society being public Company and the purpose of acquisition being a public purpose, it is not open to the Petitioners to argue to the contrary before this Court at this stage.

20. As already mentioned above, the findings of this Court, including the finding that the record did not show and there had been enquiry under Rule 4 of the Rules, no report of enquiry under Rule 4(3) was forwarded by the State Government to the Land Acquisition Committee and that the consent of the Government was in violation of the requirements of law, were noticed by the Supreme Court in paragraph 18 of the judgment. It nevertheless disapproved quashing of the declaration as a whole and remitted the cases for doing individualised justice between the parties. But as the Supreme Court did not record any finding as to whether there had been compliance of Rule 4 though it held that Rule 4 was mandatory and essential to be complied with, consider it proper to examine that aspect of the case. However, before referring to

documents cited on behalf of the Respondent society in this regard, it would be proper to quote Rule 4 as under:

4.-Appropriate Government to be satisfied with regard to certain matters before initiating acquisition proceedings.--(1) Whenever a Company makes an application to the appropriate Government for acquisition "of any land, that Government shall direct the Collector to submit a report to it on the following matters, namely:

(i) that the Company has made its best endeavor to find out lands in the locality suitable for the purpose of acquisition;

(ii) that the Company has made all reasonable efforts to get such lands by negotiation with the persons interested therein on payment of reasonable price and such efforts have failed;

(iii) that the land proposed to- be acquired is suitable for the purpose;

(iv) that the area of land proposed to be acquired is not excessive;

(v) that the Company is in a position to utilise that land expeditiously; and

(vi) where the land proposed to be acquired is good agricultural land, that no alternative suitable site can be found so as to avoid acquisition of that land.

2. That Collector shall, after giving the company a reasonable opportunity to make any representation in this behalf, hold an enquiry into the matters referred to in Sub-rule (1) and while holding such enquiry he shall:

(i) in any case where the land proposed to be acquired is agricultural land, consult the Senior Agricultural Officer of the district whether or not such land is good agricultural land;

(ii) determine, having regard to the provisions of Sections 23 and 24 of the Act, the approximate amount of compensation likely to be payable in respect of the land, which, in the opinion of the Collector, should be acquired for the Company; and

(iii) ascertain whether the Company offered a reasonable price (not being less than the compensation so determined), to the persons interested in the land proposed to be acquired.

Explanation.--For the purpose of this rule "good agricultural land" means any land which, considering the level of agricultural production and the top pattern of the area in which it is situated, is of average or above average productivity and includes a garden or grove land.

(3) As soon as may be after holding the enquiry under Sub-rule (2) the Collector shall submit a report to the appropriate Government and a copy of the same shall be forwarded by the Government to the Committee.

(4) No declaration shall be made "by the appropriate Government u/s 6 of the Act unless--

(i) the appropriate Government has consulted the Committee and has considered the report submitted under this rule and the report, if any, submitted u/s 5-A of the Act; and

(ii) the agreement u/s 41 of the Act has been executed by the Company.

It would appear from the above that a Company may apply to the appropriate Government for acquisition of land. On such application being made, first the appropriate Government may direct the Collector to submit report on matters specified in Sub-section (2). The Collector is required to hold enquiry and submit report having regard to the factors specified in the Sub-section. On receipt of the enquiry report, under Sub-rule (3) the State Government after consulting the Land Acquisition Committee constituted under Rule 3 of the Rules after getting agreement u/s 41 of the Act executed by the Company, may publish the declaration u/s 6 of the Act.

