

(2005) 03 BOM CK 0096

In the Bombay High Court

Case No : Writ Petition No's. 5604, 6973, 7302, 7389, 7415 of 2002

Dada Fire Works Pvt. Ltd. and Another

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 23-03-2005

Acts Referred:

Constitution of India, 1950 — Article 226, 243ZD
Land Acquisition Act, 1894 — Section 17, 17(1), 3, 4, 4(1)
Maharashtra District Planning Committees (Constitution and Functions) Act, 1998 —
Section 10
Municipal Solid Wastes (Management and Handling) Rules, 1999 — Rule 2, 4, 4(2), 6

Citation : (2005) 3 ALLMR 627 : (2005) 4 BomCR 50 : (2005) 3 MhLj 807

Hon'ble Judges : Rebello F.I., J;Kukday S.P., J

Bench : Division Bench

Advocate : S.G. Aney, A. and Madhav Jamdar, in W.P. Nos. 5604, 6972, 7302 and 7415 of 2002 and A.V. Anturkar, in W.P. No. 7389 of 2002, for the Appellant; A.P. Vanarshe, A.G.P., in W.P. No. 5604 of 2002, for Respondent Nos. 1, 3, 6 and 8 and in W.P. Nos. 6973 and 7302 of 2002, for Respondent Nos. 1, 2, 4 and 6 and in W.P. No. 7389 of 2002, for Respondent Nos. 1, 2 and 3 and in W.P. No. 7415 of 2002, for Respondent Nos. 1, 2, 4 and 5, S.N. Deshpande and A.M. Koyande, in W.P. No. 5604 of 2002, for Respondent Nos. 4 and 5 and in W.P. Nos. 6973, 7302, 7415 of 2002, for Respondent Nos. 7 and 8 and R.G. Ketkar, R.S. Khadapkar and R.M. Pethe, in W.P. No. 5604 of 2002 and in W.P. Nos. 6973, 7302 and 7415 of 2002 and in W.P. No. 7389 of 2002, for the Respondent

Judgement

Rebello F.I., J.—In none of these petitions, rule has been issued. Counsel have however argued the matters on merits. In the light of that, rule in all the petitions. Respondent waive service. By consent heard forthwith.

2. All these petitions are being disposed of by a common judgment, and order as they raise common questions of law. The facts in each petition will be dealt with separately;

In Writ Petition No. 5604 of 2002, the petitioner is a company which claims ownership on the land which is identified under Survey Nos. 191, 192, 193, 194

and the entire Survey No. 195/2 of village Phursungi, Taluka Haveli, District Pune. The notification u/s 4 of the Land Acquisition Act, 1894 (hereinafter referred to as "the Act") was issued on 25-7-2002 to acquire land for public purpose viz. extension of garbage depot, garbage treatment plant and 40 ft. wide road. A declaration u/s 6 has subsequently been made on 29-11-2002. It is this declaration which is the subject-matter of the present petition.

Writ Petition 6973 of 2002 has been filed by two petitioners who claim to be the owners of a portion of land bearing Survey No. 195/3.

In Writ Petition No. 7302 of 2002 petitioner No. 1 claims to be the power of attorney of the original owners of an area admeasuring 7 hectares, 62 Ares of Survey No. 195/2. It is his case that he was sub-divided the land and made them into plots and sold them to different persons. The petitioner Nos. 2 to 6 are such persons to whom the plots have been sold by petitioner No. 1.

Writ Petition No. 7389 of 2002 is by the petitioners who are the villagers of villager Urali Devachi, village Phursungi, Taluka Haveli, District Pune. The land under notification u/s 4, bearing Survey Nos. 191, 192, 193, 194, 195/2, 195/3 and 195/6 is in village Phursungi and land under Survey-No. 32 is in village Urali Devachi. These properties are the suit properties. They challenge the notification for acquisition of the land for the public purpose as set out in the notifications.

Writ Petition No. 7415 of 2002 is by 30 petitioners claiming to be the owners of a portion of a land which is sought to be acquired. They also challenge to notification seeking acquisition of the land for extension of garbage depot, garbage treatment plant and construction of 40 ft. wide road.

