

(1993) 05 MP CK 0009

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 461 of 1992

Chaitram Verma

APPELLANT

Vs

Land Acquisition Officer and others

RESPONDENT

Date of Decision : 20-05-1993

Acts Referred:

Land Acquisition Act, 1894 — Section 4(1), 6

Citation : (1993) MPLJ 572

Hon'ble Judges : P.N.S. Chouhan, J; Gulab C. Gupta, J

Bench : Division Bench

Advocate : A.D. Deoras and A.G. Dhande, for the Appellant; S.L. Saxena, Addl. A.G. for State and Y.S. Dharmadhikari and Anoop Choudhary, for the Respondent

Final Decision : Allowed

Judgement

Gulab C. Gupta, J.

The Petitioners are bhumiswamis of lands notified u/s 4(1) of the Land Acquisition Act, 1894 (hereinafter referred to as the Act) on 4-7-1991 to be acquired for "public purpose" and challenge legal validity thereof by filing this writ petition under Article 226 of the Constitution of India. The lands in question have also been declared u/s 6 of the Act as acquired and awards in respect thereof passed by the Respondent No. 1. The declaration dated 24-2-1992 (Ann, R-IV) u/s 6 of the Act and awards dated 27-5-1992 are also challenged as illegal in this petition.

It appears that pursuant to the industrial policy of the Respondent-State of Madhya Pradesh, industrialists from all over the country were offered concessions, facilities and benefits and invited to establish industries in the State. The Respondent No. 4, pursuant to this invitation gave their consent to the Industries Department of the State and Audyogik Kendra Vikas Nigam to establish a cement factory at Bhatapara sub-division, Raipur and were granted permission by the Respondent -State. The cement plant was to be

commissioned in October, 1992 (Para 3 of the Return of the Respondent No. 4). According to the affidavit dated 5-5-1993 of Shri Raj Singh, Resident Manager of Respondent No. 4, they approached the Railway Board in May-June 1986 for No Objection Certificate for providing a railway siding for the cement plant and the said Board granted the said certificate on 6-6-1986. Thereafter, the S. E. Railways was requested to undertake survey for the said siding and submit its report. The S. E. Railways undertook the survey and submitted its report to the Respondent No. 4 on 25-11-1986. The Respondent No. 4 communicated their acceptance to the S. E. Railways on 20-4-1987 and paid survey fee of Rs. 13,82,850/- to them by 11-11-1989 in four instalments. Thereafter, on 7-12-1989 the Respondent No. 4 applied to the Audyogik Kendra Vikas Nigam for making available the land for construction of railway siding. The Nigam forwarded this application to the General Manager, District Industries Centre who in turn passed it on to the Additional Director of Industries. The Additional Director recommended the matter to the Respondent-State Government on 2-4-1990. The State Government accorded its sanction on 15-6-1990 and required the Respondent-Collector to undertake proceedings for the acquisition of lands in accordance with the provisions of the Act.

There is nothing on record to show what happened between 15-6-1990 i.e. date of sanction and 20-6-1991 when the Respondent No. 1 obtained information about the lands to be acquired from Patwaris of the village. Order sheets (Annexures-D, E and F) indicate that the Respondent-Land Acquisition Officer applied to the Commissioner, Raipur Division on 25-6-1991 for permission to proceed u/s 17(1) of the Act. Order-sheets do not show that any request to dispense with enquiry u/s 5-A as required u/s 17(4) of the Act was made by the Respondent No. 1. The Commissioner seems to have approved application of Section 17(1) of the Act on 29-6-1991 and thereafter on 4-7-1991 draft notifications under Sections 4(1) and 6 of the Act were prepared by the Respondent No. 1 and sent for publication in official Gazette. The two notifications were published in M.P. Rajpatra dated 19-7-1991 as per Annexures-A and B and mention acquisition "for construction of railway siding of cement plant of Tata Iron and Steel Company" Actual words are in Hindi and are as under:

Order-sheet of one of the cases indicates that Respondent No. 1 on 3-7-1991 required the Respondent No. 4 to sign agreement u/s 41 of the Act, and hence 3 agreements in relation to lands in 3 villages were signed on 4-7-1991. Order-sheets dated 22-7-1991 show that the Respondent No. 1 ordered on that date that two notifications/declarations be also published in two local newspapers. The Respondent No. 1 also ordered publication u/s 9(1), (2) and (3) of the Act on 22-7-1991. It appears that possession of lands covered by notifications was obtained on 10-2-1992 by the Tahsildar, Bhatapara and eventually handed over to the Respondent No. 1 on 22-2-1992.