21. Now advertng to the documents amongst others, from Annexure G (in CWJC No. 2755/88) it appears that in response to letter of the Additional Collector, Patna dated 30.5.77, on 19.9.77 the State Government authorised one Shri Shyam Sundar Prasad Yadav, District Land Acquisition Officer, Patna to make enquiry u/s 40 of the Act. The enquiry report of said Shri Shyam Sundar Prasad Yadav was" fowarded by the Additional Collector to the State Government on 11.10.77 vide Annexure-H. From Annexure-1 It appears that the said report on being forwarded by the State Government was considered by the Land Acquisition Committee as agenda item No. 14 on 28.11.80. On the conditions (a) that five acres of land out of 59.95 acres would be set apart for the landless, (b) that land would be allotted only to those who or whose family members do not have land within the limits of Patna Municipal area and (c) that the area of the land to be allotted to the members would not exceed 400 sq. metres, the Committee concurred in the proposal. On 30.3.81 the Additional Collector signed the draft notification u/s 4. On 14.4.81 the State Government approved it. On 21.4.81 The notification was published in the gazette. From Annexure-D (in CWJC No. 2849/83) it appears that in the meantime, under notification dated 5.5.80 one Shri Ram Binod Singh was appointed as Additional Land Acquisition Officer, Patna and vested with the powers of the Collector under the Act (except these under Sections 4, 5, 6, 35 and 38). Said Shri Ram Binod Singh held enquiry u/s 5A of the Act and submitted report on 15.10.82 vide Annexure 13 (in CWJC No. 2962/83) on receipt of which the Additional Collector passed orders vide Annexure-B (in CWJC No. 2962/83) on 17.1.83 and sent the same to the State Government vide Annexure-F on 22.1.83. From perusal of the order-sheet, report of the Enquiry Officer and the order of the Additional Collector, it appears that the claim for its exclusion/exemption of land on behalf of one of the Petitioner society, namely, Pharmaceuticals Co-operative House Construction Society was allowed in part to the extent of 3.8125 acres, while those of other

societies was rejected by reasoned order. Thereafter on 24.2.83 an agreement was entered into between the State Government (Governor) and the Respondent society as required u/s 41. On 7.3.83 the agreement was published in the gazette vide Annexure 12 (CWJC No. 2962/83) as. Section 42.

22. The Respondents have brought on record copies of the objection filed by intervenor Madhusudan Yadav dated 1.6.81, the writ petition filed by him being CWJC No. 780/84 and the intervention petition later filed by him in CWJC No. 2849/83, marked Annexures B, C and D respectively to the counter affidavit in CWJC No. 2755/33. It was pointed out by the counsel for Respondent society that not only the objections etc. are silent on the point of supposed non-compliance of Part VII of the Act, there is not even whisper of the alleged agreement with Ashish Sahkari Grih Nirman Samiti (Petitioner in CWJC No. 2755/88) on 28.12.80. It was pointed out that after his objection u/s 5A was rejected by the Collector under the Act, Madhusudan Yadav simply filed an application on 24.8.82 vide Annexure M in CWJC No. 2849/88 for six months" time to approach the Minister Incharge, even though the Minister has no jurisdiction to pass any order.

23. It was submitted on behalf of the Respondent society that on the earlier occasion this Court took an adverse view on account of the fact that though the enquiry u/s 5-A of the Act was fixed for 31.8.82, from the record it appeared that hearing was done on 24.8.82 itself i.e. before the date fixed which amounted to denial of opportunity of hearing. It was submitted that as per the judgment of the Supreme Court even if there was any procedural infirmity in the conduct of the proceedings u/s 5-A, in the event Rule 4 enquiry is found to be proper, the acquisition proceeding would not be vitiated. Regarding the charge of interpolation it was submitted that the difference between the original and the certified copy of the ordersheet arose on account of the fact that the typist of the Copying Department due to inadvertence failed to type one sheet of the ordersheet in the case of the particular Applicant, namely, Panchu Yadav. No other person made such complaint. This mistake, however, was blown out of proportion and the defence of the Respondent society was not considered.

24. Be that as it may, from the documents referred to above I am inclined to think that there has been substantial compliance of the requirements. The Respondent society being a public company as held by the Supreme Court, the object of acquisition of land viz. construction of houses being a public purpose within the meaning of Section 3(f) of the Act, the State Government having come to the conclusion that the impugned acquisition was for public purpose and the Supreme Court also having said so, this Court, has merely to see as to whether the decision making process was in accordance with law. In Smt. Somavanti and Others Vs. The State of Punjab and Others, , the Supreme Court observed that the question as to whether the acquisition is for public purpose or not is for the Government to decide, subject to one exception namely, where such acquisition is colourable exercise of power on which ground the declaration

can be challenged. There being no apparent infirmity in the acquisition proceedings, that is, the decision making process, am inclined to think that the impugned acquisition was in accordance with law.