3. With the above background, we may now deal specifically with the pleadings as set out in Writ Petition No. 5604 of 2002 and the replies filed by the respondents which would include the reply filed by Pradeep Pralhad Dhaygude, Sub-Regional Officer of the Maharashtra Pollution Control Board who has filed an affidavit in Writ Petition No. 6973 of 2002. It is the case of the petitioners that the notification u/s 4 was issued on 25-7-2002 for acquiring land set out under Survey No. 191, 192, 193, 194 and 195/2 the notification as published in daily Sakal is for the public purpose of extension of garbage depot, garbage treatment plant and the construction of 40 ft. road. The petitioner state that the acquisition is illegal and unreasonable and the same is contrary to the provisions of the Environment (Protection) Act, 1986, The Municipal Solid Wastes (Management & Handling) Rules, 2000, Bio-Medical Wastes (Management and Handling) Rules, 1998, the Hazardous Wastes (Management and Handling) Rules, 1989 and contrary to the various directions issued from time to time in Writ Petition No. 2746 of 2000.

4. The petitioner further state that the Gram Panchayat of Urali Devachi and some residents of the village had filed Writ Petition No. 2746 of 2000 before this Court wherein they had prayed that the land identified under Survey Nos. 30 and 31 of village Urali Devachi should not be used for the purpose of garbage depot

and to use only that land for garbage depot which is shown as reserved for the garbage depot in the Development Plan, and for other reliefs as more particularly set out therein.

Reliance is placed on various affidavits filed from time to time in the said petition including various orders passed as also report of the Commissioner. One such order is of the Civil Judge, Junior Division, PMC Court, Pune who was appointed as a Court Commissioner. The learned Judge visited the site and submitted his report dated 4-9-2000. Reference is then made to the affidavit filed by the Collector as also of Shri Dilip Khedkar, Sub-Regional Officer of the Maharashtra Pollution Control Board. In the report of the learned judge who acted as a Court Commissioner has set out the distance between the site and the water wells as also the closest habitation. It is then set out that the contention of respondent No. 7 (Pune Municipal Corporation) was invited to the statement made by their Counsel in Writ Petition No. 2746 of 2000 which requires that the respondent No. 7 has to first select the site for garbage depot and only thereafter could commence the process of acquisition. By an amendment carried out to the petition, it is pointed out that the petitioners had received notice of hearing u/s 5A of the Land Acquisition Act dated 14-10-2002. The petitioners had on 23-10-2002 submitted a letter enclosing a copy of the petition. Further letter was sent on 24-10-2002. Detailed objections were filed on 13-11-2002. Petitioner contend that they were not given hearing on their objections. Petitioners state that they were thus shocked to see the declaration u/s 6 dated 29-11-2002 published in daily Sakal dated 7-12-2002 and invocation of the urgency clause u/s 17(1).

The submission on behalf of the petitioners in these petitions may be summarised as under :-

- i. The petitioners were not heard as required by Section 5-A of the Land Acquisition Act; Though they had filed their objections, no notice of hearing was given to the petitioners. The declaration issued u/s 6 is therefore without any authority of law and consequently liable to be set aside.
- ii. It is submitted that the acquisition is colourable exercise of power and/or mala fide exercise of power, inasmuch as the respondents are seeking to acquire land without following the provisions of the relevant Act, Rules and Regulations.
- iii. It is then submitted that the respondents before issuance of the notification u/s 4 of the Land Acquisition Act, ought to have followed the provisions of the Municipal Solid Wastes (Management and Handling) Rules, 2000. As they have not followed the said Rules, the declaration u/s 6 is vitiated.
- iv. It is submitted that before lands can be acquired the development authority must identify the sites and handover the same to the municipality, which then must take steps to acquire the land. In the instant case, there was no site identification and consequently on that ground also the declaration u/s 6 must be set aside.

v. Lastly it is submitted that the development authority is the authority as specified under the provisions as set out in Part 9-A of the Constitution of India. This has to be read alongwith Rules of 2000. If so read, the site has not been identified by the development authority and consequently the declaration u/s 6 is liable to be set aside.

