

(2007) 07 CAL CK 0029

In the Calcutta High Court

Case No : FMA No's. 671 of 2004 and 790 of 2006

Bengal Peerless Housing Development Co. Ltd.

APPELLANT

Vs

Urmila Roy and Others
 Krishna Majumdar and Others
Vs State of West Bengal and Others

RESPONDENT

Date of Decision : 02-07-2007

Acts Referred:

Constitution of India, 1950 — Article 15(1), 15(4), 15A, 226

Land Acquisition Act, 1894 — Section 11, 11A, 18, 2(8), 3

West Bengal Housing Board Act, 1972 — Section 17, 18, 19, 2(8)(A), 20

Citation : (2007) 3 CHN 640 : (2009) 1 ILR (Cal) 193

Hon'ble Judges : S.S. Nijjar, C.J.; Pinaki Chandra Ghose, J

Bench : Division Bench

Advocate : Balai Chandra Roy, Advocate General, Prasenjit Basu, Somnath Ghosh, A.N. Banerjee and Ziaul Islam, in FMA Nos. 671-72/2004 and Amit Sen and Sudipta Chakraborty, in FMA No. 790/06, for the Appellant; Debasish Kundu, Subhas Bhattacharyya, Subhasis Chakraborty, Pratik Prakash Banerjee and Rajendra Nath Barik, for the Respondent

Judgement

S.S. Nijjar, C.J.—These appeals (FMA Nos. 672 of 2004 and 671 of 2004) have been filed by the State of West Bengal (hereinafter referred to as "the State") and Bengal Peerless Housing Development Co. Ltd. (hereinafter referred to as "The Bengal Peerless") against the judgment of the learned Single Judge dated 18.5.2004 passed in W. P. No. 10051/2002/2004 whereby the learned Single Judge has disposed of the writ petition by setting aside the land acquisition proceedings being L.A. Case No. 4/14 of 2000-2001 initiated by the State in respect of the land owned by the respondents. FMA No. 790 of 2006 has been filed by Smt. Krishna Majumdar and others. This common judgment will dispose of all the aforesaid three appeals, as the facts and the law involved are common.

2. Two facts as called out from the judgment of the learned Single Judge and the pleadings of the parties are as under:

Respondent Nos. 1 to 4 claim to be owners of 6.78 acres of land. According the

respondents, they purchased the aforesaid land with a view to develop the same by construction of an International School, a Cultural Centre, I. T. Park and Housing Complex. They had been in negotiations with the West Bengal Housing Board (hereinafter referred to as "The Housing Board"). However, before any project could be finalised, notification u/s 4(1) of the Land Acquisition Act, 1894 (hereinafter referred to as "the Act") was issued on 12.12.2000 seeking to acquire the land measuring 5.9275 hectares (12.67 acres) for implementation of a Housing Scheme. The respondents were given to understand by the officers of the Housing Board that in the event, they did not prefer any objection to the Notification, the Housing Board would be inclined to sanction the project of the respondents and also allow them to participate in the same. The respondents, therefore, filed only a token reply on 8.3.2001 (Annexure P-2 to the writ petition) but did not seriously object to the proposed acquisition proceedings. Thereafter, declaration u/s 6(1) of the Act dated 29.11.2001 was published in the "Asian Age" on 4.12.2001. Subsequently, the respondents came to know that the land had been acquired for the purpose of handing over the same for development and implementation of a Housing Scheme by the Housing Development Co. Ltd. (hereinafter referred to as "The Bengal Peerless"). Thereafter, the respondents also came to know that the Collector had passed an award, L. A. Case No. 4/14 of 2000-2001 on 22.9.2003. The respondents came to know about it when notice was received by them on 16.2.2004. Through this notice, respondent Nos. 1 to 4 were informed that since the actual ownership and names of awardees could not be ascertained, the compensation amount has been deposited u/s 31(2) of the Act with the learned Special L. A., Judges' Court, Alipore. These respondents, therefore, filed Writ Petition No. 10061(W) of 2004 challenging the acquisition proceedings. In the writ petition, it has been pleaded that the land acquisition proceedings have lapsed by efflux of time. It was pleaded that the declaration u/s 6 of the Act had been published on 29.11.2001 and the award has been made on 22.12.2003. Since it was beyond a period of two years, entire acquisition proceedings have lapsed by operation of Section 11A of the Act. It was also the pleaded case of the petitioners that the declaration was not published in the locality as required u/s 6(2) of the Act. Therefore, the date of declaration will be deemed to be 4.12.2001 at the latest, when the same was published in the newspaper. Since the acquisition proceedings had lapsed by operation of law, the question of the petitioners withdrawing the compensation amount or challenging the same does not arise. However, without prejudice to their rights and conditions in the writ petition, the petitioners have been advised to file by way of abundant caution applications u/s 18 of the Act. It has been pleaded that under the garb of "public purpose", the authorities have acquired the lands for private purpose and for the benefit of the Bengal Peerless. In the land acquisition proceedings, the nature of the proposed housing scheme has not been specified. Therefore, it cannot be said to be a valid public purpose. In any event, the respondent Nos. 1 to 4 had evinced similar, if not, better interest for development of the land. Since the implementation of the project by Bengal Peerless is commercial in nature, there is no difference between the projects that

were submitted by respondent Nos. 1 to 4 and the Bengal Peerless. The purported acquisition of land is colourable exercise of power. This according to respondent Nos. 1 to 4 is evident from the fact that the name of Bengal Peerless, was not mentioned in the Notifications under Sections 4 and 6. It was mentioned for the first time in Notification u/s 9. This has deprived them of their valuable right to file objections u/s 5A of the Act. Neither the State nor the Bengal Peerless had filed any affidavit-in-reply. However, the entire record of the land acquisition was produced before the learned Single Judge who has proceeded to decide the writ petition on the basis that "all the allegations made in the writ petition have been deemed to be treated as denied". On examination of the record, the learned Single Judge has come to the conclusion that the Notification u/s 4 of the Act, was duly made on 4.12.2000 and published in two newspapers i.e. "the Asian Age" and "Ganashakti" on 8.12.2000 and 10.12.2000, respectively. It has also been held that declaration u/s 6 of the Act has been published in the Calcutta Gazette on 29.11.2001 and two daily newspapers in English and Bengali i.e. "the Asian Age" and "Ganashakti" on 4.12.2001. It is further observed that the substance of the declaration was given publicity in the locality on 11.1.2002. Furthermore, the survey has been completed u/s 8 and notice u/s 9 had been given in the locality on 3.7.2002 and 4.7.2002. It is further noticed by the learned Single Judge that in the initial declaration made u/s 4 of the Act in the very first line, it has been stated that the land is likely to be needed for a public purpose viz. for implementation of a housing scheme. The learned Single Judge concludes that it appears from the Notification that the Government wanted to take the land for "public purposes". The learned Single Judge has further come to the conclusion that it was necessary for the Government to comply with the provisions of both the Land Acquisition Act and the West Bengal Housing Board Act, 1972 (hereinafter referred to as "the 1972 Act"). It is accepted by the learned Single Judge that the Government used to acquire land and construct residential complex in and over such land through the Housing Board. However, since the amendment in the Housing Board Act in the year 1993 by introduction of Section 27A, the Government can also entrust a Joint Sector Company to execute a housing scheme with the previous approval of the State of Government. On perusing the record, the learned Single Judge observed that the proposal for the Housing Scheme has been initiated at the instance of the Bengal Peerless. Neither an approval of the Government was taken for the purpose of entrustment of the Scheme for execution nor it appears from the file that the Government was satisfied or the Housing Board was satisfied that for public interest, the land is to be entrusted with the Joint Sector Company i.e. Bengal Peerless to execute the Scheme. The Government also failed to prepare any budget for the execution of the Scheme. The Scheme also does not disclose as to how many units/flats would be constructed and out of the said flats, how many are meant for LIG and MIG Sectors. It is concluded by the learned Single Judge that the provisions of the 1972 Act were not at all followed. It is further held that it appears from the record that the intention of the Government is to arrange for profit of the Bengal Peerless. Therefore, the acquisition was not for a public