25. What is significant is that not only at any stage of acquisition proceeding, but even in none of these writ petitions any plea was or has been taken regarding non-compliance of the provisions of Part VII or, to be precise, regarding any infirmity in the enquiry u/s 40 read with Rule 4 of the Land Acquisition (Companies) Rules. In the absence of any plea, muchless foundational facts pleaded, I am afraid, it was/is not open to the Petitioners to urge the point.

26. This however, is not the end-all of the matter. In view of the mandate of the Supreme Court to effect individualized justice between the parties, having regard to the fact that not only the impugned acquisition for the Respondent society but also the purchase of the land by individual Petitioners and/or Housing Societies directly from the land owners was for the same object, namely, construction of residential houses on the land in the town of Patna, it is to be seen whether the interest of the Petitioners should be protected and if so, which of them and to what extent.

27. Though the Supreme Court in paragraph 19 of the judgment observed that the persons who had not gone before the High Court in writ petitions need not have been given relief, to quote, "delay, if any, in the facts and circumstances of each case in approaching the High Court could have had a determinative effect", in my respectful opinion, while there is no question of granting any relief to those who have not approached this Court and therefore the benefit of the order cannot be extended to them, it would be difficult to reject the claim of the concerned Petitioners on the ground of delay alone. It is worth mentioning here that in this batch of cases CWJC No. 2849/83 is the earliest case which was filed on 6.7.83 followed by CWJC No. 2962/83 on 14.7.83. The remaining cases except CWJC No. 2755/88 and CWJC Nos. 11788 and 11789; of 1993 and CWJC No. 9515 of 1994 (which were filed after remand by the Supreme Court), were filed at regular intervals, one after the other, between 19.12.83 and 11.6.84 and none of them can be dismissed on the ground of delay. The exercise of jurisdiction under Article 226 of the Constitution is discretionary in nature and though in appropriate case :on the ground that the person aggrieved had approached the Court after inordinate and unexplained delay, the Court \\ may decline to grant relief, as to what would constitute delay will depend on the facts and circumstances of each case. A decision of the Full ..Bench of the Nagpur High Court in the case of Krishna Rajeshwar v. The Chief Secretary to the M.P. Government AIR 1954 Nag 151, may usefully be quoted as- under:

The Court, under Article 226 of the Constitution, however, owes duty not only to the contending party but also to the Petitioner, and wide and un-trammeled as are its powers, it cannot be precluded from rectifying a grave injustice simply because the Petitioner could have moved in the matter earlier. It would, therefore, be wholly repugnant to the nature of the proceedings and of the

powers of the Court that are invoked, in the absence of a rule framed under Clause 27 of the Letters Patent Appeal, to postulate an artificial, much less an arbitrary, standard to determine whether a petition should be thrown out "in limine" or considered on merits. The object, in such cases, is the removal of grave and patent errors which infringe on human rights & unless, by undue delay or laches, inconsistent legal or equitable considerations have arisen which judicial conscience cannot with equanimity ignore, justice should not be denied simply because the Court has not been moved soon after the injury was caused or threatened and the delay has not been explained. Naturally, therefore, the question of delay or laches can be determined with reference to the number of days that have elapsed since the injury was caused or threatened and while in certain cases long delay may not be deemed sufficient to defeat a just cause, in others, it may not in equity be fair to condone even a slight delay. It is presumably for this reason that the Constitution has not provided any limitation on the discretion of the Court in regard to the exercise of its powers under Article 226, and left it to the Court itself to determine the limits to which it will go, depending upon justices of each case.

28. In considering the grant of relief to either the Petitioners or the Respondent society, in the facts and circumstances, I am of the opinion that factors which ought to be considered relevant are the conduct of the parties, specially after passing of the interim orders by the Court, and secondly, the period and extent of land purchased by them and their post-purchase conduct.

29. It may at this stage be appropriate to refer to the interim orders passed in different cases at different "stages at one place as under:

Case No.

Data

Nature of order

CWJC No. 2849/83

6.7.83

Stay of further proceedings with respect to the lands of the petitioners. The acquisition proceedings for other land may proceed.

CWJC No. 2362/83.

7.9.83

No fresh step shall be taken in pursuance of notification dated 18.4.81.

7.10.83

Status quo in respect of the lands claimed by the petitioners shall be maintained. The order dated 7.9.83 stands modified to that extent.

23.3.84

No fresh step shall be taken in pursuance of notification dated 18.4.81. Petitioners however, are restrained from making any further constructions in the meantime.