5. An affidavit was first filed by Raghunath Shivram Adhav, Regional Officer of the Maharashtra Pollution Control Board. In the said affidavit it is set out that the acquisition of land for landfill, extension of garbage depot, garbage treatment plant and construction of 40 feet road, has to be done by respondent Nos. 6, 7, 8 and 9, as they were the proper authorities to decide the issue. It is next set out that for the implementation of the Environment (Protection) Act, 1986 and the Rules made thereunder including the Municipal Solid Waste Rules, it is Pune Municipal Corporation which is responsible for the implementation of the provisions, and for any infrastructure development for collection, storage, segregation, transportation, processing and disposal of municipal solid waste. The Pune Municipal Corporation has to make an application for grant of authorisation for setting up waste processing and disposal facility including landfills from Pollution Control Board. The District Magistrate or the Deputy Commissioner of the concerned District has the overall responsibility for the enforcement of the provisions of the Municipal Solid Waste (Management & Handling) Rules, 2000 within their jurisdiction. The role of Maharashtra Control Board is restricted to monitor the compliance of the standards regarding ground water, ambient air, leachate quality and the compost quality including incineration standards specified in the rules and to grant/refuse authorisation taking into consideration the views of the other agencies like the State Urban Development, the Town and Country Planning Department, Air Port or Airbase Authority and the Ground Water Board etc. as set out therein. Adverting to the Municipal Solid Waste Rules, it is set out that as per the implementation as set out in Schedule I, the improvement of the existing landfill sites is permissible and is to be done before 31-12-2000, and as of the date of affidavit which is dated 9-11-2002, no authorisation has been granted for the extension of the garbage depot, garbage treatment plant and construction of 40 ft. wide road. Authorisation has only been granted to make an improvement of existing land fill sites. It is also pointed out that the process of identification and selection of landfill sites has to be carried out by development authorities before handing over to the concerned municipal authorities. Reliance is placed on the authorisation issued on 7-6-2002 which is in respect of Survey Nos. 30 and 31 of village Urali Devachi.

6. An affidavit has been filed by Pradeep Pralhad Dhaygude, Sub-Regional Officer of the Maharashtra Pollution Control Board in Writ Petition No. 6973 of 2002, it is then set out that the office of the Pollution Control Board has communicated to the Director of Town Planning Department by letter dated 10-7-2002, that for granting of No Objection Certificate for acquiring new land bearing Survey No. 32 at Devachi Urali and Survey Nos. 191 to 195 of village Fursungi, the process of

identification and selection of the landfill site is to be carried out by the development authorities before handing over to the concerned Municipal Authorities.

Dr. Roopchand P. Pardeshi, Deputy Medical Officer of Health working with P.M.C. has filed an affidavit in Writ Petition No. 5604 of 2002. It is set out therein that in Writ Petition No. 2746 of 2000, the respondent No. 7 (Pune Municipal Corporation) had consistently made commitments to this Court on affidavits that in consultation with the authorities under the Maharashtra Solid Waste (Management & Handling) Rules, 2000 the respondent No. 7 proposes to acquire additional area of 120 acres land adjacent to the present landfill site, for future use. The additional acquired area will be used for development of complete solid waste management and handling site on a long term basis in a proper, scientific and hygienic manner complying with all the rules. As set out in the said affidavit, it was estimated that the land acquisition proceedings would be completed within eight months and consequently the respondent No. 7 had initiated the correspondence for land acquisition, and the work of designing and construction would be immediately taken up after acquisition. Consistent with the commitment made to this Court on affidavit, the Standing Committee of respondent No. 7 passed a resolution on 21-11-2000 sanctioning Rs. 1.60 crores for acquisition of 120 acres of land adjacent to the land field site. By a resolution dated 26-12-2000, the General Body sanctioned the acquisition and also the amount of Rs. 1.60 crores for the said acquisition. Based on that, a proposal was forwarded to the Collector, Pune, on 9-5-2001. An application for authorisation was also forwarded to Maharashtra Pollution Control Board (M.P.C.B.). The M.P.C.B. raised certain queries. The compliance report to the queries was submitted by the Pune Municipal Corporation on 30-5-2002. An authorisation letter thereafter came to be issued by M.P.C.B. on 7-6-2002. Placing reliance on the authorisation letter, it is set out in Annexure to the said authorisation, a buffer zone of 1000 meters as no development, shall be maintained around the land field site and shall be incorporated in the Town Planning Department's land use plans. The area surrounding Survey Nos. 22 and 191 to 195 of village Phursungi are agricultural lands and hence are no development zone in the regional plan. Reference is then made to the letter dated 17-7-2002 addressed by the Additional Municipal Commissioner (General) P.M.C. to the Collector of Pune setting out therein that the development authority in this case is the District Collector. The Site Clearance Committee has to be set up by the Collector and the Committee has to re-comment site under the provisions of the Rules. As per the letter dated 10-7-2002 of Shri. D.K. Khedkar, Sub-Regional Officer, M.P.C.B., the Site Clearance Committee comprised of Deputy Regional Officer, M.P.C.B., Assistant Director of Town Planning, Pune, the Land Acquisition Officer (Co-ordination) and Additional Municipal Commissioner, (General) P.M.C. As far as members of the Forests Department, Archaeological Department, Air-port/Air-base authorities, Ground Water Board etc., having regard to the location of the site, their presence was not required in the Site Clearance Committee. It is