purpose. Learned Single Judge has held that the whole process of acquisition is mala fide as it appears from the record.

3. At this stage, it may be noticed that W. P. No. 10002(W) of 2002 was also filed by some other owners of the land challenging the same acquisition. The aforesaid writ petition was dismissed by the learned Single Judge (Justice Chattopadhyay) on 16.9.2003. Therein it has been held that the land has been acquired for a public purpose in accordance with the provisions of law. It has been categorically observed that the acquisition proceedings are not vitiated on the ground of colourable exercise of power. It has been categorically held that the State was not seeking to acquire the land in question for a company. This judgment was brought to the notice of the learned Single Judge. It has, however, been distinguished by the learned Single Judge on the ground that certain correspondence between the Bengal Peerless and the Housing Board was not brought to the notice of Justice Chattopadhyay. The learned Single Judge further observed that from the judgment, it appears that the Counsel for the petitioners conceded that the land is being acquired for public purpose.

4. Learned Advocate General appearing in both the approach has submitted that the learned Single Judge has erred in law by not following the judgment of Justice Chattopadhyay. Even otherwise the main ground on which the writ petition had been filed was that the entire acquisition proceedings had lapsed as the award had not been announced within a period of two years of the Notification u/s 6. He submits that a bare perusal of the relevant record would show that there is no infringement of Section 11A of the Act. He points out that the Notification u/s 6 was issued on 11.1.2002. The award was given by the Collector on 22.12.2003. According to the learned Advocate General the relevant date for the purposes of Section 11A in this case would be 11.1.2002, when the notification u/s 6 was published in the locality. In support of this submissions, learned Advocate General has made a reference to a letter dated 20.3.2002 written by the Deputy Secretary to the Collector with regard to the issuance of order u/s 7 of the Land Acquisition Act in respect of acquisition of 12.67 acres of land in Mauza Barakhola, Jurisdiction list No. 21, P.S. Kasba, District South 24-Parganas. This precisely was the land that was acquired. In this communication, it is mentioned that declaration u/s 6 of the Act dated 29.11.2001 was published in the Calcutta Gazette on 29.12.2001 followed by the publication in two newspapers on 4.12.2001 and in the locality on 11.1.2002. Therefore, the award cannot be said to be beyond the period prescribed u/s 11A. A perusal of the judgment of the learned Single Judge would show that although the submissions with regard to the lapsing of the acquisition proceedings have been noticed but no firm finding has been recorded thereon. However, the learned Single Judge has clearly noticed that the substance for the declaration was given publicity in the locality on 11.1.2002. Therefore, we are of the opinion that the submission of the learned Advocate General merits acceptance that the provisions of the Land Acquisition Act had been complied with and acquisition proceedings could not be said to have elapsed. The learned Advocate General next submitted that since

the writ petition was based only on the submission that the acquisition proceedings has lapsed in view of Section 11A of the Act, it deserved to be dismissed. We are unable to accept this submission. We have noticed the pleadings earlier and it is quite clear that the acquisition proceedings were challenged on a number of grounds. Learned Advocate General further submitted that the writ petition itself was not maintainable as the petitioners had filed references u/s 18 of the Act. The writ petition was filed on 9.3.2004 and the reference u/s 18 had been made on 13.3.2003. The fact that the respondents had made reference u/s 18 of the Act is apparent from the pleadings. It has been categorically stated in the writ petition that although the land acquisition proceedings had lapsed, the petitioners had been advised to file references u/s 18 of the Act. Once the petitioner had filed the references u/s 18 of the Act, the land acquisition proceedings could not have been challenged. In support of this submission, learned Advocate General has relied on the judgment of the Supreme Court in the Govt. of A.P. and Ors. v. Kolluti A Obi Reddy and Ors. 2005(6) SCC 493 and The Municipal Council, Ahmednagar and Another Vs. Shah Hyder Beig and Others, . We are of the opinion that the submissions of the learned Advocate General merit acceptance, in view of the clear enunciation of law, by the Supreme Court.

5. In the case of Shah Hyder Beig (supra), it has been held as follows:

17. In any event, after the award is passed no writ petition can be filed challenging the acquisition notice or against any proceeding thereunder. This has been the consistent view taken by this Court and in one of the recent cases (C. Padma v. Dy. Secy. to the Govt. of T. N.) this Court observed as below: (SCC p. 628, para 4)

4. The admitted position is that pursuant to the notification published u/s 4(1) of the Land Acquisition Act, 1894 (for short "the Act") in GOR No. 1392-Industries dated 17.10.1962, total extent of 6 acres 41 cents of land in Madhavaram Village, Saidapet Taluk, Chengalpattu District in Tamil Nadu was acquired under Chapter VII of the Act for the manufacture of Synthetic Rasina by Tvl. Reichod Chemicals India Limited, Madras. The acquisition proceedings had become final and possession of the land was taken on 30.04.1964. Pursuant to the agreement executed by the company, it was handed over to Tvl. Simpson and General Finance Co. which is subsidiary of Reichold Chemicals India Lts. It would appear that at a request made by the said company, 66 cent of land out of one acre 37 cents in respect of which the appellants originally had ownership was transferred in GOMs No. 816-Industries dated 24.03.1971 in favour of another subsidiary company. Shri Rama Vilas Service Ltd., the 5th respondent which is also another subsidiary of the company had requested for two acres 75 cents of land; the same came to be assigned on leasehold basis by the Government after resumption in terms of the agreement in GOMs No. 439-Industries dated 10.5.1985. In GOMs No. 546-Industries dated 30.03.1986, the same came to be approved of. Then the appellants challenged the original GOMs No. 1392-

Industries dated 17.10.1962 contending that since the original purpose for which the land was acquired had ceased to be in operation, the appellants are entitled to restitution of the possession taken from them. The learned Single Judge and the Division Bench have held that the acquired land having already vested in the State, after receipt of the compensation by the predecessor-in-title of the appellants, they have no right to challenge the Notification. Thus, the writ petition and the writ appeal came to be dismissed.