CWJC No. 6000/83

10.2.84

Status quo shall be maintained.

CWJC 5904/83

23.3.84

No fresh step shall be taken. Petitioners however restrained from making further constructions.

CWJC No. 93/84

23.3.84

-do-

CWJC No. 904/84

23.3.84

-do-

CWJC No. 924/83

23.3.84

-do-

CWJC No. 940/84

23.3.84

-do-

CWJC No. 953/84

23.3.84

-dc-

CWJC No. 957/84

23.3.84

-do-

CWJC No. 998/84

23.3.84

-do-

CWJC No. 1040/84

27.2.84

Status quo shall be maintained.

23.3.84

No fresh step shall be taken, petitioners however restrained from making further constructions.

CWJC No. 1041/84

27.2.84

Status quo shall be maintained.

23.3.84

No fresh step shall be taken. Petitioners however restrained from making further constructions.

CWJC No. 1042/84

27.2.84

Status quo shall be maintained

23.3.84

No fresh step shall be taken. Petitioners however restrained from making further constructions.

CWJC No. 1108/84

2.3.84

Status quo shall be maintained.

23.3.84

No fresh step shall be taken. Petitioners however restrained from making further constructions.

CWJC No. 6000/83

10.2.84

Status quo shall be maintained.

CWJC No. 1618/84

26.4.84

Status quo shall be maintained.

CWJC No. 2365/84

14.5.84

Possession will not be taken from the petitioner.

CWJC No. 2780/84

11.6.84

Status quo.

CWJC No. 2963/84

19.6.84

Status quo.

CWJC No. 2755/84

29.4.88

Acquisition of the land initiated by the petitioner society shall remain stayed.

CWJC No. 11788/93

4.8.94

Petitioner shall not be dispossessed from his house.

CWJC No. 11789/93

-

-do-

CWJC No. 9515/94

11.7.95

May renew the prayer for interim relief when there is threat of dispossession.

The Supreme Court had also passed an interim order during the pendency of the SLPs on 19.9.91 restraining the parties from erecting third party interest. After the cases returned to this Court on remand, on 25.6.96 the parties gave an undertaking that status quo shall be maintained with respect to the lands in questions.

30. On behalf of the Respondent society it was strenuously argued that as constructions have been made by the Petitioners on the lands in question in disregard of the interim orders of this Court, they are not entitled to any relief in writ jurisdiction, it was contended that when a party does not approach the Court with clean hands, he cannot claim any right in equity. Reliance was placed on Panchugopal Barua and others Vs. Umesh Chandra Goswami and others, V.S. Palanichamy Chettiar Firm Vs. C. Alagappan and Another, A. Venkatasubbiah

Naidu Vs. S. Challappan and Others, It is not in dispute that constructions have been made during the pendency of these cases. It was however, submitted on behalf of the Petitioners that the Respondent society having taken recourse to dubious means, it does not lie , in its mouth to argue "pari" delicto".

31. I do not find any substance in the stand of the counsel for the Petitioners. Though interim orders were passed in different forms, in effect and substance the parties were required to maintain status quo. In fact, in most of the cases there was specific order restraining the Petitioners from making further construction. From the report of the Collector, Patna dated 30.6.96 submitted pursuant to order dated 25.6.96 it appears that as on date constructions had been made over 13.50 acres (approx.) land. In fact, it appears that further constructions have been made during the intervening period. It is regrettable that the Petitioners not only violated the interim orders but also did not abide by undertaking given to this Court on 25.6.96 that status quo shall be maintained. Whether the Petitioners are entitled to urge that as the houses have been constructed on different parts of the land this Court should not disturb the status quo? As explained by the Supreme Court in Waman Shrinivas Kini Vs. Ratilal Bhagwandas and Co., the true meaning of the maxim "pari delicto potior est conditio possidentis" is that where the circumstances are such that the Court should refuse to assist either party the consequence must follow that the party in possession will not be disturbed. It is settled legal principle that no person can found a cause of action upon his illegal or immoral act and the Court may refuse to lend assistance to enforce illegal or immoral transactions. This Court therefore cannot countenance the fact that constructions have been made" by the Petitioners on the lands in question with impunity and in utter disregard of the orders of this Court and their own undertaking. However, in the facts and circumstances, I do not propose to non-suit the Petitioners on this ground. Firstly, this would require ascertainment of fact as to which of the Petitioners made the constructions and when. Secondly, so far as the purchasers or members of the Housing Societies are concerned, the object of purchase etc. being acquisition of a piece of land for construction of residential house, if they made constructions under pressing circumstances, it may not be in the ends of justice, indeed, necessary, to disturb their possession if the need of the Respondent society is also substantially satisfied at the same time. Needless to say that the benefit will be available only to the bona fide purchasers and members of the Housing Societies. As would appear from the facts and figures hereinafter, many of the Petitioners had purchased small area of land and prior to the impugned notification. It would not be proper in their cases to negative their claim only on the ground that they made constructions in violation of the Court's order and undertaking. At this stage the relevant facts of each case may be noticed.