It appears that proceedings for determination of compensation were also

initiated by the Respondent No. 1 who eventually passed awards (Ann. H, I and J) on 26-9-1991. It also appears that out of total lands of 123.09 acres required for construction of railway siding, 23.56 acres belonged to the State Government and the rest to private individuals. Out of 98.99 acres belonging to private individuals, 55 Bhumiswamis owning 55.06 acres accepted the awards and the compensation and hence there is no dispute about this land. The balance of 43.93 acres belongs to the Petitioners, who did not accept either the compulsory to the Petitioners, who did not accept either the compulsory acquisition or the awards and filed this petition on 1-2-1992 invoking this Court's extraordinary jurisdiction under Article 226 of the Constitution.

The petition in this Court seems to have prompted administrative review of the matter by respondents Nos. 1 to 3. It was realized that Declaration u/s 6 of the Act issued on 4-7-1991 and published in the M.P. Rajpatra on 19-7-1991 was illegal and required rectification. Eventually, a new declaration dated 24-2-1992 was issued u/s 6 of the Act and published in M.P. Rajpatra dated 28-2-1992 (Ann. R-IV). This declaration mentions that earlier declaration dated 4-7-1991 published in M.P. Rajpatra dated 19-7-1991 has been cancelled. Pursuant to this new Declaration, the Respondent No. 1 initiated fresh proceedings for determining compensation and passed new Awards on 27-5-1992. These Awards have been filed by the Respondent No. 4 and are available at pages 154, 173 and 202 of the Paper Book. The Petitioners have, since then amended their petition including challenge to legal validity of the new declaration and awards.

It may be mentioned that new awards dated 27-5-1992 mention that earlier awards dated 26-9-1991 stand automatically superseded by the fresh declaration u/s 6 of the Act dated 28-2-1992. The new awards determine the dispute between the parties in the absence of the Petitioners and except for some marginal adjustment in price, offer nothing new to them.

The Petitioners submit that compulsory acquisition of their lands is colourable exercise of power under the Act, inasmuch as though the land is needed for the Respondent No. 4, a public limited company, notification u/s 4(1) and declaration u/s 6 of the Act mention its acquisition for "public purpose" with a view to avoid application of Chapter VII of the Act and deny statutory benefits to the Petitioners. It is further submitted that dispensing with enquiry u/s 5-A of the Act is also illegal inasmuch as there was neither any urgency nor any one has applied its mind to the question whether such an enquiry should be done away with. It is also submitted that cancellation of earlier declaration u/s 6 of the Act was illegal and mala fide, its only intention being to render this petition infructuous. It is urged that since earlier awards had become final under the Act, they could not be superseded by new awards and hence new awards are illegal and without jurisdiction. The learned Addl. Advocate General for Respondents Nos. 1 to 3 however submitted that since Respondent No. 4-Company is only a lease-holder in respect of the lands and not Bhumiswami thereof, acquisition cannot be treated as acquisition for the Company. It is emphasised that since construction