pointed out that the Site Clearance Committee selected Survey No. 32 and Survey Nos. 191 to 195 of village Fursungi. Reliance is placed then on the letter dated 1-8-2002 addressed by the Collector to the members of the Site Clearance Committee. The Collector convened a meeting on 6-8-2002. Reliance is placed on the minutes of the meeting which records that after the lands are handed over to the P.M.C. it will have to comply with the provisions of the Rules.

On 29-8-2002 the Collector of Pune addressed a letter to the Municipal Commissioner of respondent No. 7, that the Collector has no objection for carrying out preliminary action in respect of the land in question. To the best of his knowledge and information, the Special Land Acquisition Officer had conducted enquiry u/s 5-A of the Act, and submitted the report to the Divisional Commissioner, Pune. The existing landfill site was given to the P.M.C. as far back as on 13-7-1990. Having regard to the existing land fill site area of 43 acres and considering the ever increasing garbage generated within the P.M.C. limits, it is absolutely necessary to have an additional area, particularly so when the population of the city has increased from 15 lakhs in 1991 to 27 lakhs. As of the date of affidavit twenty new villages have been included in the Municipal area.

7. An additional affidavit was filed by Dr. Pramod Shankar Dhaygude, Medical Officer of Health working with respondent No. 7, disputing the title of the petitioners to the land. To that, rejoinder has been filed by the petitioners and further reply by Dr. Dhygude. It is really not necessary to go into that controversy, as it is not germane for the purpose of deciding the controversial issue and that issue can be considered by the Land Acquisition Officer.

8. Considering the above contentions, the first question that has to be considered is whether the Land Acquisition Officer has complied with the requirements of Section 5-A of the Land Acquisition Act. Section 5-A requires that any person interested in any land, may, within 30 days from the date of publication of the notification u/s 4, object to the acquisition of the land, and every objection shall be made to the Collector in writing, and the Collector shall give the objector an opportunity of being heard in person or by any person authorised by him in this behalf or by pleader and shall, after hearing all such objections and after making such further inquiry, if any, as he thinks necessary, make the report or reports as contemplated u/s 5-A(2). The requirement therefore is, that it is for the persons interested to object to the acquisition within 30 days of the publication of the notification u/s 4, by making such objection in writing to the Collector. In the instant case, the petitioners filed objections on 12-8-2002. The petitioners were given an individual notice on 26-8-2002 fixing the hearing on 16-9-2002. The petitioners in Writ Petition No. 5604 of 2002 sought further time for filing objections. Time was given upto 26-9-2002. The petitioners filed additional objections on 26-9-2002. The Land Acquisition Officer completed hearing on 26-9-2002, in respect of these petitioners and in respect of other petitioners who had not filed objections and who had not sought time on 18-9-2002 completed the hearing process. The mere fact that the petitioners herein have filed

additional objections on 14-10-2002 and 13-11-2002, would therefore be of no consequence as they are after the hearing was completed on 26-9-2002. The petitioners were given individual notices of hearing. When they sought additional time, that time was given to them. In these circumstances, the first contention as urged on behalf of the petitioners herein that no notice of hearing was given to them or that they were not heard as required by Section 5-A, has to be rejected.