32. I will first take up cases in which the Petitioners are owners. In CWJC No. 2849/83 by Panchu Yadav and others, the lands involved are plot Nos. 209, 234 and 246. In the writ petition the area has not been disclosed but from the

counter affidavit it appears that the said 3 plots have an area of 1.38 acres. However, two intervention applications have been filed by Madhusudan Yadav & his two brothers and Ghulam Sharful Haque in this case. The first one is with respect to 19.25 acres land of plot nos. 108, 229, 243, 244 and 254. It is worth pointing out here that 12.28 acres land of plot nos. 243 and 244 out of 19.25 acres is subject-matter of CWJC No. 2755/88 by Ashish Sahkari Grih Nirman Samiti which claims to have purchased the land from said Madhusudan Yadav and brothers. The other intervention application by Gulam Sharful Haque relates to 7.185 acres land of plot nos. 175, 184, 190, 197, 204, 210, 214, 235, 238, 245, 247 and 248. It may be mentioned that; Madhusudan Yadav and others filed the intervention application on 21.2.84 pursuant to an order of this Court in CWJC Mo. 780/84 filed by them earlier, the other application by Gulam Sharful Haque was filed on 11.2.88.

Panchu Yadav and others in the writ petition has alleged non-compliance of Section 5-A to assail the validity of the acquisition, nothing of the kind was stated by Madhusudan Yadav and others of Ghulam Sharful; Haque in their respective intervention applications. As a matter of fact, even in CWJC No. 780/84 Madhusudan Yadav did not make any such complaint. The grievance of both Madhusudan Yadav & ors. and Ghulam Sharful Haque was general in nature that they are vitally interested in the outcome of the case, they adopt the writ petition of Panchu Yadav, the claim of Respondent society that its members being landless persons was not correct. It is relevant to mention here, so far as Ghulam Sharful Haque is concerned, he claims to have entered into agreement with one Millat Sahkari Grih. Nirman Samiti. The said Samiti had claimed the exclusion of the land in question before the Additional Land Acquisition Officer, Patna during enquiry u/s 5-A claiming to be the bona fide purchasers from Gulam Sharful Haque. The claim however, was rejected on finding that the land in question was private land of Gulam Sharful Haque and the formation of the said society was merely an attempt by him to get rid of the Urban Ceiling Act. It may not be out of place to mention here that unlike other objectors, Millat Co-operative Housing Society did not pursue the claim further by filing any writ petition, as others did. The particulars of lands involved in other cases on behalf of the owners are as follows:

Case No.

Plot No.

Area

CWJC No.

904/84

227

1 Bigha

228

0.38 Acre

CWJC No.

940/84

189

0.64 Acre

174

0.08 Acre

CWJC No.

1040/84

236

0.3775 Acre

CWJC No.

1041/84

189

0.64 Acre

174

0.08 Acre

CWJC No.

1042/84

238

1 Bigha

227

2 Bighas

175

0.17 Acre

CWJC No.

1618/84

188

1.07 Acres

0.33 Acre

33. The cases of all these Petitioners are more or less same, the ground of challenge broadly is non-compliance of Section 5-A of the Act and their loss as a result of acquisition. I have already stated above that on the ground of non-compliance of Section 5-A, even if it was so, the acquisition cannot be annulled provided there was proper enquiry u/s 40 of the Act read with Rule 4 of the Land Acquisition (Companies) Rules since it was open to the Government to give its consent on the basis of either of the two reports, as held by the Supreme Court, and the record shows substantial compliance of Section 40 read with Rule 4, and no averments to the contrary have been made. In the absence of any allegation, muchless pleadings by the Petitioners, it is not possible to interfere with the acquisition even if there had been some violation of procedure. No ground thus having been made out by these Petitioners, their claim with respect to the lands in question must be rejected.

