

(2009) 07 BOM CK 0187

In the Bombay High Court

Case No : Writ Petitions No's. 511 and 542 of 2007

Bandekar Brothers Private Limited and Vassantram Metha
and Company Private Limited

APPELLANT

Vs

State of Goa and Others
 Shri Rama Bhiva Parab and
Others Vs State of Goa and Alcon Cement Company Private
Limited

RESPONDENT

Date of Decision : 14-07-2009

Acts Referred:

Constitution of India, 1950 — Article 226
Evidence Act, 1872 — Section 83
Goa (Prevention of Illegal Mining, Transportation and Storage of Minerals) Rules, 2004
— Rule 3
Goa Land Revenue Code, 1968 — Section 110, 112, 115, 14
Goa Village Panchayat Raj Act, 1994 — Section 65
Goa, Daman and Diu Land Acquisition Rules, 1972 — Rule 4, 4(1), 4(2), 4(3), 4(4)
Land Acquisition (Companies) Rules, 1963 — Rule 4
Land Acquisition Act, 1894 — Section 3, 38, 4, 44A, 44B

Citation : (2009) 111 BOMLR 3475

Hon'ble Judges : U.D. Salvi, J;B.P. Dharmadhikari, J

Bench : Division Bench

Advocate : S.G. Dessai and Shivan Dessai, in Writ Petition No. 511 of 2007 and A.D. Bhohe, in Writ Petition No. 542 of 2007, for the Appellant; S.S. Kantak, General and Gauri Bhonsule, Additional Government Advocate for Respondent Nos. 1 to 4 in Writ Petition No. 511 of 2007, S.D. Lotlikar and Sourabhi Vaidya, for Respondent Nos. 5 and 6 in Writ Petition No. 511 of 2007 and for Respondent No. 4 in Writ Petition No. 542 of 2007 and S.S. Kantak, General and A. Kamat, Additional Government Advocate for Respondent Nos. 1 to 3 in Writ Petition No. 542 of 2007, for the Respondent

Judgement

B.P. Dharmadhikari, J.—By this writ petition filed under Article 226 of the Constitution of India, the petitioners-landowners question acquisition of their lands for the purposes of construction of a road leading to jetty of respondents No. 5 and 6, which are private limited companies engaged in mining business. Both the petitioners in Writ Petition No. 511/2007 are private limited companies,

engaged in mining. The petitioners in Writ Petition No. 542/2007, except petitioner No. 3, are individuals whose lands are also being acquired for the same purpose. Petitioner No. 2 therein is a temple of Shree Dev Chandrashwar, through its Managing Committee. The petitions have been directed to be disposed of at the stage of admission itself as per Order dated 15.1.2008. It appears that Writ Petition No. 542/2007 was admitted on 1.7.2008 and interim relief granted on 10.12.2007 was continued. It is admitted position that said Order dated 10.12.2007 is identical in both the writ petitions and the respondents were permitted to proceed further with acquisition proceedings and are restrained only from taking possession, but Award has been allowed to be made without prejudice to the rights and contentions of the petitioners. Accordingly, the State Government has proceeded further with acquisition and has declared the Award. It is apparent that the award fails, if the writ petitions are allowed.

2. The fact that lands belong to petitioners is not in dispute and filing of objections u/s 5A by them is also not in dispute. The petitioners contend that because of political procedure and malafides, Section 5A inquiry was completed with undue haste and it was only a farce. Their second contention is that the acquisition is for company and not for public purpose and in any case malafide one. Lastly, it is contended that the notification u/s 4, therefore, itself needs to be quashed and set aside. In view of this line of arguments, it is not necessary for this Court to go into the details of lands held by the petitioners and it can only be mentioned that those lands are also shown in the sketch map produced at page 61 along with Writ Petition No. 511/07. As objections are identical, the writ petitions were then heard together.

3. We have heard Senior Advocate Shri S.G. Dessai with Shri Shivan Dessai for the petitioners in Writ Petition No. 511/07, Advocate Shri Bhobe for the petitioners in Writ Petition No. 542/07, learned Advocate General for respondents No. 1 to 4 and Senior Advocate Shri S.D. Lotlikar for respondents 5 and 6 Private Companies.