of railway siding was essential for despatch of cement, acquisition was for public purpose and hence provisions of Chapter VII have no application. Declaration u/s 6 of the Act issued on 4-7-1991 and published in M. P. Rajpatra on 19-7-1991 is admitted to be illegal in view of the judgment of the Supreme Court in State of Uttar Pradesh Ors. Vs. Radhey Shyam Nigam and Others, but it is claimed that for that reason the earlier notification did not exist in law and hence subsequent declaration was legally and validly issued. As regards enquiry u/s 5-A of the Act, it is submitted that it was not necessary in view of order u/s 17(1) of the Act. Fresh awards are also claimed to be within the authority and jurisdiction of the Respondent No. 1 and are claimed to be necessary consequence of fresh declaration u/s 6 of the Act. The Learned Counsel for Respondent No. 4 adopted the submissions of the learned Addl. A. G. but, in addition, submitted that the Respondent No. 4 was working towards industrialisation of the State by investing huge amounts and hence extraordinary jurisdiction of this Court should not be exercised in the instant case. This Respondent has also submitted that establishment of a railway siding was a public purpose and the said purpose would not be changed only because the Respondent-Company would be benefited by it, particularly when the said Company was not the owner of the land and siding was to be constructed by the Indian Railways. This Respondent also submitted that this Court would not readily accept the plea of colourable exercise of power and would not examine the matter particularly when the publication of declaration in this behalf is conclusive.

It may first be considered whether this Court, exercising jurisdiction under Article 226 of the Constitution can examine whether the notification u/s 4(1) and declaration u/s 6 of the Act are the result of colourable exercise of powers. The argument appears to be that the two read together would be conclusive of the public purpose mentioned therein and shall be conclusive evidence of the fact that the land is needed for a public purpose. Section 6(3) does provide that the mention of the purpose in the declaration shall be conclusive. The conclusiveness, as clarified in Valjibhai Muljibhai Soneji and Another Vs. The State of Bombay (Now Gujarat) and Others, attaches not only to the need but also to the question whether the purpose was a public purpose. In Smt. Somavanti and Others Vs. The State of Punjab and Others, it was also clarified that there is no difference between the effect of the expression "conclusive evidence" and that of "conclusive proof, the aim of both being to the finality of the establishment of the existence of a fact from the proof of another. In spite of it, the Supreme Court in Raja Anand Brahma Shah Vs. State of Uttar Pradesh and Others, held that the declaration u/s 6(1) that the land is required for a public purpose is conclusive except when it is made in colourable exercise of power. In Jage Ram and Others Vs. State of Haryana and Others, it was laid down that unless it is shown that there was colourable exercise power, the Court cannot go behind the declaration of the Government and find in a particular case, whether the purpose for which the land was needed was a public purpose or not. It would, therefore appear that even in cases covered u/s 6(3) of the Act, it has been held

that the rule of conclusive evidence would apply in all cases except the case of colourable exercise of power. As regards notification u/s 4(1) of the Act, there is no provision like Section 6(3) and therefore the rule of conclusiveness does not apply to the notification under the said provision as a statutory bar. Section 4, as it stood before its amendment in 1984, provided issuance of Notification only for a public purpose and for that reason, all acquisitions had to be for a public purpose and for that reason, all acquisitions had to be for a public purpose. There was therefore no scope for any argument based on colourable exercise of power. Section 6, on the contrary, provided declaration either for public purpose or for the company and therefore Sub-section (3) which provides the rule of conclusiveness, had become necessary. Even then, the rule was not sufficient to bar the jurisdiction of the Court to determine whether the notification/declaration was as a result of colourable exercise of power. The decision of the Supreme Court in *State of Punjab and Another Vs. Gurdial Singh and Others*, seems to be dealing with another category of cases where the rule of conclusive evidence would not apply. In this case, mala fide exercise of power was also held to be permitting judicial review. Dealing with mala fides in the jurisprudence of power it was observed as under:

Pithily put, bad faith which invalidates the exercise of power - sometimes called colourable exercise or fraud on power and often times overlaps motives, passions and satisfactions - is the attainment of ends beyond the sanctioned purposes of power by simulation or pretension of gaining a legitimate goal. If the use of the power is for the fulfilment of a legitimate object the actuation or catalysation by malice is not logical. The action is bad where the true object is to reach an end different from the one for which the power is entrusted goaded by extraneous considerations, good or bad, but irrelevant to the entrustment. When the custodian of power is influenced in its exercise by considerations outside those for promotion of which the power is vested the Court calls it a colourable exercise and is undeceived by illusion.

This decision would therefore dictate(sic) that cases of colourable exercise of power also include lack of bona fides on the part of the authority exercising the power. In view of these decisions, there should be no difficulty in holding that this Court has the necessary power and jurisdiction to consider whether the acquisition in the instant case is the result of colourable exercise of power or lacks bona fides.