34. The purchasers and/or the members of the Housing Societies, in the facts and circumstances, however, stand on different footing. This would be evident from the particulars of the purchase etc. by them as under:

Cage No. Plot No Area Date of Purchase Remarks CWJC 2962/83 188 9 Kathas 16 Dhurs 1979 Purchased by Society. Subsequently allotted to 10 members. 216/217 9 Kathas Between 16.5.80 Purchased Privately by 6 members & 7.7.80 CWJC 5904/83 192, 193, 196 & 221 4.42 acres Between 1978 Purchased by 44 members of the Society. The society formed later. and 1980 CWJC 6000/83 205 Part 185 Part 6 Kathas 8 Dhurs 6 Dhurkies 3.11.80 And. Purchased by Society. Subsequently allotted to five members @ between 11 Dhurs and 1 Katha, 13 Dhurs and 6 Dhurkies. 16.3.81 8 Kathas Between 19.6.78 and 25.6.78 Purchased by 6 members @ 1 Katha, 2 Kathas and so on. 4 Dhurs 14 Dhurkies CWJC 93/84 220 2.82 acres 22 Kathas 4 dhurs 9 Kathas 2 Dhurs 4 Dhurkies 9 Kathas 2 Dhurs 4 Dhurkies 0.3550 acres 1.6.78 and 2.8.78 Purchased by Society. 22 Kathas & 4 Dhurs by the members directly CWJC 924/84 185 29.7.76 Purchased by Petitioners No. 1 27.7.76 Purchased by Petitioner No. 2 27.7.76 purchased by Petitioner No. 3 CWJC 953/84 173, 191, 200 & 224 4 Kathas 10 Dhurs 1978 Purchased by Petitioner No. 1 5 Kathas 1978 Purchased by Petitioner No. 2 5 Kathas 14.11.79 Purchased by Petitioner No. 3 5 Kathas 14.11.79 Purchased by Petitioner, No. 4 5 Kathas 14.11.79 Purchased by Petitioner No. 5 2 Kathas 1981 Purchased by Petitioner No. 6 3 Kathas 1981 Purchased by Petitioner No. 7 . 10 Dhurs 2 Kathas 1981 Purchased by Petitioner No. 8 3 Kathas June, 1982 Purchased by Petitioner No. 9 4 Kathas June, Purchased by Petitioner No. 10 7 Dhurs 1982 3 Kathas June, 1982 Purchased by Petitioner No. 11 CWJC 957/84 195 20 Decimals 20.7.79 Purchased by Petitioner No. 1 18 Decimals 3.8.79 Purchased by Petitioner No. 2 9 Decimals 3.8.79 Purchased by Petitioner No. 3 CWJC 998/84 230 5 Kathas 1.9.78 Purchased by Petitioner No. 1 15 Dhurs 5 Kathas 15 Dhurs 19.10.78 Purchased by Petitioner No. 2 4 Kathas 2.12.78

Purchased by Petitioner No. 3 2 Kathas 2.12.78 Purchased by Petitioner No. 4
 CWJC 1108/84 239 3 Kathas 19.12.79 Sole Petitioner CWJC 2365/84 185 3
 Kathas 11.4.66 ? CWJC 2780/84 227 5 Kathas 22.3.68 " CWJC 2963/84 173 4
 Kathas 6 Dhurs 1 Dhurs 15.6.82 ? CWJC 11788/93 227 1 Katha 10 Dhurs
 22.1.73 " CWJC 11789/93 227 4 Kathas 5.8.67 ?

The above chart would show that all the purchases were made either by the society or directly by members of the society or non-member purchasers from the owners. The purchases were apparently for construction of residential houses. The case of these Petitioners in short is that after the purchase, they got their names mutated in the relevant records and are paying rent etc. They have also constructed houses, some of them by taking loan from the Bihar State Housing Co-operative Federation. As these Petitioners appear to be bona fide purchasers of land, the purpose being the same for which the acquisition was made for the benefit of the Respondent society, I am of the view that they stand on par with the members of the Respondent society and they should not be disturbed from their possession of the land and/or the houses. Though the Petitioners in CWJC Nos. 11788/93, 11789/93 and 9515/94 approached this Court very late, in fact, after the judgment of the Supreme Court, but as they stand on par with other Petitioners in all other respects, I do not think it would be appropriate to deny them the relief allowed to other similarly situate Petitioners. The claim of these purchaser-Petitioners are fit to be allowed.