4. After inviting attention to map at page 61, the petitioners state that the jetty for respondents No. 5 and 6 was not in existence when Notification u/s 4 of the Land Acquisition Act was published and notified and that notification gave impression as if the jetty existed. Thus, the acquisition proposed for construction of road was in fact for non-existent need or purpose. Our attention was also invited to Section 3(f) thereof to show that the acquisition for company cannot be an acquisition for public purpose. It is stated that the Captain of Ports had granted licence for construction of jetty on 21.7.2004 and it was valid for one year. The said jetty was never constructed and on 2.8.2006, again application for grant of NOC was moved by respondents No. 5 and 6 to the Captain of Ports. After said application, on 4.8.06 respondents No. 5 and 6 made request vide letter dated 4.8.06 for acquiring lands of petitioners and said request was made to the Director of Mines and Geology as, according to petitioners, the then

Minister for Mines and Geology was having business partnership with respondent No. 5. It is stated that the said request letter does not disclose any public purpose at all and acquisition sought was for only private purposes and to increase profits of those respondents. One Shri Raajiv Yaduvanshi was Secretary of the said Department and he accepted the note by showing as if the Government was under obligation to provide for access road to the respondents. The said note was then sent to the Revenue Department, where again said Shri Yaduvanshi was the Secretary and under his supervision, ultimately proposal for obtaining cabinet approval was prepared and processed. He prepared that joint note and the cabinet approved that joint note on 10.11.2006. Thereafter, notification u/s 4 came to be published on 9.3.2007, specifying the purpose of acquisition as construction of access road, leading to the loading/unloading jetty at Cotombi Village in Bicholim Taluka. It is stated that as per Circular dated 7.4.2003 issued by the State Government, this purpose was not the public purpose and though an Officer in the vicinity of the said land was required to be appointed as Land Acquisition Officer, the Deputy Collector at Panaji was designated for the said purpose. The petitioners filed their objections on 9.4.2007, in great detail, and pointed out that there was no public purpose. After this, vide communication dated 15.5.2007, the petitioners were directed to file their objections and petitioners, accordingly, on 14.6.2007 filed the same. On 9.4.2007 they also complained that time given to them to file objections was very short as they had earlier sought time till 30.6.2007. On 15.6.2007, the Land Acquisition Officer issued another notice and fixed the objections for hearing on 22.6.2007. The petitioners got this notice on 20.6.2007 and then petitioners sought adjournment on the ground that the concerned officer was on outdoor duty and another person representing petitioner No. 2 was operated for cataract. They sought time after 3rd July, 2007. The Deputy Collector fixed the matter on 27.6.2007. In view of this, on 25.6.2007, the petitioners moved another application and reiterated their grievance and requested for fixing the matter after 3rd July, 2007 and to confirm the next date at least one week in advance. However, their request was not considered and the Land Acquisition Officer submitted his report u/s 5A to the State Government on the same day itself. Learned Counsel for the petitioners, therefore, contends that this was with undue haste and because of political pressure of the then Minister for Mines and Geology who is currently the Chief Minister of the State. In this background, our attention has been invited to an unreported Judgment of the Hon'ble Apex Court in case of Uma Nath Pandey and Ors. v. State of U.P. and Anr. Criminal Appeal No. 471/2009 to explain the scope of principles of natural justice and also Hindustan Petroleum Corporation Ltd. Vs. Darius Shapur Chenai and Others, to point out how that opportunity u/s 5A has been judicially construed by the Hon'ble Apex Court. Our attention is also invited to the Goa, Daman and Diu Land Acquisition Rules, 1972 (referred to hereafter as "Goa Acquisition Rules, 1972"), particularly Rule 4 to show that how the Land Acquisition Officer is supposed to apply his mind and how that Rule is breached in the present circumstances. It is further stated that malafides and undue haste are also apparent from the fact that

Trading and Mineral Licence issued to respondents under Rule 3 of the Goa (Prevention of Illegal Mining, Transportation and Storage of Minerals) Rules, 2004 was sought to be renewed by moving an application on 2.8.2006.