The submission of the Learned Counsel for the Petitioners, in the main, is that the acquisition in fact is for the Respondent-Company but the Respondent No. 1 instead of following procedure under Chapter VII of the Act, has made the declaration that acquisition was for public purpose. The argument is that the provisions of Chapter VII specifically apply to the acquisition of land for companies and provide sufficient safeguards in the matter. Reference is made to Section 39 which provides that the provisions of Sections 6 to 37 shall not be put into force in order to acquire land for any Company unless with the previous

consent of the appropriate Government nor unless the Company shall have executed the agreement mentioned hereunder. Before an appropriate Government can give consent, provisions of Section 40 become operative and the appropriate Government is required to be satisfied either on the report of the Collector u/s 5-A or on enquiry under this provision, that the purpose of acquisition is what is mentioned in the provision. After the appropriate Government is satisfied as aforesaid, the company is required to enter into an agreement with the Government providing for matters u/s 41 of the Act and thereafter the agreement is required to be published in the official Gazette. The submission of the Learned Counsel for the Petitioners is that the Respondent-Land Acquisition Officer has acted under the influence of the Respondent-Company and has given a go-by to the salutary provisions affecting adversely their interests. Such a course, according to the Learned Counsel, is impermissible in law and is an instance of colourable exercise of power. The Learned Counsel for the Respondents, however, disputed the aforesaid and submitted that the purpose for which the land is acquired is a "public purpose" and therefore the provisions of Chapter VII are not applicable. Since, in order to determine the legal question involved in the controversy, it will be necessary to determine correct facts, the factual aspect of the matter may first be looked into.

Notification u/s 4 of the Act (Annexure-A) mentions that the land was required for the public purpose. Schedule to the Notification describes the public purpose as "for constructing railway siding for the cement plant of Tata Iron and Steel Company." Prima facie, therefore, the acquisition was for construction of the railway siding for the cement plant of the Respondent No. 4. According to the return of the Respondents Nos. 1 to 3, the Respondent No. 4 has established the cement factory which was likely to go in production in October, 1992, and the railway siding was required for facilitating transportation of cement from the said plant. Agreements u/s 41 of the Act (filed with the return of the Respondents Nos. 1 to 3 as Annexures R-4 to R-6) indicate that the acquisition was to be done on behalf of the Company" i.e. Respondent No. 4. Para 2 of this Agreement vested the acquired land in the Respondent-Company, giving them an absolute title thereto, subject to the payment of an assessment or ground rent. Though this agreement was entered into on 4-7-1991 u/s 41 of the Act, it was never published as required u/s 42 thereof. Since the notification u/s 4(1) of the Act is also dated 4-7-1991, it is reasonable to infer that though the Respondents intended to acquire lands for the company, notification wrongly mentioned that acquisition was for a public purpose. Though the Respondents 1 to 3 have filed these agreements along with their return and submitted that "it was subsequent thereto that the notification u/s 6 was issued on 24-2-1992" (Para 4), there is nothing in the return to indicate why these agreements were not published and why further action under Chapter VII was not taken. There is also nothing on record to show that consent of the Respondent- State was obtained as required u/s 39 of the Act. Curiously enough. Para 5 of the return of the Respondents 1 to 3 mentions that the main purpose of Part VII of the Act is to see that the money