9. We may now deal with the second contention that the acquisition is a colourable exercise of power and or mala fide in the context in which the expression is used. The learned Counsel contends that the submission is based on legal mala fide. The expression "public purpose" is now defined u/s 3(f) of the Land Acquisition Act, 1894. That was introduced by Act 68 of 1984 w.e.f. 24-9-1984. The acquisition of land for a garbage treatment plant and or land fill sites, would come under the expression "public purpose". Reliance however has been placed on several judgments to contend that the acquisition is a colourable exercise of power. In *Smt. Somavanti and Others Vs. The State of Punjab and Others*, , it was observed that if the purpose for which the land is being acquired by the State is within the legislative competence of the State, the declaration of the Government will be final subject, however, to one exception viz. colourable exercise of power. If there is colourable exercise of power, the declaration will be open to challenge at the instance of the aggrieved party. The test would be, if the acquisition is not for a public purpose but a private purpose or no purpose at all, then the action of the Government would be colourable as not being relatable to the power conferred upon it by the Act. The Apex Court also put it slightly differently when it observed that if a purpose for which the acquisition has been made is not related to the "public purpose" then the question may well arise whether in making a declaration there has been, on the part of the Government, a fraud on the power conferred by the Act. This proposition was reiterated by the Constitution Bench of the Apex Court in the case of *Valjibhai Muljibhai Soneji and Another Vs. The State of Bombay (Now Gujarat) and Others*, . Reliance was once again placed on the judgment in the case of *Somawanti & others (supra)*. In *Jage Ram and Others Vs. State of Haryana and Others*, again the challenge was that the purpose for which the land was acquired was not a "public purpose". On facts, the learned Apex Court held that the purpose was a public purpose and that the declaration could only be challenged if there was a colourable exercise of power. See to the same effect, *Shri Farid Ahmed Abdul Samad and Another Vs. The Municipal Corporation of the City of Ahmedabad and Another*, . These were all the judgments before the amendment to the Land Acquisition Act, as pursuant to the amendment the expression "public purpose" is defined. The Apex Court, considering the expression "public purpose", was pleased to observe in *Srinivasa Cooperative House Buildings Society Ltd. Vs. Madam Gurumurthy Sastry and Others*, , that the expression "public purpose" is not capable of precise definition. Each case has be considered in the light of the purpose for which the acquisition is sought for. Public purpose broadly speaking would include the purpose in which

the general interest of the society as opposed to the particular interest of the individual is directly and vitally concerned. Generally, the executive would be the best Judge to determine whether or not the impugned purpose is a public purpose. Yet, it is not beyond the preview of judicial scrutiny. The interest of a section of the society may be public purpose when it is benefited by the acquisition. The acquisition in question must indicate that it was towards the welfare of the people and not to benefit a private individual or group of individuals joined collectively. Therefore the acquisition for anything which is not for a public purpose cannot be done compulsorily. Proceeding further, the Apex Court noted that when an act is done by the State under the colour of authority of law, it must be for the lawful purpose envisaged under the Act, and if the purpose namely, the public purpose envisaged under the Act is not served, then the exercise of the power of the declaration u/s 6 must be held to be colourable exercise of the power, though not with evil motive. If this test coupled with the definition clause is understood, there can be no dispute that on the facts of the present case the acquisition is for a public purpose.

The learned Counsel however submits that even if the land is acquired for a public purpose, it cannot be in breach of the rules and/or the provisions of the Act, and if so done, it will still tantamount to colourable exercise of power. That contention can be considered while dealing with other two contentions as to whether the rules for Solid Waste Management have been followed before issuing the notification u/s 4 of the Land Acquisition Act. The second contention as urged must also be rejected.

10. With the above, we may now come to the third contention which is based on the reading of Solid Waste (Management & Handling) Rules. Before that, we may gainfully refer to what this Court has set out while disposing of PIL 2746 of 2000 by its order dated October 16, 2002. In that petition, an interim order had been passed on April 10, 2002 on considering the provisions of the Environmental (Protection) Act, 1986 and the Municipal Solid Waste (Management & Handling) Rules, 2000. The interim order passed was therefore made it rule of the Court. We may gainfully refer to the directions passed in the interim order.