5. In this background, our attention is invited to provisions of Section 41 of the Town and Country Planning Act to show that it permits acquisition of land reserved in town planning and lands of petitioners were not reserved for any purpose. It is stated that as land was being acquired for private purpose, provisions of Chapter VII of the Land Acquisition Act were only relevant and those provisions along with the Rules framed u/s 5A of the State Government have not been satisfied in the present circumstances. Attention is also invited to provisions of Land Acquisition (Companies) Rules 1963 stating that the matter was never placed before the Land Acquisition Committee. It is further stated that what is sought to be acquired in fact does not connect any public road to the jetty, but it is situated in the middle of petitioners' property and earlier part which connects the said portion with public road is in fact a private road belonging to and constructed by the petitioners. As the said private road is not sought to be acquired, the proposal for acquisition itself shows non-application of mind and is liable to be set aside. In this background, note prepared by the Mining Department and the Revenue Department is criticized by stating that it proceeds under the presumption that the road connects the public road to the proposed jetty and also under impression that the Government is duty bound to provide such access to the respondents. It is contended that in the meanwhile those respondents have made alternate arrangement and have another road as access to their jetty and the same is under their use. Pleadings of the petitioners about undue haste or violation of principles of natural justice have not been traversed and it is further stated that the Mining Minister became the Chief Minister on 2.6.2007 and thereafter on 4.6.2007, the petitioners have written to him and pointed out that their private road has been erroneously treated as public road.

6. Recommendations or report of the Land Acquisition Officer u/s 5A is referred in detail to show that it mechanically reproduces some of the grounds, but then really does not evaluate the same and without considering the merits or demerits, leaves everything to the appropriate Government. It is contended that such a strange approach is adopted by the Land Acquisition Officer only because of pressure upon him. The State Government, thereafter, called for some survey reports, but those survey reports were called behind the back of the petitioners and, hence, there was no inquiry as contemplated by the Hon'ble Apex Court in *Hindustan Petroleum Corporation Ltd. v. Darius Shapur Chenai and Ors.* (supra). It is urged that the petitioners are in fact being victimized because of pressure from respondents No. 5 and 6. Advocate Bhobe has adopted the arguments of Senior Advocate Dessai and stated that the site of petitioners was inspected behind their back in great hurry without any notice to them. He states that though report or recommendations were made by the Land Acquisition Officer (LAO) on 27.6.2007 itself, the site inspection report has been forwarded on

9.7.2007. Senior Advocate Dessai has relied upon Srinivasa Cooperative House Buildings Society Ltd. Vs. Madam Gurumurthy Sastry and Others, ; State of Punjab and Another Vs. Gurdial Singh and Others, ; General Government Servants Cooperative Housing Society Ltd., Agra and Others Vs. Sh. Wahab Uddin and Others, ; State of Gujarat and Another Vs. Patel Chaturbhai Narsibhai and Others, and Devinder Singh and Others Vs. State of Punjab and Others, in support of his contentions.