18. Similar is the view in an earlier decision of this Court in the case of *Municipal Corporation of Greater Bombay v. Industrial Development Investment Co. (P) Ltd.* Incidentally, the decision last noted was also on land acquisition and requisition under the Maharashtra Regional and Town Planning Act, 1966 and in para 29 of the Report this Court observed: (SCC p. 520)

29. It is thus well-settled law that when there is inordinate delay in filing the writ petition and when all steps taken in the acquisition proceedings have become final, the Court should be loath to quash the notifications. The High Court has, no doubt, discretionary powers under Article 226 to quash the notification u/s 4(1) and declaration u/s 6. But it should be exercised taking all relevant factors into pragmatic consideration. When the award was passed and possession was taken, the Court should not have exercised its power to quash the award which is a material factor to be taken into consideration before exercising the power under Article 226. The fact that no third-party rights were created in the case is hardly a ground for interference. The Division Bench of the High Court was not right in interfering with the discretion exercise by the learned Single judge dismissing the writ petition on the ground of laches.

6. In the case of *Kolluti A. Obi Reddy (Supra)*, it has been observed as under:

5. We shall first deal with the plea relating to the maintainability of the writ petition filed after long passage of time,. In a catena of decisions this Court has held that the High Court should not entertain writ petitions when there is delayed challenged to the Notification u/s 4(1) and declaration u/s 6 of the Act (See *Aflatoon v. Lt. Governor of Delhi*, *State of T. N. v. L. Krishnan* and *Municipal Corporation of Greater Bombay v. Industrial Development Investment Co. (P) Ltd.*).

6. The High Court was moved in these matters by writ petitioners long after Section 4(1) notification and Section 6 declarations were made. On that ground alone the writ petitions should not have been entertained. Additionally, the respondents clearly accepted that references in terms of Section 18 were pending. The High Court has not even indicated any reason as to why the writ petitions were being entertained when the references in terms of Section 18 were pending. On that score also the High Court's judgment becomes unsustainable.

7. The aforesaid observations make it abundantly clear that the writ petition is not maintainable. It ought not to have been entertained.

8. Learned Advocate General thereafter submitted that the award could not be said to be mala fide in the absence of proper pleadings in the writ petition. Again there is merit in the submission made by the learned Advocate General. It is a settled proposition of law that allegations of mala fide have to be clearly pleaded and proved. The burden of proof lies heavily on him who seeks to avoid an order or action of the competent authority on the grounds of mala fide or colourable exercise of power. Therefore, in our opinion in the absence of the pleadings, the learned Single Judge erred in law in holding that the whole process of acquisition is mala fide. The learned Single Judge has wrongly held that mala fide is apparent from the record. In fact, the attention of the learned Single Judge has not been drawn to a number of vital documents which were on record and would clearly go to show that all the provisions of both the Land Acquisition Act as well as the Housing Board Act have been complied with. It has been wrongly held by the learned Single Judge that the Housing Scheme was not prepared with the approval of the Government. The findings are clearly erroneous in view of the documents which have been placed on record. The Housing Scheme has been appended and placed on record with the FMA No. 671/04 (MAT No. 2180 of 2004) CAN No. 5973 of 2004 seeking stay of the operation of the judgment of the learned Single Judge. This document was on the record, but has not been adverted to by the learned Single Judge. A perusal of the Scheme clearly shows that the Single Judge has wrongly held that the scheme is not for a public purpose as no amount of compensation has been paid by the Government. On the contrary, the State has been very transparent in all the proceedings. The public purpose has been mentioned in the Notification u/s 4 as well as in the Notification u/s 6. Even otherwise the notifications need not have mentioned the public purpose as there is no requirement under any of the provisions of the Act. Merely because the name of the Bengal Peerless was mentioned for the first time in the Notification u/s 9, would not lead to the conclusion that the acquisition proceedings are a colourable exercise of power. The entire history of the acquisition proceedings has been accurately set out by the appellants in the application for the stay of the judgment. A perusal thereof shows that the 1972 Act enacted for the establishment of a Housing Board with a view to solve the acute shortage of housing. Section 2(8) of the Act defines a Housing Scheme to mean a Scheme made under the Act which includes any Housing Scheme entrusted to the Board by the State Government u/s 17(2) of the 1972 Act. The Housing Board is a body corporate as provided under Sections 3 and 5 of the 1972 Act. All members of the Board are appointed by the State Government and the Chairman is the Minister-in-charge of the Housing Department of the State Government. Sections 17 to 27 of the 1972 Act provides for powers and duties for the Board to undertake Housing Schemes. u/s 17(2), the Government may entrust to the Board the framing and execution of any Housing Scheme. Sections 19 to 23 enable the Board to prepare budgetary provisions for execution of the Housing Scheme and to submit the same for approval of the State Government. Thereafter, the Scheme is to be published. Section 27A of the 1972 Act inserted in the Act by Amendment Act of 1993 it was inserted to assist the Housing Board

in execution of the Housing Scheme as the Housing Board was facing tremendous financial crunch. This section enables the Housing Board to entrust the execution of a Housing Scheme to a joint venture company. Joint Sector Company is defined u/s 2(8)(A) of the 1972 Act as amended by the Amendment Act of 1993. This section defines the Joint Sector Company to mean a company in relation to which 50% of Directors of the Board of Directors is nominated by the State Government. The Bengal Peerless was incorporated as Joint Sector Company to execute building Schemes in collaboration with the State Government. On 13.09.1993, a Memorandum of Understanding was entered by and between the Board and the Bengal Peerless for the purpose of incorporation of the Joint Sector Company. It was agreed that the Joint Sector Company would undertake Housing Construction under the guidance and control of the State Government and the Housing Board. The Bengal Peerless was duly incorporated as a Joint Sector Company on 20.05.1994. It was provided that the Housing Board and the Bengal Peerless will have equal share capital of 49.5% and balance 1% will be held by the public. This company is run by an independent Board of Directors. The Board of Directors consists of 9 Directors, out of which five are nominated by the State Government. Chairman of the Board of Directors is nominated by the State Government and thereby the State Government has the majority number of Directors in the Board and as such the State Government has full and complete control over the management and functions of the Bengal Peerless. As noticed earlier a substantial amount of the compensation amount has been paid by the Housing Board. In view of these facts, in our opinion, it would not be open to the petitioners to argue that the land has been acquired to benefit a purely private limited company. In support of his submissions, learned Advocate General relied on a judgment of the Supreme Court in the case of State of Gujarat and Another Vs. Sankalchand Khodidas Patel (Dead) by L.Rs., . In this judgment, it has been clearly held by the Supreme Court as under:

9. It appears that the High Court arrived at its finding about the abandonment for the further reason that the agreement Ex. 104 was executed by the co-operative society concerned on June 17, 1960, it is however not disputed before us that the agreement was obtained under the impression that the land had been acquired for a company under Part VII of the Act. But this was not so because it had been made quite clear in the notification Ex. 58, which was issued u/s 4 of the Act, that the acquisition was for a "public purpose" namely, for the construction of house"s for New Sarvodaya Co-operative Housing Society Ltd. and there was nothing to show that the acquisition was for any company. The notification u/s 6 of the Act for any company. The notification u/s 6 of the Act was also to the same effect, and in that notification it was stated at four important places that the land was needed for the "public purpose" specified in Column 4 thereof. There was therefore nothing in the two notifications to show that the notification was for a company, and there was no justification for arriving at a contrary decision merely because of the execution of agreement Ex. 104 by the Society under a mistaken impression.

10. The High Court has gone on to state that as the words "or at the expense of a local body or corporation or company as the case may be" were not scored off from the notification u/s 6 of the Act, the language of the notification supported its finding that the acquisition was for a company, and not for a public purpose. It is true that the unnecessary words were not scored off, but the very fact that it was stated at as many as four places in that very notification that the acquisition was inadvertent and could not justify the finding that the land was not acquired for a public purpose but for a company.

9. With regard to the payments, the learned Advocate General has pointed out that before issuance of the notification u/s 6 of the Act, the Land Acquisition Collector issued a letter to the Housing Department of the Government of West Bengal on 13.11.2001 for placement of Rs. 3.00crores or 50% of that amount for acquisition of land. The aforesaid memo was forwarded by the Government to the Board for placement of funds with a note in the letter that the land was proposed for acquisition with the initiative of the Bengal Peerless. This note, according to the learned Advocate General, has been misconstrued by the learned Single Judge. In fact the purpose of the note was merely to emphasize that the necessary funds be made available as the publication of the Notification u/s 6 would be held up due to the non-deposit of the funds. It has, therefore, been emphasized that necessary action be taken to see that the proposal be not lapsed for non-deposit of fund in time. On 23.11.2001, the Board requested the Bengal Peerless to arrange Rs. 1.70 crores for payment to the Land Acquisition Collector. Therefore, a cheque for an amount of Rs. 1.67 crores was sent by the Bengal Peerless to the Land Acquisition Collector through the Housing Board. Thereafter, the Government requested the Housing Board through Memo No. 611 dated 30.10.2003 to place balance compensation amount of Rs. 82,04,134/- by forwarding letter dated 04.11.2003. The Housing Board duly sent a cheque for the balance compensation amount to the Housing Department. In our opinion, the aforesaid facts would make it apparent that the compensation has been duly paid by the Housing Board and the conclusion arrived at by the learned Single Judge that no amount has been paid by the Housing Board is against the record. Since a substantial amount of compensation has been paid by the Board, the learned Single Judge, in our opinion, has wrongly come to the conclusion that the amount of compensation has not been paid from the public funds. This view of ours will find support from the judgments of the Supreme Court in the case of Sankalchand Khodidas Patel (supra) and the case of Pratibha Nema and Others Vs. State of M.P. and Others, . We have already reproduced reproduced paras 9 and 10 of the judgment rendered in the case of Sankalchand Khodidas Patel (supra). In the case of Pratibha Nema (supra), it has been held as follows:

9. We may not advert to Section 6. It provides for a declaration to be made by the Government or its duly authorized officer that a particular land is needed for a public purpose or for a company when the Government is satisfied after considering the report, if may, made u/s 5A(2). It is explicitly made clear that such declaration shall be subject to the provisions of Part VII of the Act which

bears the chapter heading "Acquisition of Land for companies". Thus, Section 6 reiterates the apparent distinction between acquisition for a public purpose and acquisition for a company. There is an important and crucial proviso to Section 6 which has a bearing on the question whether the acquisition is for a public purpose or for a company. The second proviso lays down that ?

no such declaration shall be made unless the compensation to be awarded for such property is to be paid by a company, or wholly or partly out of public revenues or some fund controlled or managed by a local authority.

Explanation 2 then makes it clear that where the compensation to be awarded is to be paid out of the funds of a corporation owned or controlled by the State, such compensation shall be deemed to be compensation paid out of the public revenues. Thus, a provision for payment of compensation, wholly or partly, out of public revenues or some fund controlled or managed by a local authority is sine qua non for making a declaration to the effect that a particular land is needed for a public purpose. Even if a public purpose is behind the acquisition for a company, it shall not be deemed to be an acquisition for a public purpose unless at least part of the compensation is payable out of public revenues which includes the fund of a local authority or the funds of a corporation owned or controlled by the State. However, it was laid down in *Somawanti* case that the Notification u/s 6(1) need not explicitly set out the fact that the Government had decided to pay a part of the expenses of the acquisition or even to state that the Government is prepared to make a part of contribution to the cost of acquisition. It was further clarified that the absence of a provision in the budget in respect of the cost of acquisition, whole or part, cannot affect the validity of the declaration. The majority Judges of the Constitution Bench also clarified that a contribution to be made by the State need not be substantial and even the token contribution of Rs. 100 which was made in that case satisfied the requirements of the proviso to Section 6(1). The contribution of a small fraction of the total probable cost of the acquisition does not necessarily vitiate the declaration on the ground of colourable exercise of power, according to the ruling in the said case. Following *Somawanti*, the same approach was adopted in *Jaga Ram v. State of Haryana*. The question, whether the contribution of a normal amount from the public exchequer would meet the requirements of the provision to Section 6, had again come up for consideration in *Manubhai Jehtalal Patel v. State of Gujarat*. D. A. Desai, J. after referring to *Somawanti*, speaking for the three-Judge Bench observed thus: (SCC p. 555, para 4)

It is not correct to determine the validity of acquisition keeping in view the amount of contribution that the motivation for making the contribution would help in determining the bona fides of acquisition. Further in *Malimabu* case contribution of Re. 1 from the State revenue was held adequate to hold that acquisition was for public purpose with State fund. Therefore, the contribution of Re. 1 from public exchequer cannot be dubbed as illusory so as to invalidate the acquisition.