35. Now coming to the case of Ashish Sahkari Grih Nirman Samiti, CWJC No. 2755/88, the writ petition was filed on 26.4.88. The Samiti .was registered under the Co-operative Societies Act sometime in the year 1981 as it bears registration No. 102/Pat/81. Though it came into existence later, it claims to have advanced sum of Rs. 25,000/- to Madhusudan Yadav and others on 28.12.80. The formal agreement however, is said to have been executed only on 5.5.81 i.e. after the publication of the notification u/s 4. In any case the sale deeds were executed on 26.6.90 during the interregnum after the judgment was delivered by this Court and before the SLPs. were filed in the Supreme Court. Apparently, the Samiti and its vendors i.e. Madhusudan and others wanted to take advantage of the judgment of this Court even though there had been limited remand to the State Government for the purpose of enquiry u/s 5-A and Rule 4 and the notification u/s 4 had not been quashed. Be that as it may, what is relevant is the fact, as already mentioned above, that the vendors i.e. owners Madhusudan Yadav and others who figure as Respondent nos. 6 to 8 in the case (CWJC No. 2755/88) and filed intervention application in CWJC No. 2849/83, did not even whisper about the agreement dated 5.5.81 muchless advance of Rs. 25,000/- on 28.12.80 in their objection. They did not say anything of the kind even in the writ petition, CWJC No. 780/84 which they had earlier filed or in the intervention application. The claim of the Samiti of being bona fide purchasers prior to the notification u/s 4, in the circumstances, is not worthy of belief. The story of advance of Rs. 25,000/- on 28.12.80 has been made out apparently to get past the date of notification. Once that part of the Petitioners case is disbelieved, they having

approached this Court only in the year 1988, to be precise, 26.4.88, question would arise as to whether they should be treated on par with other Petitioner who approached this Court even later, in 1993 or 1994, and whose claim has been allowed above. As the concerned Petitioners of CWJC Nos. 11788/93, 11789/93 or 9515/94 were purchasers of very small areas of land to the extent of 1 Katha 10 Dhurs, 4 Kathas and 2 Kathas respectively, and that too much prior to the date (A) notification, this Petitioners cannot claim parity with them, apparently when the attending circumstances create doubt about the bona fide of their claim on the basis of the advance of Rs. 25,000/- on 28.12.80 and agreement on 5.5.81. It is true that its vendors i.e. Madhusudan Yadav and others did approach this Court in 1984 but they did not speak anything about the so called agreement with it. The Samiti, it appears, wanted to fish in the troubled waters and take advantage of the situation after the fate of the impugned acquisition became uncertain, the fact that it approached this Court after five years lends credence to its motives. The claim of this Samiti with respect to 12.28 acres of land of plot nos. 243 and 244 which, as mentioned above, is part of the claim of Madhusudan Yadav and others, which already stands rejected, must also be rejected.

36. In fairness to Shri Abhay Kumar Singh, learned Counsel for Ashish Sahkari Grih Nirman Samiti, I must refer to the decisions (except those already noticed above) cited by him, none of which, I am afraid, has any relevance in the fact-situation of these cases and the view that, I have taken. The decisions are Delhi Transport Corporation Vs. D.T.C. Mazdoor Congress and Others, Smt. Shrisht Dhawan Vs. M/s. Shaw Brothers, , Dalmia Cement (Bharat) Ltd. and Another Vs. Union of India (UOI) and Others, , D.K. Basu Vs. State of West Bengal, , Mafatlal Industries Ltd. and Others Vs. Union of India (UOI) and Others, , Apparel Export Promotion Council Vs. A.K. Chopra, , State of Punjab Vs. Baldev Singh, and Om Kumar and Others Vs. Union of India, The decisions in D.K. Basu Apparel Export Promotion Council and Baldeo Singh related to cases of custodial veilance, sexual harassment of female employees at the place of working and trial of accused under the NDPS Act; and have no relevance in these cases. Likewise the case of Dalmia Cement (Bharat) Ltd. related to validity of economic legislation in the context of the fundamental right of individuals to carry on trade and business and has no relevance, in these cases. Similarly, the case of Delhi Transport Corporation arose from termination of the services of the employees of the said Corporation and the points at issue were totally different the decisions in Mafatlal Industries Ltd. on the point had restitution also does not seem to have any relevance in these present cases. So far as the decisions in Shrisht Dhawan on the point of equity and fraud and Om Kumar on the point of proportionality concerned, I have already distinguished the cases of the Housing Societies (except Ashish Sahkari Grih Nirmal Samiti) and other purchasers from the owners and held that the owners are not entitled to any relief in law, Ashish Sahkari Grih Nirman Samiti is also held not entitled to any relief either in law or equity. In the facts and circumstances, these decisions are therefore of no avail