7. Learned Advocate General has stated that the contentions that the road in use of the petitioners is private road is being used for the first time in the writ petition and there was no such objection at the stage of 5A inquiry. By comparing the survey numbers belonging to the petitioners with the map at page 64, it is stated that survey Nos. 14, 37, 38, 13 and 14 do not belong to the petitioners and, therefore, part of road going through it cannot be a public road. It is stated that the petitioners deliberately did not file either their lease deeds or the sale deeds on record as it would have shown the boundaries of lands and existence of public road. In this connection, provisions of Section 110 of Goa Land Revenue Code in relation to boundary marks, Section 112 read with Section 115 about effect of settlement of boundaries are pointed out. Provisions of Section 14 are also pointed out to show that title vests in favour of the Government. Presumption flowing from Section 83 of the Evidence Act is also pressed into service. Section 65 of Goa Panchayatraj Act is also shown to urge that said road vests in Panchayat and acquisition in fact is for connecting existing public road with jetty and thus for extension of that public road. It is stated that allegations about malafides are totally misconceived, as neither the Hon"ble Minister nor Shri Yaduvanshi are parties to the present petitions and the issue was considered by cabinet ultimately which found it necessary to acquire the lands. The decision of cabinet in this respect cannot be challenged as malafide. It is further stated that some houses exist in that area and occupiers of those houses will be benefited by the public road if it is allowed to be extended upto jetty. Earning of foreign exchange by respondents No. 5 and 6, improvement in infrastructure for companies and better avenues for them, as also generation of employment are stated to be public purposes sought to be achieved by the said acquisition. Division Bench Judgment in Motibhai Vithalbai Patel and Another Vs. The State of Gujarat and Another, is pressed into service to show how the aspect of public purpose has been looked into though acquisition was there for a private company. Raja Anand Brahma Shah Vs. State of Uttar Pradesh and Others, and Sooraram Pratap Reddy and Others Vs. District Collector, Ranga Reddy Distt. and Others, are pressed into service in this respect.

8. It is contended that the petitioners were given full opportunity and due chances by the LAO and they deliberately did not utilize it. When it was noticed that the petitioners were interested in prolonging the matter, the LAO closed the proceedings and submitted his report. It is contended that the petitioners by their conduct disentitled themselves to any further adjournment and as the adjournment was within the discretion of the LAO, in writ petition, this Court

cannot interfere. Our attention has been invited to Rule 4(4) of Goa Acquisition Rules, 1972 to point out time limit for the LAO to submit his report. *Delhi Administration v. Gurdip Singh Uban and Ors. etc.* reported at AIR 2000 SC 3737 is pressed into service to show types of objections which the land owners can raise and attention is also invited to Rule 4(2) of the Goa Acquisition Rules, 1972 in this respect. It is stated that the LAO has considered all relevant objections and thereafter has submitted his report. It is contended that though a better report in the matter could have been prepared, the LAO has honestly placed his report/recommendations before the State Government and the said document cannot be viewed in any other way as the LAO is not required to give reasons like a Judicial Officer. It is urged that even if the LAO has not given any findings on purpose of acquisition, said purpose is always justiciable and hence, no prejudice has been caused to the petitioners. It is contended that the petitions have been filed with apprehension that infrastructures will be used by others, but then as entire public is entitled to use the road, such apprehension is misconceived. Our attention has been invited to paras 16 and 17 of the writ petition to urge that there are no specific allegations of malafides and only inferences have been mentioned, without disclosing reasons for belief entertained by the petitioners. Lastly, without prejudice to all contentions mentioned above and in the alternative, learned Advocate General stated that if this Court finds any procedural lapse on the part of the LAO, the matter may be remanded to him to complete the inquiry, in accordance with law, at the earliest and the period for which the stay was operating is liable to be excluded.

9. Senior Advocate Shri Lotlikar for respondents No. 5 and 6 invited attention to request for acquisition and has contended that improvement in infrastructure is in accordance with the policy of the State Government and as it is public purpose which results in generation of more employment, earning of foreign exchange, acquisition under Chapter II of the Land Acquisition Act is permissible. He points out that the road proposed is public road and merely because the company will be using it, that does not mean that acquisition is not for public purpose. He further states that alternate arrangement made by respondents No. 5 and 6 is on account of lease with a private company and the said lease is to operate for a limited number of years and the road provided is not suitable for moving the material which respondents No. 5 and 6 wish to bring to their jetty. According to him, there are no malafides and Section 5A report needs to be maintained, along with Section 6 notification, as also the award. 10. Learned Advocates for the petitioners, particularly Senior Advocate Shri Dessai, in reply, have contended that the road has always been stated to be their own private road by the petitioners and survey map of Government does not mention it as a public road. It is further urged that the petitioners are ready and willing to produce their lease deeds and sale deeds to show boundaries of their respective plots of land. But then basic finding in this respect is required to be given by the LAO. It is further pointed out that there is no general policy of Industries Department of the State of Goa to provide infrastructures to industries like respondents No. 5

and 6. All objections raised by the petitioners were under Rule 4(2)(i) and (v) of the Goa Acquisition Rules, 1972. In this background, it is stated that acquisition has to be under Chapter VII and not under Chapter II of the Land Acquisition Act and that the case of respondents No. 5 and 6 that they are using the road shown as private road of the petitioners is being denied and attention is invited to a dotted lines shown in the sketch map at page 61 for the said purpose to show road in their use.