10. In Somawanti case, the following note of caution was sounded: (AIR p. 169, para 52)

We would, however, guard ourselves against being understood to say that a token contribution by the State towards the cost of acquisition will be sufficient compliance with the law in each and every case. Whether such contribution meets the requirements of the law would depend upon the facts of every case". Indeed the fact the State's contribution is nominal may well indicate, in particular circumstances, that the action of the State was a colourable exercise of power. In our opinion "part" does not necessarily mean a substantial part and that it will be open to the Court in every case which comes up before it to examine whether the contribution made by the State satisfies the requirement of the law. In this case, we are satisfied that it satisfies the requirement of law.

11. A three-Judge Bench of this Court in *Indrajit C. Parekh v. State of Gujarat* without much of elaboration, relegated the observations in the above passage to very narrow confines by stating thus: (SCC p. 827, para 3)

In view of the decision in this case that a nominal contribution out of public revenues would satisfy the requirement of the proviso to Section 6(1) the observation "whether such contribution meets the requirement of the law would depend upon the facts of every case" must necessarily be taken to refer to the requirement of some law other than the proviso to Section 6(1). No such law was pointed out to us and it is not necessary for the purposes of this appeal to enter on discussion as to what such other law could be.

XXX XXX XXX 22. Thus the distinction between public purpose acquisition and Part VII acquisition has got blurred under the impact of judicial interpretation of relevant provisions. The main and perhaps the decisive distinction lies in the fact whether the cost of acquisition comes out of public funds wholly or partly. Here again, even a token or nominal contribution by the Government was held to be sufficient compliance with the second proviso to Section 6 as held in a catena of decisions. The net result is that by contributing even a trifling sum, the character and pattern of acquisition could be changed by the Government. In ultimate analysis, what is considered to be an acquisition for facilitating the setting up of an industry in the private sector could get imbued with the character of public purpose acquisition if only the Government comes forward to sanction the payment of a nominal sum towards compensation. In the present state of law, that comes to be the real position.

Whether the second proviso to Section 6(1) has been complied with.

10. From the above it becomes crystal clear that the contribution to be made by the State need not be substantial and even a token contribution of Rs. 100/- would satisfy the requirement that the compensation has been paid out of public funds.

11. We are also of the opinion that the learned Single Judge has erroneously held

that the Housing Scheme had not been prepared in accordance with the provisions of the 1972 Act. It would appear that a number of facts have completely escaped the notice of the learned Single Judge. From a perusal of the record, it becomes apparent that the Scheme was in fact formulated by the State Government after due deliberations. A meeting was held on 17.5.2000 at the Chamber of the Secretary, Housing Department in the presence of the Commissioner and the Land Acquisition Officer of the Housing Board. The proposed Scheme for the land to be acquired was fully discussed in the aforesaid meeting. In the meeting note, it is clearly mentioned that the Scheme has been formulated in order to achieve the object to the Government to provide Housing to the weaker sections of the society with a modest living condition. The Scheme clearly mentions that there shall be 1800 dwelling units meant for the people from all sections of the society, namely, low, middle and higher income group. At least 50% of the dwelling units shall be reserved for low/middle income group of the people. The price for low income group of flats shall be subsidised, as per the policy of the Government. The price of flats for middle income group shall be at "no profit no loss basis". For healthy cross subsidy, the price of HIG flats shall be finalised by the Board. The Scheme also provides for setting up a shopping complex to cater for the needs of the residents. It is also proposed to provide playground, children park, rainwater harvesting and community centre etc. For sewage disposal a treatment plant of suitable capacity shall also be installed. The Scheme also talks about eligibility criteria for allotment of flats. It provides that the price of the flats shall be as per the policy of the Government depending upon the total monthly income for different categories of people followed by the Board in their other projects. The Scheme also provided that no dwelling units shall be allotted to any person/persons having landed property within Calcutta metropolitan area. Significantly, the Scheme also provides as follows:

The price as may be decided by the Board before implementation of the Project shall remain firm throughout the tenure of implementation of the Project and no escalation in any account shall be charged for any of the dwelling units of the any category.

This non-escalation clause indicates that the Scheme is not motivated by profiteering but is for the benefit of the poor sections of the society.

12. The Scheme also provides for distribution of plots through public lottery, subject to the dwelling units reserved under the Board's quota, as per their policy. The Scheme also provides that the project shall be completed within five years from the date of the commencement of the work. On 23.5.2000, it was directed by the Joint Secretary that we may now proceed with the land acquisition and the Land Acquisition Collector be requested to take necessary action. In our opinion that on the basis of the aforesaid facts, the learned Advocate General has rightly submitted that the learned Single Judge has erroneously held that the Scheme had been initiated at the behest of the Bengal Peerless or that it has not complied with the provisions of the 1972 Act. We find

merit in this submission of the learned Advocate General also. In support of his submissions, he has relied on the judgment of the Supreme Court in the case of State of Tamil Nadu and others etc. Vs. L. Krishnan and others etc., . In this case the Supreme Court was considering Section 35 of the T.N. Housing Board. The aforesaid section is para materia to Section 17 of the Bengal Housing Board Act, 1972. The Supreme Court has held as follows:

16. In such circumstances, it would not be right to contend that unless a final and effective scheme prepared in accordance with the provisions of Chapter VII of the Housing Board Act is in existence, the Government cannot issue a notification u/s 4 of the Land Acquisition Act for acquiring the land required for execution of the schemes by the Housing Board. To repeat, the Housing Board is obliged to execute not only the Housing or improvement schemes prepared under the said Chapter but also certain other schemes referred to in Sections 35 and 36. For example, the Government may conceive of a particular scheme and ask the Housing Board to execute on such terms and conditions as the Government may specify. In such a situation, there is no question of preparing a housing or improvement scheme by the Housing Board in accordance with the provisions of the Housing Board over again. So far as the Scheme framed by the Government is concerned, there is no enactment governing it. It can, therefore, be a scheme as ordinarily understood. Similar would be the case where the scheme undertaken by a local authority is made over to the Housing Board by mutual agreement.

13. In our opinion, these observations of the Supreme Court are fully applicable to the facts and circumstances of the present case. The facts narrated above make it abundantly clear that the Housing Scheme has been prepared by the Government, after due consideration and it could not be said to have been initiated at the instance of the Bengal Peerless. Therefore, the learned Single Judge has erroneously held that the acquisition proceedings were null and void.

14. Mr. Kunduhas quite vehemently argued that the judgment of the learned Single Judge deserves to be upheld. The learned Counsel has taken us through the relevant record and the pleadings of the parties. On the issue as to whether the writ was maintainable, the learned Counsel has submitted that references u/s 18 were not filed before the filing of the writ petition. Therefore, the pleading with regard to "without prejudice..." in paragraph 15 of the writ petition is correct. He has also submitted that in fact a perusal of the record would clearly show that the petitioners were actually clamouring for the release of the land from acquisition. Learned Counsel made a reference to the letter dated 13.3.2003 in which it has been stated as follows:

The purchaser along with myself are now in the position of setting up an IT. Global village at the plot with Japanese assistance and would welcome your assistant in releasing the land so that the venture can start at the earliest.