payable as compensation becomes easily available from the company and nothing more. It is therefore submitted that the provisions are mandatory only to this extent and other provisions are only directive" (Para 5). The submission appears to be that the agreement u/s 41 having been entered into, there is sufficient compliance of Chapter VII of the Act and even if this Court finds any breach thereof, the breach would not be of any mandatory provision. These Respondents however say nothing about the previous consent u/s 39 of the Act. The return of Respondent No. 4 dated 17-4-1992 does not state anything about the agreements u/s 41 of the Act. Para 3 of the said return, which is in reply to Paras 4 and 5 of the petition, on the contrary, mentions that the provisions of Sections 38 to 41 of the Act are not applicable as the acquisition is for a public purpose. The public purpose, according to the Respondent No. 4, is construction of railway siding which is interlinked with cement plant of the company. The Respondent No. 4 have also filed lease-deeds dated 23-2-1992 indicating that the land under acquisition was to be leased out to the Respondent-Company for a period of 99 years for the purpose of construction of railway siding thereon. It would therefore appear that the stands of the Respondents Nos. 1 to 3 on the one hand and the Respondent No. 4, on the other, are contradictory. Though the Respondents Nos. 1 to 3 do not rule out the applicability of Chapter VII of the Act, they submit that the mandatory part thereof has been followed by entering into an agreement u/s 41 and the rest of the Chapter being directory, its non-compliance does not vitiate the acquisition. The Respondent No. 4, on the contrary, deny the application of Chapter VII and submit that it has no application because the acquisition is for the public purpose. Respondent No. 4 do not even mention the agreements u/s 41 of the Act and have, on the contrary, produced lease deeds to establish the contrary. In spite of it, both, the Respondents Nos. 1 to 3 and Respondent No. 4 agree that the purpose of acquisition of the lands of the Petitioners is for the construction of railway siding for the cement plant of the Respondent No. 4. The cost of construction of the railway siding is to be borne by Respondent No. 4 is clear from the affidavit of Shri Raj Singh, filed on 5-5-1993. That the entire cost of acquired lands will be borne by the Respondent No. 4 is also obvious from the return of all the Respondents. In the context of these facts, it requires determination whether the acquisition can be said to be for a "public purpose". In case it is held that the acquisition is for a company i.e. Respondent No. 4, the entire proceedings would stand vitiated for non-compliance of Chapter VII of the Act.

The definition of "public purpose" has undergone a change by Act No. 68 of 1984 and now reads as under:

3(f) the expression public purpose" includes

(i) the provision of village-sites, or the extension, planned development or improvement of existing village-sites;

(ii) the provision of land for town or rural planning;

(iii) the provision of land for planned development of land from public funds in pursuance of any scheme or policy of Government and subsequent disposal thereof in whole or in part by lease, assignment or outright sale with the object of securing further development as planned;

(iv) the provision of land for a corporation owned or controlled by the State:

(v) the provision of land for residential purposes to the poor or landless or to persons residing in areas affected by natural calamities, or to persons displaced or affected by reason of the implementation of any scheme undertaken by Government, any local authority or a corporation owned or controlled by the State;

(vi) the provision of land for carrying out any educational, housing, health or slum clearance scheme sponsored by Government or by any authority established by Government for carrying out any such scheme, or, with the prior approval of the appropriate Government, by a local authority, or a society registered under the Societies Registration Act, 1860, or under any corresponding law for the time being in force in a State, or co-operative society within the meaning of any law relating to co-operative societies for the time being in force in any State;

(vii) the provision of land for any other scheme of development sponsored by Government, or, with the prior approval of the appropriate Government by a local authority;

(viii) the provision of any premises or building for locating a public office.

but does not include acquisition of land for Companies;

The last part of this definition i.e. "it does not include acquisition of land for Companies" is important and brings out the obvious fact that even though a "public purpose" may be served by acquiring land for companies, the expression "public purpose" as used in the Act does not include such acquisition. It is true that the definition is inclusive and therefore it is possible to hold that it includes many other purposes, which would otherwise not be included within it. But the use of exclusionary sentence at the end would make the difference and indicate that except for acquisitions for companies which cannot be treated as acquisition for public purpose, all other purposes are included within it. It is therefore a case where the definition is both inclusive and exclusive, the exclusion being of a limited nature suggesting that other categories of acquisitions which are not excluded fall within the inclusive definition. This method in relation to a definition clause is not unusual and had received attention of the Supreme Court in *Purshotam H. Jadye and Others Vs. V.B. Potdar, and Commissioner of Income Tax, Gujarat Vs. Vadilal Lallubhai, etc. etc.*, Under the circumstances whatever may be extent of purpose included within the definition of "public purpose", acquisition for company is excluded from it. Clearly therefore, an acquisition for a company is to be distinguished from acquisition for a public purpose, and an acquisition for a company even though serving public purpose, cannot, in the

context of Section 3(f) of the Act, be accepted as an acquisition for a public purpose.