11. Learned Advocate General has stated that the objections raised by the petitioners were not falling under clauses as mentioned in Rule 4(2) of Goa Acquisition Rules, 1972. He has relied upon *Delhi Administration v. Gurdip Singh Uban and Ors. etc.* (supra) for the said purpose. The said Judgment, particularly para 54 thereof shows that the land owner can contend (i) the purpose for which land is being acquired is not a public purpose; (ii) even if it is public purpose, it could be served better by another land already proposed or being proposed; (iii) special fact-situation in which he is placed, so as to show that his land needs to be omitted from acquisition. Hon^{ble} Supreme Court has stated that the objection of second type is personal to the land and the objection of third type is personal to the objector. Perusal of objections raised by the petitioners before the LAO shows that they were seeking some time because they were awaiting certain information from other Departments. They further pointed out that there was no loading or unloading jetty at Cotombi Village which required any such access. They also alleged that the purpose was private purpose and hence special procedure and provisions under the Land Acquisition Act needed to be followed. They further stated that the concerned owner/Director of respondents No. 5 and 6 Mr. Anil Couto as well as Minister of Mines had earlier requested them for access and both of them were personally interested because it was a joint venture of both of them. They also pointed out that because of this only the Director of Mines and Geology was moved, though he was in no way concerned with the acquisition. They further stated that they have been operating in the said area for last several years and they have developed access road from main road to river area, developing other infrastructures by incurring huge expenditure by acquiring properties for construction of roads, paying compensation, rehabilitating houses and carrying on welfare activities, etc. They further alleged that the construction of road was not for public in general and the permission to construct the jetty given to respondents No. 5 and 6 had already expired. They have also pointed out interference with natural slope of stream water drain and, therefore, possibility of inundation upstream. They have raised as many as 31 objections.

12. In this background, when provisions of Rule 4(2) of Acquisition Rules, 1972 are looked into, the same state that the objection has to be specific and on grounds such as notified purpose not genuinely or properly a public purpose, land notified being not suitable for the notified purpose, land not so well suited as other land, and the objector's land being selected maliciously or vexatiously Mere perusal of Sub-rule (2) of Rule 4 shows that these grounds of objections as

stated are not only illustrative, but are exhaustive. We have briefly mentioned the grounds raised by the petitioners and it cannot be said that the grounds raised by the petitioners vide objections dated 9.4.2007 do not fall under Sub-rule (2) of Rule 4 of Goa Acquisition Rules, 1972.

13. Before proceeding further, we find it proper to comment upon the report submitted by the LAO on 27.6.2007. He has given history in initial paras and in para 4 he has stated how on 22.6.2007 the matter was adjourned to 27.6.2007 and how he rejected the request of the petitioners for grant of time on the said date. Then in para 5 he has mentioned the Director of Mines and Geology as acquiring department. Then he has reproduced the comments of the said department and in para 6 he has stated that there was revised survey report and survey map received by him from the acquiring department. In para 7 he mentions about inspection and has stated that the land to be acquired was touching a motorable road. In para 9 he has mentioned that there are objections to the acquisition and there existed jetties in Cotombi Village with access and interested parties were objecting for the said acquisition. He states that the objection was that it was not public purpose, but for private party. He concludes that it was for the Government to take appropriate decision before issuance of Section 6 notification. He also annexes draft Section 6 notification. In para 4 he has mentioned that the petitioners in Writ Petition No. 542/2007 invited attention to the provisions of Section 38 of the Land Acquisition Act and he stated that it was not applicable as Government had proposed the acquisition. This report, therefore, does not show consideration of various objections raised by the petitioners, including the fact that the road being used by the petitioners was private road. Though learned Advocate General has contended that the word 'private' has been used for the first time by the petitioners before this Court, we find that in para 13 of their objections the petitioners have stated that they have developed the access road by incurring huge expenditure by acquiring properties for construction of roads, by paying compensation and by rehabilitating houses. Perusal of the map placed on record by the petitioners shows that from Sanquelim - Ponda road the petitioners have got a road which passes through their properties and said road is shown by letters "R?", "R", "R". That road comes upto survey No. 21 where the portion proposed for acquisition begins and this portion is shown in dark yellow strip in shape of inverted "L" leads to another road, which ultimately goes to the jetty. The petitioners have claimed that entire road starting from Sanquelim - Ponda upto that yellow strip is their private road. The LAO has not considered this aspect at all. Survey map to which our attention has been invited by the learned Advocate General does not show that the road is a public road. No doubt the Government contends that there are some private houses which will be benefited by the said road, but by acquiring part of the land in the middle of private lands of the petitioners, purpose of the Government of providing access to general public will not be served. In that case the Government may be required to acquire entire stretch of the road from Sanquelim-Ponda road. This objection has been specifically raised before the LAO