either to the owners or Ashish Sahkari Grih Nirman Samiti.

37. At the end, it is relevant to point out that the area claimed by the Petitioners on calculation comes to little over 44 acres (after necessary conversion) though 56.1275 acres land was notified in the declaration u/s 6 of the Act which only goes to show that the quashing of the declare action as a whole inured to the benefit of even those who had not approached this Court--as observed by the Supreme Court. On further calculation the area of the plots with respect to which the claim of the Petitioners has been allowed viz plot Nos. 173, 175 Part, 185, 188, 191 Part, 192, 193, 195, 196, 200, 216, 217, 220, 224, 227 Part and 230 comes to about 10 acres. As seen above, the area of the plots in some of the cases has been mentioned in terms of average the total of which comes to 5.24 acres, in other cases it has been mentioned in terms of Bigha, Katha, Dhurs and Dhurkies, to wit, 7 Bighas, 11 Kathas, 11 Dhurs and 19 Dhurkies which on conversion @ 32 kathas per acre comes to 4.75 acres i.e. about 10 acres in all. In other words; allowing the claim of the Petitioners with respect to the above mentioned 10 plots having total area of approx. 10 acres means that sufficient land may be available to 100 members (figure mentioned in the judgment of the Supreme Court) of the Respondent society. I am conscious of the fact that in all likelihood constructions have been made on lands with respect to which the claim; of the concerned Petitioners has been disallowed. Nothing would have been fetter if the parties had sat, across, the table and accommodated the claim of each other. In this manner, perhaps, there would not have been any occasion to interfere with the constructions already made but that unfortunately was not to be. In the circumstances, it is clarified that should the need of the Respondent society and its members be found to be insufficient, having regard to the vacant land available at its disposal, it would be open to it to apply for eviction of the persons concerned, if necessary, by demolishing the constructions made.

38. To sum up, the claims of the concerned Petitioners with respect to lands of plot nos. 173, 173 Part, 185, 188, 191 Part, 192, 193, 195, 196, 200, 216, 217, 220, 224, 227 and 230 are allowed. Those lands are ordered to be released from the acquisition proceedings and the schedule of the acquired lands. The claim; of the concerned Petitioners with respect to plot nos. 108, 174, 175 Part, 179, 188, 189, 190, 191 Part, 197, 204, 209, 210, 214, 227 Part, 228, 229, 234, 235, 236, 238, 243, 244, 245, 246, 247 and 254 are rejected. The acquisition of these lands and other lands which are lot subject matter of these cases is upheld. The Collector, Patna is directed to identify the lands, and deliver possession thereof to the Respondent society, if necessary, demolishing the constructions made thereon.

39. In the result, CWJC Nos. 2962/83, 5904/83, 6000/83, 93/84, 924/84, 953/84, 957/84, 998/84, 1108/84, 2365/84, 2780/84, 2963/84, 11788/93, 11789/93 and 9515/94 are allowed. CWJC Nos. 2849/83, 904/84, 940/84, 1040/84, 1041/84, 1042/84, 1618/84 and 2755/88 are dismissed. The intervention:" applications by Madhusudan Yadav and Ors. and Ghulam Sharful

Haque in CWJC No. 2849/83 are rejected. CWJC No. 2875/94 is disposed of. In the circumstances of the case, there will be no order as to cost.

I.P. Singh, J.

40. I agree.