15. The learned Counsel submitted that a similar request had been made on

8.3.2001. Since no reference was made u/s 18, therefore, the judgment relied upon by the Advocate General in the case of Government of A.P. (supra) is not relevant. We are not much impressed by this submission. A perusal of the letter dated 8.3.2001, clearly shows that the respondents No. 1 to 4 did not oppose or challenge the acquisition proceeding. The letter states as under:

To Date: 8th March, 2001 The Special Land Acquisition Officer South 24-Parganas, 5th Floor, New Treasury Buildings, Alipore, Kolkata ? 700027 Sir, Re: Barakhola Mouza J. L. No. 21 P. S. Kasba

This has reference to your acquisition notice dated 12.1.2001 for 12.67 acres land in Plot Nos. 125 and 126 of the subject mouza.

In this connection, I would like to submit that I am the power-of-attorney (Registered) holder of the successors of late Abhay Pada Pain who was the owner of the aforesaid plots as evident from the ROR. A copy of the P/A is enclosed for your kind perusal. Incidentally Plot No. 126 was duly demarcated showing the vested portions and the retained portions by the District authorities as per copy of the Map enclosed alongwith a copy of the Minutes of the meeting held in Chamber of the then ADM and L.R.O. South 24-Parganas on 20.3.1996.

Subsequently 13.56 acres of land was sold to the following parties and registered u/s 41 on 25.6.1999 of which deed copies are enclosed. Since the taxes has not been assessed as yet for value to ascertain additional stamp-duty, the same have not been paid so far. However, enquiries are under way, but in the meantime khazna has been paid up-to-date as per copies of receipts dt. 18.1.2001 enclosed herewith.

The transferees are:

(a) Sri Debabrata Choudhary : (b) Sri Shreekanta Ray : 6.00 acres (c) M/s. Anarean Estate Co. Ltd. : (d) Sri Swadesh Ghosh : (e) Sri Swapan Dey : (f) Smt. Illa Dey : 6.58 acres (g) Sri Saptashi Dey : (h) Smt. Basanti Ghosh : The aforesaid transferees did not raise any objection to Govt. acquiring. The land for housing, in fact, I had moved an idea to West Bengal Housing Board and willing to negotiate alongwith the transferees price for your acquisition.

Please do let me know for any further information and clarification/ assistance, as may be required.

Thanking you, I am

Enclosed Yours faithfully (a) copies of 8 Nos. deed sd/-Urmila Ray (b) copy of power-of-attorney Constituted Attorney of (c) copy of witness by ADM, DL, LRO Smt. Lily Paul (d) copy of Minutes of meeting dt. 26.3.96 Smt. Dolly Paul (e) copy of Khana receipts Smt. Mira Rani Basu C 735407 dt. Rs. 32,277/- C 735408 dt. 18.1.01 for Rs. 2709.

16. In view of the above, it would appear that the petitioners cannot now be permitted to challenge the acquisition. This view of ours will find support from

the judgment of the Supreme Court in the case of M.K. Ananda Rao Vs. State of Andhra Pradesh, . In this case, the Supreme Court has held as follows:

10... It has to be appreciated that a point of defence which has been wilfully or deliberately abandoned by a party in a civil case, at a crucial stage, when it was most relevant or material, cannot be allowed to be taken up later, at the sweet will of the party which had abandoned the point, or as a last resort, or as an afterthought. In fact in a case where a point has been wilfully abandoned by a party, even if, in a given case, such a conclusion is arrived at on the basis of his conduct, it will not be permissible to allow that party to revoke the abandonment if that will be disadvantageous to the other party.

17. In our opinion, the aforesaid observations of the Supreme Court would disentitle the respondent Nos. 1 to 4, to challenge the acquisition proceedings, especially in view of the facts noticed earlier.

18. Learned Counsel further submitted that the petitioners are bona fide purchasers of the land which have been acquired. They had all along wanted to set up an IT Park on the land. In spite of numerous representations having been made to the Government for release of the land from acquisition, the Government still went ahead with the acquisition. He has made a reference to one such representation made on 27.12.2004. This letter makes a reference to the earlier representations dated 8.3.2001 and 11.9.2003. In our opinion, these submissions have merely to be stated to be rejected. Notification u/s 4 has been published in accordance with the provisions of the Land Acquisition Act. This fact is even accepted by the learned Single Judge. Therefore, the reliance of the learned Counsel on the judgment of the Supreme Court in the case of the Collector (District Magistrate) Allahabad and Another Vs. Raja Ram Jaiswal, is wholly misplaced. Even otherwise what is argued by the learned Counsel is not pleaded. Faced with this situation, the learned Counsel for respondent Nos. 1 to 4 has argued that even though these facts have not been pleaded, they should not be disregarded as the omission is due to the bad draftmanship of the pleader. In support of this submission, learned Counsel relied on the judgment of the Supreme Court in the case of Surendranath Sud (Dead) by L.Rs. Vs. Standard Vacuum Oil Co. and Others, and Anil Kumar Gupta and Others Vs. State of U.P. and Others, .

19. We are unable to accept this submission. In the case of Surenderanath Sud (Dead) by L.Rs. (supra), the Supreme Court was dealing with a case where the very foundation of the action has been omitted from the pleadings. In these circumstances, it was observed, by Krishna Iyer, J. as under:

These two appeals by special leave stem from a suit instituted by the appellant (now represented by his legal representative, his widow) for rendition of accounts against the defendant-respondent, Standard Vacuum Oil Company Ltd. The respondent company has been taken over by the Hindustan Petroleum Corporation. We have heard Counsel on both sides. It is unfortunate that the

plaint has been drafted in a confused manner and the written statement, probably misled by the plaint, has also not brought out the real contention between the parties. Sorting out the documents and the other evidence in the case, we have discovered that the foundation for the action is Ex. P-9(a), a contract between Mr. Sud the plaintiff and the S.V.O.C, the defendant. The Courts, not having proper leadings before them, have not been able to approach the real issue arising in the case. The party mainly responsible for this misfortune is probably the plaintiff himself.

2. Even so, looking at the justice of the matter in the light of Ex. P-9(a), we are satisfied that the defendant-respondent should pay the plaintiff-appellant an amount which would represent the probable compensation in lieu of the claim made. We are overlooking the inartistic drafting, we are slurring over the true nature of the claim, we are not strictly interpreting the terms of the contract; but in an endeavour to do justice to the plaintiff (now represented by his legal representatives) we feel that it is appropriate to direct the respondent to pay a sum of Rs. 12,000/- grounding ourselves on a fair understanding of the terms of Ex. P-9(a) and the surrounding circumstances. The quantification part- is rough and ready because, in the circumstances; nothing else, than an intelligent guess can be made.