and he has failed to consider it. Failure of the petitioners to produce their sale deeds or lease deeds before us cannot be viewed adversely in this background only because some part of the road side land at the beginning of private road admittedly does not belong to the petitioners. The other part, admittedly, belongs to the petitioners and the other part is not being acquired. Rule 4 of the Goa Acquisition Rules, 1972 prescribes procedure for hearing objections u/s 5A of the Land Acquisition Act. As per its Sub-rule (1), the Collector/LAO has to record the objections in his proceedings and then he has to consider whether those objections are admissible according to the provisions of Sub-rule (2). Sub-rule (2) states that objections to be admissible must be filed within 30 days and allege some specific objections, and thereafter gives 6 different heads under which objections can be filed by the land owner. As already observed, the language of Sub-rule (2) clearly shows that those heads are only illustrative heads and objections raised by the petitioners were within 30 days. Those were also under relevant heads. The petitioners have raised grounds of malafides, purpose being not public purpose and also ground about unsuitability or impropriety of the acquisition. They have also pointed out that they are being victimized maliciously. As neither Hon''ble Minister nor the Secretary Shri Yaduvanshi are parties before this Court, we cannot and at present stage, it is not necessary for us to look into this aspect of malafides. It is necessary to note that in the present matter, the LAO did not find out whether all objections raised before him were admissible or not as envisaged by Sub-rule (2) of Rule 4 of the Goa Acquisition Rules, 1972. Thus, there is failure of exercise of jurisdiction on his part. Rules permit him to hold inquiry and record evidence if any disputed questions arise.

14. Hon''ble Apex Court in *Uma Nath Pandey and Ors. v. State of U.P. and Anr.* (supra) has considered the importance of principles of natural justice when quasi judicial body embarks on determining dispute between parties or any administrative action involving civil consequences is in issue. It has been observed therein that time given for raising objections or for making representation should be adequate. In *Hindustan Petroleum Corporation Ltd. v. Darius Shapur Chenai and Ors.* (supra) scope of opportunity u/s 5A has been liberally construed by the Hon''ble Apex Court and it has been held that Section 5A of the Land Acquisition Act is in two parts. After receipt of objection, the Collector is required to make further inquiry as he may think necessary and then submit his report which has to contain recommendations on objections filed by the owner of the land. He has to forward his record to the Government and then Government has to render decision thereupon. Para 16 shows that consideration of objections raised by the owner and acceptance of the recommendations by the Government has to precede proper application of mind by the Government. Action required to be taken by the State Government is to be distinct and different from the action to be taken by the Collector and the State Government can further inquire into the matter if the case therefore is made out. In para 8 of this Judgment, Hon''ble Apex Court has observed that when there has been total

non-application or substantial non-compliance with the provisions of Section 5A, Court cannot fold hands and refuse to grant relief to writ petitioner. In view of the arguments advanced by the learned Advocate General that after publication of Section 6 notification in the present matter on 6.9.2007 conclusiveness is attached to it, it is necessary to note here that Hon"ble Apex Court observed that when decision making process itself is in question, the power of judicial review can be exercised by the Court in the event the order impugned suffers from well known principles, viz. illegality, irrationality and procedural impropriety. The Hon"ble Apex Court states that when such statutory authority exercises such enormous power, it must be done in a fair and reasonable manner. The State in its decision making process must not commit any misdirection in law. Thus publication of notification u/s 6 does not confer any immunity on State if such defects are noticed.