Legal position was different before the amendment of the definition in 1984 by Act No. 68 of 1984. The definition of "public purpose" in Section 3(f) of the Act before this amendment did not have any exclusionary clause and was inclusive. Similarly, Section 4(1) of the Act permitted issue of notification only for a "public purpose". It was therefore possible to then submit that if "public purpose" is served by a Company, there would be no illegality in the acquisition for a company on the basis of notification, mentioning acquisition for a public purpose. In this connection the decision of the Supreme Court in *Babu Barkya Thakur Vs. The State of Bombay and Others*, may be profitably read. The law declared by this decision has however become irrelevant because of the amendment not only of the definition of "public purpose" in Section 3(f) but also Section 4(1) of the Act. Under the circumstances, the submission that the public purpose being served by the Respondent No. 4, notification mentioning acquisition as for public purpose is legal, cannot be accepted.

It was thereafter submitted that the words "for a company" appearing in Sections 4 and 6 of the Act only cover cases where the acquisition is on behalf of the company and the title of the land to be acquired would vest in the company for which it is required. As noticed earlier, though the words "for a company" were inserted in Section 4 of the Act by the Amendment Act No. 68 of 1984, these words existed in Section 6 even prior to it. In *R.L. Aurora Ram Ditta Mal Vs. State of Uttar Pradesh and Others*, these words were read as meaning "for the benefit of the company". No authority has been cited by the Learned Counsel for the Respondents to support the submission that words "for a company" mean "for vesting ownership of the acquired land in the company". The word "for" is used as a function or to indicate purpose or any intended destination or the object towards which the acquisition is directed. Dictionary meaning of the word "for" is "intended to", "belonging to" or "is used in connection with" or "suiting the purpose or need of". These meanings give a wide scope to the word "for" and hence words "for a company" would mean "for the purpose or need of a company". It is well established rule of interpretation that an otherwise clear and unambiguous language of a statute will not be interpreted restrictively only because its meaning does not suit a particular factual situation. The literal grammatical meaning of the words "for a company" which includes "for the benefit of the company" is neither inconsistent with the purpose of the provision nor otherwise unjust or unfair so as to prompt this Court to make an effort to interpret it in a restricted manner. Under the circumstances, this Court is not inclined to accept the submission of the Learned Counsel for the Respondents that the acquisition "for a company" would cover only those cases where the land is intended to be transferred to the ownership of the beneficiary company. In the opinion of this Court, the words "for a company" would cover cases where acquisition is for the purpose of meeting any particular need of a company or for the benefit of a company. In the instant case, the land is required for

construction of a railway siding which in turn, is required for transporting manufactured cement from the cement plant of the Respondent No. 4. The acquisition is therefore for the benefit of the Respondent-company. Entire cost of construction of railway siding as also the cost of acquisition will also be borne by the Respondent No. 4 and no part of this cost would come from public exchequer. In a situation like this, the acquisition would be for the Respondent No. 4 and not for a public purpose, as defined u/s 3(f) of the Act. Indeed, in the absence of any contribution to costs of acquisition by Respondent No. 3, the acquisition, even before the amendment of 1984, would not be for a public purpose.

Order-sheet of Case No. 9-A of 1992 dated 3-7-1991 would show that the agreement u/s 41 of the Act was ready for signatures of the parties on that date. The agreement was actually signed on 4-7-1991. The order-sheet therefore clearly indicates that this agreement was signed before the notification u/s 4(1) of the Act, which is also dated 4-7-1991. Position in case No. 10-A/1982 and case No. 11-A/1982 is also the same except that order sheets in these cases do not show any entry dated 3-7-1991. The agreements and notification u/s 4 are signed by the same authority i.e. Respondent No. 1 on behalf of the Respondent-State. It is therefore possible to hold that the authority issuing notification u/s 4 of the Act was aware of the agreements u/s 41 of the Act and knowingly issued the notification mentioning acquisition for public purpose. Could the authority getting the agreement u/s 41 of the Act reasonably notify that acquisition was intended to be for a public purpose and not for the company? The answer, in the opinion of this Court, is an emphatic No. It is difficult to believe that the Respondent No. 1 did not know the law on the subject. Under the circumstances, the only legitimate inference is that the Respondent No. 1 wanted to by-pass the provisions of Chapter VII of the Act by making the notification for public purpose. It is therefore possible to allege lack of bona fide on the part of the Respondent No. 1 while issuing the notification. For the same reason, the notification u/s 4 of the Act must be held to have been issued in colourable exercise of power. The notification u/s 4 of the Act (Annexure-A) is thus vitiated.