1. No dumping be made of any waste except Non-Biodegradable Inert Waste and other waste which is not suitable either for recycling or biological process.
2. No use of Urali Devachi Dumping Ground is to be made unless respondent obtains authorisation of Pollution Control Board.
3. The Municipal Corporation shall not operate any Waste Processing and Disposal Facility without getting authorisation of Pollution Control Board as per Rule 6.
4. The respondents shall comply with all the requirements mentioned in Schedule III of the aforesaid Rules relating to specification for the land filling, strictly as per the said Rules.

5. The Secretary, Urban Development Department, Government of Maharashtra or any official nominated/deputed by him will supervise strict implementation of these directions issued by us and faithfully comply with earlier orders as expeditiously as possible.

6. The Pollution Control Board will also monitor the compliance standard as laid down the Rule 6 of the Rules.

7. Let the authorities consider and decide with regard to selection of new land site as laid down in Schedule III read with Rule 6 of the Rules.

It is thus clear that there never was a total prohibition on the Corporation. They could still dump Non-Biodegradable Inert Waste and Other Waste which is not suitable either for recycling or biological process. The land bearing Survey Nos. 30 and 31 had already been acquired for the purpose of disposal of garbage. The present acquisition is for extension and for other requirement as required to be maintained by P.M.C. under the provisions of the Solid Waste Rules. The Municipal Solid Wastes Rules were notified on 25-9-2000 and published in the Official Gazette on 3rd October, 2000. 3rd October, 2000 therefore will be the date on which the rules would come into force. By virtue of Rule 2 every municipal authority is responsible for collection, segregation, storage, transportation, processing and disposal of municipal solid wastes. Land filling, has been defined to mean, disposal of residual solid wastes on land in a facility designed with protective measures against pollution of ground water, surface water and air fugitive dust, wind-blown litter, bad odour, fire hazard, bird menace, pests or rodents, greenhouse gas emissions, slope instability and erosion. Various other definitions are given, which we need not advert to. By virtue of Rule 4, every municipal authority within the territorial area of the municipality, shall be responsible for the implementation of the provisions of the Rules, and for any infrastructure development for collection, storage, segregation, transportation, processing and disposal of municipal solid wastes. Rule 4 farther sets out that the municipal authority or an operator of a facility, shall make an application in Form I, for grant of authorisation for setting up waste processing and disposal facility including landfills from the State Board or the Committee in order to comply with the implementation programme laid down in Schedule I of the Rules. By virtue of Schedule I, setting up of waste processing and disposal facility had to be completed by 31-12-2003 or earlier, monitoring the performance of waste processing and disposal facilities has to be done once in six months, the improvement of existing landfill sites as per the provisions of the Rules had to be completed by 31-12-2001 or earlier, and the identification of the landfill sites for future use and making sites ready for operation had to be completed by 31-12-2002 or earlier.

The question which we have to answer is whether for the purpose of identification of landfill sites or for garbage treatment plant permission of Pollution Control Board had to be taken as is sought to be contended on behalf of the petitioners herein. Site selection is set out in Schedule III. Amongst various

other requirements, it is provided that in areas falling under the jurisdiction of the development authorities, it shall be the responsibility of such development authorities to identify the land fill sites and hand over the sites to the concerned municipal authority for development, operation and maintenance. Elsewhere this responsibility shall lie with the concerned municipal authority. It is clear from this that the development authority or the municipal authority must identify the land fill sites and hand over the sites to the municipal authorities. The second requirement is that the selection of land fill sites shall be based on examination of environmental issues. For that purpose, the Department of the Urban Development of the State or the Union Territory shall co-ordinate with the concerned Organisations for obtaining the necessary approvals and clearances. In order not to repeat the requirements of Schedule III we may also refer to the condition 9 which provide that a buffer zone of no-development shall be maintained around the landfill site and shall be incorporated in the Town Planning Department's land use plans. At the highest, therefore, the requirement is that the site must be selected taking into consideration and/or examination of environmental issues. That necessarily has to be done before a notification u/s 4 of the Land Acquisition Act is issued. If the land belongs to private owners, a public body or its officers cannot or could not enter on the land without the permission of the said authorities. It is only when the notification is issued u/s 4(1) of the Act, is it then lawful, by virtue of Sub-section (2) for any officer either generally or specially authorised to enter upon and survey the land, dig or bore in the sub-soil, and to do all other acts necessary to ascertain whether the land is adapted for such purpose. If we bear this aspect in mind, the contention as urged on behalf of the petitioners that the permission is required even before the notification u/s 4 of the Land Acquisition Act is issued, will have to be negatives. The inspection of the site and whether it would confirm to the requirements and satisfy the environmental issues, can only be done if the officer of respondent No. 1 or officers of the Development Authority can enter upon the land after the issue of the notification u/s 4(1) of the Land Acquisition Act. A reading of Rule 4 of the Solid Waste Rules would also make it clear that the application in Form I is for grant of authorisation for setting up waste processing and disposal facility including the landfills. We have noted the definition of landfill, which includes not only the disposal of residual solid wastes but also putting up of a facility. In other words, something that is already done on the land, and consequently the authorisation contemplated by Form I, can also contemplate a case where the land is not yet taken in possession by respondent No. 7. We are therefore clearly of the opinion that there was no requirement on the Development Authority or the Municipal Authority to take authorisation before a notification u/s 4(1) of the Land Acquisition Act was issued. The contention therefore must be negated.