15. Here, as already observed by us, the LAO is obliged to consider whether objection raised before him is admissible according to the provisions of the Goa Acquisition Rules, 1972. The report forwarded by him on 27.6.2007 does not show any such application of mind under Rule 4(3) of Goa Acquisition Rules, 1972. After admitting objections and after having given objector opportunity of hearing, the Collector/LAO has to decide whether recording of oral or documentary evidence is necessary. Again in the present matter, the LAO has not complied with this requirement. Though the petitioners in Writ Petition No. 542/2007 were present and they made some allegations, no order in this respect is passed. Not only this, the objections raised by the petitioners in Writ Petition No. 511/07 raise some factual dispute, but again that factual dispute has not been taken into account by the LAO. It is no doubt true that Rule 4(4) requires Collector to submit the report and record of proceedings for decision of the Government, within 45 days after expiry of period prescribed for lodging objections, the said time limit is to be adhered to ?as far as practicable? as envisaged in the Sub-rule itself. Here, the matter was fixed for hearing for the first time on 22.6.07. Petitioners, admittedly, got the notice thereof on 20.6.2007. They were seeking time till after 3.7.2007 for certain difficulties. Without considering genuineness or otherwise of those reasons, the LAO adjourned the matter to 27.6.2007. When again request for grant of further adjournment was made to him prior to 27.6.2007 by expressly pointing out inability, on 27.6.2007 he closed the proceedings and submitted the report. Had the LAO considered the reasons for grant of time pressed into service by the petitioners and found them insufficient, perhaps this Court in exercise of writ jurisdiction could not have interfered in the matter. Here the LAO has not followed the principles of natural justice also, and has shown undue haste though time of 45 days from 15.6.2007 was available to him. The way in which the proceeding is conducted, the manner in which the report has been prepared and non-compliance with the provisions of Rule 4 of Goa Acquisition Rules, 1972, clearly show that the provisions of Section 5A of the Land Acquisition Act have been violated and the petitioners did not receive the opportunity due to them as

contemplated by Hindustan Petroleum Corporation Ltd. v. Darius Shapur Chenai and Ors. (supra). In these circumstances, merely because notification u/s 6 has been published, no conclusiveness can be attached to it.

16. Issue of purpose also needs to be briefly commented at this stage. The Government of Goa has issued a Circular dated 7th April, 2003 which states that in case of access road, it must be for at least 10 households. It also states that proposal should be for genuine and bonafide serving public purpose and this should be clearly indicated in such proposal. The officer having his office in the proximity should be appointed to conduct acquisition proceedings and at the time of processing the proposal u/s 5A inquiry report from the LAO should be studied carefully and specific recommendations should be given by the Collector. In guideline No. 5, it is stated that if the acquisition of land is for a company, it should be clearly stated the efforts to purchase land in the open market failed and why acquisition was required. In Motibhai Vithalbhai Patel and Anr. v. The State of Gujarat and Anr.(supra), relied upon by the learned Advocate General, the Hon''ble Division Bench considered acquisition of land for expansion of private company. The Company wanted additional land for manufacturing some life saving drugs which were otherwise required to be imported. The consideration is in this background. Raja Anand Brahma Shah v. The State of Uttar Pradesh and Ors. (supra) considers acquisition of land for a company which was engaged in production of cement i.e. a commercial enterprise. The objection was that the lime stone extracted from the acquired land was to be sold for earning profit. Respondent State before the Hon''ble Apex Court contended that production of cement was important in national interest. In para 3, Hon''ble Apex Court concluded that declaration u/s 6 was final, except where it was under colourable exercise of power. In Sooraram Pratap Reddy and Ors. v. District Collector, Ranga Reddy District and Ors. (supra), Hon''ble Apex Court has stated that interference in policy matters without illegality is not permitted. The judgment shows wider connotation given to public purpose. In para 119, the Hon''ble Apex Court has observed that Government is to be the best judge for finding out whether acquisition is for public purpose or not and a writ Court will not interfere normally and substitute its judgment for the same. As against these judgments cited by the learned Advocate General, petitioners rely upon Srinivasa Cooperative House Building Society Ltd. v. Madam Gurumurthy Sastry and Ors. (supra) where the Hon''ble Apex Court has stated in para 8 that Sections 44A and 44B in the Land Acquisition Act intended to safeguard public interest and company acquiring land for a public purpose in Chapter VII may, after the acquisition has become final, divert the land for private profit motive, defeating the public. In this background, difference between private company and Government company is also considered. In para 4 it has been observed that the Land Acquisition Act recognizes dichotomy, viz. acquisition for a public purpose in Chapter II and acquisition for a private purpose of a type restricted in Chapter VII. There is no provision in the Act to show that when land is required for company it may also be for a public purpose. In State of Punjab and Anr. v.