The aforesaid conclusion would also be sufficient to hold that notifications u/s 6(1) of the Act published on 19-7-1991 and 28-2-1992 are illegal. It will further be sufficient to hold that provisions of Section 17(1) of the Act are not attracted in the instant case and for that reason, enquiry u/s 5-A of the Act could not have been dispensed with. In this connection, decision of Supreme Court in *Ram Sarup Vs. The Union of India (UOI)* and *Another*, is important. This was an appeal from the decision of this Court in *Shyam Behari and Others Vs. State of Madhya Pradesh and Others*. In this case the Notification u/s 4 mentioned acquisition for public purpose and so did the declaration u/s 6 of the Act. The Supreme Court considered all facts and circumstances of the case and held that since entire compensation to the land owners was to be paid by the company and no part of the compensation was to come out of public revenue or fund controlled or managed by a local authority, the acquisition was for a company. Since the notification u/s 6 of the Act mentioned acquisition for public purpose, it was held

to be invalid for that reason alone. Clearly therefore, if the acquisition is for a company, but notification and declaration mention it as acquisition for a public purpose, the notification would not be sustained in law. In *Aflatoon and Others Vs. Lt. Governor of Delhi and Others*, the Supreme Court again emphasized the aforesaid aspect of the matter and held that the purpose must be real and honestly specified and procedure provided in respect thereof followed. In *State of Gujarat and Another Vs. Patel Chaturbhai Narsibhai and Others*, legal requirements for compulsory acquiring lands for a company were stated and it was held that as long as there was no compliance of sections 38 to 41 of the Act, the acquisition for a company would not be valid. In this case, the Court found, as a fact, that there was no compliance of section 39 of the Act and therefore held that the acquisition proceedings were vitiated. Indeed, it does not need any authority to indicate that provisions of Chapter VII of the Act are required to be followed. As regards agreement u/s 41 of the Act, even the Respondents Nos. 1, 2 and 3 admit that the provision is mandatory but they submit that all other provisions of this Chapter are directory and their non-compliance would not vitiate acquisition. It is however not possible to accept the submission. In *Rajan Singh and Others Vs. State and Another*, and *Khem Karan and Others Vs. State of Uttar Pradesh and Others*, it was specifically held that prohibition contained in Section 39 of the Act was definite and mandatory. Indeed non-compliance of Section 39 of the Act was the reason declaring acquisition invalid in *State of Gujarat v. Patel Chaturbhai* (supra). Publication of agreement u/s 42 of the Act cannot also be said to be a mere formality and non-publication was held to be affecting acquisition in *P. Iya Nadar Vs. State of Madras and Others*. Under the circumstances, it was necessary for the Respondents to follow the procedure prescribed in Chapter VII of the Act while acquiring lands for the Respondent No. 4.

A perusal of the notification u/s 4 of the Act would indicate that the Respondent No. 1 has dispensed with enquiry u/s 5-A as, according to the said Respondent, provisions u/s 17(1) of the Act are applicable in the instant case. Order-sheets (Annexures D, E and F) show that this order was passed by the Commissioner and notified by the Respondent No. 1. Order-sheets however do not indicate any order u/s 17(4) of the Act dispensing with enquiry u/s 5-A of the Act. Section 17(1) as it originally stood, included acquisitions for the company but the said provision has been amended by Act No. 68 of 1984 and is no longer applicable to cases of acquisition for a company. If Section 17(1) or 17(2) of the Act be inapplicable, there would be no scope for invoking urgency provision in the case of acquisition for a company. For the same reason, there would be no authority with the Respondent No. 1 to dispense with the enquiry u/s 5-A of the Act. Even if Section 17(1) of the Act was applicable, this Court would have found no justification for dispensing with the enquiry u/s 5-A of the Act. It has been clearly held in *State of Punjab and Another Vs. Gurdial Singh and Others*, that the urgency should be real and not merely a cloak for denying benefits of the provision to the claimants. This is also the decision of the Supreme Court in