20. Lack of pleadings in the present case cannot be said to be a result of inartistic pleadings. The submission of the learned Counsel is merely an attempt to build a castle without any foundation. It is clearly an afterthought and a lacuna which cannot be permitted to be filled by oral submissions. In the case of Anil Kumar Gupta (supra) again the Supreme Court was considering a case where a glaring illegality, which was self-evident, and had not been raised. It concerned the difference in the nature of reservations under Articles 15(1) and 15(2) of the Constitution. Therefore, it was observed as under:

7. At the outset, we may mention a glaring illegality which has unfortunately not been raised in these writ petitions but it is not self-evident from the decisions of this Court. Under the revised notification dated 17.12.1994, three per cent of the seats have been reserved for candidates belonging to Uttar anchal areas. These, two reservations along with reservations in favour of physically handicapped, children of deceased/disabled soldiers and dependents of freedom fighters are treated as horizontal reservations. In other words, the reservations in favour of hill areas and Uttaranchal areas are understood and treated as reservations relatable to Article 15(1) of the Constitution and not as reservations in favour of ""socially and educationally backward classes of citizens or for the Scheduled Castes and Scheduled Tribes" within the meaning of Article 15(4) of the Constitution. It has been held by this Court in State of U.P. v. Pradip Tandon that the reservation of seats in favour of candidates belonging to hill areas and Uttarakhand areas are reservations within the meaning of Article 15(4) of the Constitution, i.e. they are reservations in favour of socially and educationally backward classes of citizens. This Court found that "the State has established

that the people in hill and Uttarakhand areas are educationally backward classes of citizens." It, therefore, follows that a separate horizontal reservation of six percent of the seats in favour of candidates from hill areas and Uttaranchal apart from and in addition to twenty-seven per cent reservation in favour of other backward class candidates is clearly illegal. Though this contention has not been specifically raised in these writ petitions, we must yet take notice of this circumstance while making the appropriate directions in these matters. It is indeed surprising that the State of Uttar Pradesh which is a party to the above decision has failed to bear it in mind. The said decision has also been referred to approvingly in *Indra Sawhney*. The State of Uttar Pradesh shall keep this in mind for future selections as also in respect of those which may be now under way and make necessary correctness.

21. Failure to plead the necessary facts with regard to the non-publication of notification u/s 4 of the Act, can hardly be styled as a glaring and self-evidence illegality.

22. Learned Counsel then submitted that "Government Company" is defined in the Land Acquisition Act. Bengal Peerless would not satisfy the test for a Government Company as laid down u/s 3(c) of the Land Acquisition Act as the Government does not hold 51% of the share capital. According to the learned Counsel for the acquisition to be legal, the provisions of both the Land Acquisition Act as well as the Housing Board Act have to be complied with. In the present case, the acquisition is contrary to both the Land Acquisition Act and the Housing Board Act. Learned Counsel also pointed out to the Notification u/s 4 which states that the land was required for a public purpose viz. for implementation of a housing scheme, but does not disclose who was to implement the Scheme. Again Section 6 Notification also does not disclose the agency which was to execute the Scheme. It is for the first time in the Notification u/s 9(3) that the Bengal Peerless has been mentioned as the company which will execute the Scheme. At the same time, the officials of the Housing Board had assured the petitioners that in case they did not object to the acquisition, their project would be considered favourably. Therefore, the petitioners have only filed token objections to the acquisition u/s 5. According to the learned Counsel, colourable exercise of the Government is further demonstrated from the fact that payments have been made by Bengal Peerless routed through the Housing Board. This has been specifically pleaded in the stay application by the State Government. Learned Counsel has made a particular reference to the documents attached with the stay application i.e. letter dated 23.11.2001 from the Housing Commissioner to the Managing Director of Bengal Peerless. In this letter, the Managing Director of the Bengal Peerless was requested to arrange to place Rs. 1.70 crores, 50% of the estimated amount in favour of the Land Acquisition Collector under intimation to the Housing Board. According to the learned Counsel the second instalment was also paid by Bengal Peerless through the Housing Board which is evident from the letter dated 4.11.2003 written by the Joint Housing Commissioner and Secretary to the Land

Acquisition Collector. These two documents read with the pleadings in paragraph 11 would clearly show that the payment has been made by the Bengal Peerless as the entire Housing Scheme had been initiated at the instance of the Bengal Peerless. In paragraph 11 of the stay application, it is clearly stated that "Might be initially it was the proposal of a Joint Sector Company namely the Bengal Peerless Housing Development Company Limited but such proposal was routed though by West Bengal Housing Board, having been approved and accepted by the State of West Bengal." We are unable to accept any of these submissions. As noticed earlier the entire payment of the compensation amount has been routed through the Housing Board. A substantial amount was actually paid by the Housing Board. Respondent Nos. 1 to 4 had themselves offered to participate in the Housing Scheme. In the letter dated 8.3.2001, it has been clearly admitted that the respondent Nos. 1 to 4 have not objected to the acquisition. They filed objections u/s 5A of the Act, and references u/s 6, but tried to retract the same. Merely because the name of Bengal Peerless has been mentioned in the Notice u/s 9, would not invalidate the statements with regard to the public purpose contained in the Notifications under Sections 4 and 6. Both these Notifications speak of acquisition of land by the State Government.

23. We may also notice some of the findings of Justice Chattopadhyay, on the same points, as we are of the opinion that the judgment in that case has been rendered on merits, in spite of the admission of the Counsel for the petitioners that the land had been acquired for a "public purpose". Justice Chattopadhyay notices the grounds on which the acquisition had been challenged. We may extract here only the most relevant grounds taken therein, as under:

(e) The original purpose of acquisition as appearing from the notice under Sections 4 and 6 of the Land Acquisition Act being for implementation of Housing Scheme at the public expenses and subsequently the same was challenged to a Housing Scheme for Bengal Peerless Housing Project which is a Joint Stock Company as appearing from the notice under Sections 9 and 11 of the Land Acquisition Act. This fact clearly shows that there was a change of purpose even before completion of the acquisition proceedings and the same is illegal. The expenses will be borne by the Joint Stock Company for construction and/or from the financial accommodation or by the intending purchasers from their fund or from their loan account.

(f) The notice under Sections 4 and 6 allegedly stated that the purpose of Acquisition of land is for the Government which is a public purpose but the same was issued in a colourable exercise of power vested in State as the land was actually required for a company which will appear from the Notice u/s 9 read with Section 11 of the Land Acquisition Act, 1894.