11. In so far as identification is concerned, we have noted that the notification u/s 4, was issued on 25-7-2002. From the affidavit of Dr. Roopchand R. Pardeshi, it becomes clear that in so far Survey Nos. 30 and 31 of village Urali Devachi, M.P.C.B. had granted authorisation by a letter dated 7-6-2002 to set up and

operate waste processing/waste disposal facility. By a letter of 10-7-2002, officers of respondent No. 4 intimated to the Director of Town Planning Department that for granting of no objection certificate to acquire land bearing Survey No. 32 at Devachi Urali and Survey Nos. 191 to 195 of village Fursingi, the process of identification and selection of landfill sites has to be carried out by the Development Authorities before handing over to the concerned Municipal Authorities. By the said letter dated 10-7-2002 the members to constitute the Site Clearance Committee, to be set up by the Development Authority, were set out. By a letter of 17-7-2002 the Additional Municipal Commissioner of respondent No. 7 informed the Collector of Pune, that the areas to be acquired are outside the jurisdiction of respondent No. 7, and as such, the Development Authority is the District Collector and the Site Clearance Committee has to be set up by the Collector and the Committee has to re-comment the site under the Municipal Solid Wastes Rules, 2000. The Committee was constituted and a notice was given to the members by a notice dated 1-8-2002. The Committee met on 6-8-2002 and decided to approve the site. The Collector by his letter of 29-8-2002 intimated to respondent No. 7 that the Site Clearance Committee had cleared the proposal in respect of Survey No. 32 of Urali Devachi and Survey Nos. 191 to 195 of village Furshingi. It is therefore clear that the Committee had been appointed by the Collector for the said purpose. There is no challenge to the constitution of the members of the Committee. Once that be the case, we are clearly of the opinion that, there was substantial compliance with the requirements of direction 1 as set out in Schedule III of the Waste Disposal Rules.

12. Another incidental question that has be answered, which was urged on behalf of the petitioner in Writ Petition No. 6973 of 2002 was that the Development Authority for the purpose of the Rules is the Authority as set out in Part IXA of the Constitution of India. Specific reference is made to Article 243ZD. The said Article contemplates that there shall be constituted in every State at the District level, a District Planning Committee to consolidate the Plans prepared by the Panchayats and the Municipalities in the District, and to prepare a draft development plan for the District as a whole. The State of Maharashtra has enacted the Maharashtra District Planning Committees (Constitution and Functions) Act, 1998. The said Act defines development plan, to mean socio economic development plan for primary, secondary and tertiary sectors of economy as outlined in Five Year Plan and the Annual Plan of the Country in general and the State in particular. Section 3 contemplates the constitution of District Planning Committee. Section 10 sets out the functioning of District Planning Committee. If therefore we consider the definition of development plan, the constitution of District Planning Committees and its functioning and duties, it would be clear that it has nothing to do with the development plan, for user of land but a development plan for the socio economic development, considering the Five Year Plan as also the Annual Plan of the Country and the State. It will therefore be not possible to accept the contention that the development authority contemplated is the Development Committee as set out in the