Narayan Govind Gavate and Others Vs. State of Maharashtra and Others, wherein it was clearly specified that not only the urgency within the meaning of Section 17(1) of the Act should be real but the authority must also consider whether the urgency is of a type as to justify dispensing with the enquiry u/s 5-A of the Act. If the facts of the present case are considered in view of the aforesaid law, there would be no justification for invoking the urgency provision u/s 17(1) of the Act. Notification u/s 4 of the Act was issued on 4-7-1991 and published in M. P. Rajpatra on 19-7-1991. The plant of the Respondent No. 4 was to go in production only in October, 1992, as noticed earlier. Apparently therefore at least 15 months were available before starting of production for which the siding was required. It is not the case of the Respondents that if immediate acquisition was not made, commissioning of plant and railway siding may not have been done together. If it was to be so, it was the obligation of the Respondents to place material on record for appreciation of this Court. In the absence of any such data or material it is not possible to hold that there was any urgency in the matter. Then, the impression gathered by this Court during the hearing of this petition is that the cement plant has not gone into production so far. Affidavit of Shri Raj Singh. Resident Manager of the Respondent-company indicates that work for establishing the plant had started at least in 1986 i.e. before the Railway Board was moved for no objection certificate for constructing the railway siding. If the matter could hang on so long for so many formalities, acquisition proceedings could have been arranged in a manner as not to deprive the Petitioners of their valuable legal right of participation in the enquiry. These facts would justify the conclusion that there was no justification for invoking urgency clause u/s 179(1) of the Act. The urgency as held earlier must be real and bonafide and not a mere excuse to deny owners of the lands of their right to participate in the enquiry.

Then existence of urgency alone is not enough to dispense with the enquiry u/s 5-A of the Act. It requires consideration whether the urgency is of the type as to justify dispensing with the enquiry. Then the enquiry cannot be dispensed with except by a direction u/s 17(4) of the Act. No one seems to have applied mind to the requirements of this provision nor any one has given any direction under it. As noticed earlier, the Respondent No. 1 had, on 20-6-1991, sought approval of the Commissioner, Raipur Division u/s 17(1) of the Act and the said approval was given on 25-8-1991. No request for a direction u/s 17(4) of the Act was made by the Respondent No. 1 and hence no one seems to have considered the matter and given direction. In spite of it, the fact of dispensing with enquiry u/s 5-A of the Act finds mention in the notification u/s 4 of the Act (Annexure-A). Apparently the person drafting the notification has done the job even though he was not required to do it. A bare reading of Section 17(4) of the Act in the aforesaid factual context establishes that it has been violated with vengeance. It would further establish that in the absence of a direction under it neither the enquiry could have been dispensed with nor declaration u/s 6 of the Act issued. The illegality, by itself, is sufficient to vitiate acquisition. If any further reason for it be necessary, decision of this Court in Mohd. Shafi v. State of M. P., 1989 J.L.J.

501, may be referred to.

Since the aforesaid is sufficient to vitiate acquisition of Petitioners' lands, it is not necessary to consider other submissions of the parties. The petition succeeds and is allowed by quashing notification u/s 4(1) dated 4-7-1991 (Annexure-A). Declaration dated 24-2-1992 (Annexure R-IV) and further proceedings and awards based thereupon, in so far as they affect lands of the Petitioners. The Respondents 1 to 3 would however be free to initiate fresh proceedings for the purpose, if they so desire, in accordance with law. Counsel fee Rs. 1,000/- payable by Respondents 1 to 3 and Respondent No. 4 in equal shares. Security amount, if any, be refunded.