Gurdial Singh and Ors. (supra) the Hon''ble Apex Court has, in para 9, stated that legal malice is distinct from personal malice and it is also known as colourable exercise of power. Fraud on power voids the order if it is not exercised bonafide for the end designed. General Government Servants Cooperative Housing Society Ltd. Agra v. Sh. Wahab Uddin and Ors. (supra), considered Rule 4 of Land Acquisition (Companies) Rules, 1963 and examined the facts where there was no application of mind by Land Acquisition Committee as required by appropriate Government. When the Collector submitted his inquiry report u/s 5A and not under Rule 4, notification u/s 6 was found to be invalid. In State of Gujarat and Anr. v. Patel Chaturbhai Narsibhai and Ors. (supra), again provisions of Rule 4 of Land Acquisition (Companies) Rules, 1963 are looked into and when failure thereof was noticed, it was held that inquiry u/s 5A could not be held and acquisition proceedings stood vitiated. In Devinder Singh and Ors. v. State of Punjab and Ors. (supra), the source of funds to cover the cost of acquisition has been stated to be the basis for adopting procedure prescribed either under Part II or Part VII. In para 16, the Hon''ble Apex Court has considered this aspect in detail. In the present matter, it is not necessary for us to go into more details at this stage. In the recent Judgment in Urmila Roy and Ors. v. Bengal Peerless Housing Development Co. Limited and Ors. reported at (2009) 5 SCC 242, the Hon''ble Apex Court has again considered the same question and has found that when compensation is being paid from public funds, procedure envisaged in Part II may be validly applied.

17. Here the note dated 10.11.2006 prepared for cabinet mentions the proposal in para 6. It is mentioned in the said para 6 that the Government is bound to provide necessary infrastructure to facilitate the business and industry which indirectly benefits the State by way of revenue to direct and indirect taxes and by a large extent through providing employment opportunities. It has been further observed that such proposal can also help in improving infrastructural facilities to the public "without any financial burden on the public funds". The Secretary (Mines) Shri Raajiv Yaduvanshi has further observed that it also helps to reduce the congestion on the already burdened road network. This proposal is approved by the Hon''ble Cabinet on 10.11.2006. The note as such shows that the acquisition shall not to cause any financial burden on the public funds. However, the report of the LAO mentions the Director of Mines and Geology as the acquiring department. In view of all these, we feel it proper that the matter should be sent back. We hold that the matter deserves to be sent back to the LAO for holding fresh inquiry u/s 5A of the Land Acquisition Act on all objections already filed by the petitioners, in accordance with law.

18. In the circumstances, the Award, in so far as it affects the lands of the petitioners, as also Notification u/s 6 of the Land Acquisition Act dated 6.9.2007 pertaining to their lands, are quashed and set aside. The LAO to proceed further in the matter in accordance with law. Rule is made absolute with no order as to costs.