XXX XXX XXX (i) Although from the impugned notice it appears that the land of the petitioners would be acquired for public purpose but from the records it appears that the lands are being acquired for Bengal Peerless Housing Projects and the Government has got no manner of contribution for the said acquisition

proceeding and thus it appears that the lands have been acquired for the purpose of "Bengal Peerless Housing Projects" and the Government is acquiring the lands for them and there is no share of the contribution of fund by the Government- Since the lands as it appears have been acquired for the Company, no rules for acquisition of land for company has been followed.

XX XXX XXX (n) The respondent authorities are seeking to acquire the lands of the petitioners by making them landless and homeless and the notifications issued in this regard are illegal, as the same have been issued in colourable exercise of power.

(o) In the present case, State Government is going to ultimately hand over the said lands of the petitioners most illegally to Bengal Peerless Housing Projects and as such the entire acquisition proceeding is liable to be quashed.

24. Considering all the points, Justice Chattopadhyay has clearly held as follows:

At the time of hearing writ petition learned Counsel of the writ petitioners have admitted that the acquisition of the land in the instant case is for a public purpose. In any event, Hon"ble Supreme Court also in various decisions have already held that acquisition of land for the purpose of "Housing" is "Public Purpose" and Government can acquire the land for implementation of the housing scheme to provide accommodations to the members of the public.

25. These observations would clearly show that the writ petition has not been disposed of merely on the admission of the Counsel for the petitioner. In fact the matter has been examined on merits also. Justice Chattopadhyay has further held as follows:

Mr. Sen further submitted that it has been held by the Supreme Court in the case of West Bengal Housing Board Vs. Brijendra Prasad Gupta and others, that incorporation of Joint Sector Company namely Bengal Peerless Housing Development Company Limited for execution of the Housing Project by the State Government and the West Bengal Housing Board is absolutely valid and legal in the eye of law, and the said Joint Sector Company has been incorporated in public interest and for a public purpose.

Referring to the Notifications issued under Sections 4, 6 and 9 of the Act 1 of 1894, learned Standing Counsel submits that the land mentioned in those notifications is needed by the Government for a public purpose i.e. for implementing a housing scheme at public expense and the said housing scheme is "Bengal Peerless Housing Project" which will be implemented by the Government at public expense and for a public purpose in terms of the notifications issued under Sections 4 and 6 of the said Act 1 of 1894.

It is true that in the notifications issued u/s 9 of the said Act Government has specifically identified the Housing Scheme as Bengal Peerless Housing Project but it has never been mentioned in the said notification that the land in question will be needed for "Bengal Peerless Housing Development Company Limited." The

learned Standing Counsel has specifically submitted before this Court that the housing scheme namely, Bengal Peerless Housing Project will be executed by the Government at the public expense for a public purpose.

In any event, for the purpose of execution and/or implementation of any housing scheme Government is entitled to engage any company and in the instant case if the housing scheme named as Bengal Peerless Housing Project is executed through Bengal Peerless Housing Development Company Limited by the Government then, the same cannot vitiate the land acquisition proceeding. The judgment of the Supreme Court in the case of State of Gujarat and Another Vs. Sankalchand Khodidas Patel (Dead) by L.Rs., is very much applicable in this regard.

26. In the notification issued u/s 4 of the Act, it has been specifically mentioned that the acquisition was for a public purpose namely, for construction of a housing project. The notification u/s 6 of the Act was also issued to the same effect and in the said notification issued u/s 6 it has also been mentioned that the land is needed for a public purpose namely, for implementation of housing scheme. The notification issued u/s 9 also does not indicate that the land in question is needed for a company. It has been clearly mentioned in the aforesaid notification that the land in question is to be taken by the Government for Bengal Peerless Housing Project and, therefore, it cannot be said that the land is needed for a company.

27. Mr. Santimoy Panda, learned Senior Counsel of the petitioners although admitted in course of his arguments that the land in question is needed for public purpose, as the said land will be utilized for implementation of the housing scheme but raised objection regarding validity and/or legality of the acquisition proceeding, mainly, on the ground that the provisions of L.A. Act of 1894 as mentioned in Part VII of the said Act has not been complied with by the respondent authorities even though the land in question, according to the petitioners, is being acquired for the company. The learned Senior Counsel of the petitioners vaguely argued that the whole acquisition proceeding by the Government is a fraud on statute and has been initiated in colourable exercise of power as the concerned authority did not mention initially while issuing the notifications under Sections 4 and 6 of the Act that the land is being acquired for a company, namely, Bengal Peerless Housing Development Company Limited.

28. In my view, the aforesaid objection raised on behalf of the petitioners is not at all tenable as the respondent authorities in the notifications issued under Sections 4 and 6 of the Act have made it clear that the land is needed by the Government for a public purpose i.e. for implementing a housing scheme and in the notification issued u/s 9 of the said Act it has also been categorically mentioned that the land is to be taken by the Government for Bengal Peerless Housing Project.

29. So, it cannot be urged under any stretch of imagination that the respondent

authorities are seeking to acquire the land in question for a company. According the application of the provisions of Part VII of the L.A. Act cannot have any application in the facts of the present case....

30. In view of the above, we are of the considered opinion that the learned Single Judge has erred in holding that the judgment in CWP No. W.P. No. 10002(W) of 2002 dated 16.9.2003 passed by Justice Chattopadhyay has been given on consent of the Counsel for the petitioners. We respectfully agree with the conclusion reached by Justice Chattopadhyay and hold that the land acquisition proceedings cannot be said to be vitiated as the land has been acquired for public purpose.

31. In view of the above, we find merit in these appeals (FMA Nos. 671 and 672 of 2004) and the same are hereby allowed. No costs.

Re: FMA No. 790 of 2006

32. This appeal has come up for hearing alongwith FMA Nos. 671 and 672 of 2004. Learned Counsel for the appellants has submitted that he would adopt the arguments which have been addressed by the Counsel for respondent Nos. 1 to 4 in FMA Nos. 671 and 672 of 2004. In addition, learned Counsel has, however, argued that there is non-compliance with Section 41 of the Land Acquisition Act. Learned Advocate General, however, submitted that Part VII of the Act would not be applicable in the present case as the land has not been acquired for a Private Company. We have considered the submissions made by the learned Counsel. We have also reproduced the relevant observations of Justice Chattopadhyay. We see no reason to differ with the conclusion reached by Justice Chattopadhyay. The land has not been acquired for the benefit of Bengal Peerless. The matter is, therefore, squarely covered by the judgment of the Supreme Court in the case of Pratibha Nema (supra) and in view of the above we find no merit in this appeal and the same is hereby dismissed.

Pinaki Chandra Ghose, J.

33. I agree.

Later:

34. At this stage the learned Counsel for the appellant seeks stay of operation of the judgment. The prayer is refused.

35. Urgent xerox certified copy of this judgment, if applied for, be given to the learned Counsel for the parties.