Maharashtra District Planning Committees Act, 1998. That is an authority for a purpose of economic planning and not connected with the development of the land in the area. A perusal of the Solid Waste Rules would indicate, that the Planning Authorities are the Development Authorities or the Municipalities. In the instant case, the land does not fall within the limits of Municipality. The lands are within the local area of a village. The expression "Development Authority" therefore will have to be seen in the context of the authority which is seized with the planned development of the area within its jurisdiction. It must be noted that Parliament would be aware of the fact, that there are Town Planning Acts in every State which provide for development plan for a town as also for a region which can include a village. Wherever there is a notified Planning Authority for an area that would be the Development Authority. If there is no Planning Authority, it would be the Municipal Authority. The M.P.C.B. which is the authority set up for granting permission and monitoring landfill sites and garbage treatment plant under the provisions of the Environment Act, intimated by its communication that in so far as village from where the land is to be acquired, the development authority is the Collector. In our considered opinion that would be the correct position in law considering the provisions and the purpose for which the Solid Waste Rules have been enacted. It is therefore not possible to accept the contention urged that the development authority is the development committee set up under the provisions of the Maharashtra District Planning Committees (Constitution and Functions) Act, 1998.

13. Having said so, we may deal with the last contention. Really speaking the authorisation considering the Rules 4 and 6 of the Solid Waste Rules is when the Corporation decides to discharge its statutory duties and for which it requires the authorisation. Once again as set out in the affidavit of Raghunath Shivram Adhav, the Regional Officer of the M.P.C.B., the role of respondent No. 4 (M.P.C.B.) is restricted to monitor the compliance of the standards regarding ground water, ambient air, leachate quality and the compost quality including incineration standards specified in the rules and to grant/refuse authorisation taking into consideration the views of the other agencies like the State Urban Development Department, the Town & Country Planning Department, Airport or Airbase Authority, the Ground Water Board etc. The authorisation has to be applied for in Form No. I which amongst other requirements, contemplates that the site clearance from the local authorities must be taken. Therefore, the municipal authority will have to apply under Rule 4(2) for an authorisation. That stage has yet to be reached. In the meantime, in so far as Writ Petition No. 7389 of 2002 is concerned, an award has been passed and the possession of the land has been taken over. In so far as other petitions are concerned, though the emergency clause u/s 17 of the Land Acquisition Act was invoked, by virtue of interim orders, the respondents have been restrained from taking possession and or from making award. It is only when the land vests in the Corporation will it be possible for it to apply for authorisation. It cannot be comprehended that a person or authority who is not the owner of the land can apply for authorisation

even before the land is taken in possession or the land vests in it.

Before concluding the judgment, we may note that one of the requirements as set out in Schedule III is that a buffer zone of no development shall be maintained around landfill site and shall be incorporated in the Town Planning. Department's land-use plans. The contentions of Corporation is that the area around the land being acquired is an agricultural land, which is a no development land. The contention of the petitioners on the other hand is that there is a national highway which is passing through the buffer zone and apart from that there are other village sites. That issue need not detain us, considering that, that aspect of the matter will have to be examined when the authorisation is sought for by respondent No. 7 from respondent No. 4. All that we can say is that the respondent No. 4 is bound to consider before granting authorisation, that the respondent No. 7 complies with the requirements of the Municipal Solid Waste Rules. We may set out what the Apex Court has been saying in the matter of acquisition of land for public purpose and interference by the courts. We may gainfully refer to the judgment in *Ramniklal N. Bhutta and another Vs. State of Maharashtra and others*, . In paragraph No. 10 it is observed :-

"Before parting with this case, we think it necessary to make a few observations relevant to land acquisition proceedings. Our country is now launched upon an ambitious programme of all round economic advancement to make our economy competitive in the world market. We are anxious to attract foreign direct investment to the maximum extent. We propose to compete with China economically. We wish to attain the pace of progress achieved by some of the Asian countries, referred to as "Asian tigers", e.g., South Korea, " page S.C. 1240 Taiwan and Singapore. It is, however, recognised on all hand that the infrastructure necessary for sustaining such a pace of progress is woefully lacking in our country. The means of transportation, power and communications are in dire need of substantial improvement, expansion and modernisation. These things very often call for acquisition of land and that too without any delay. It is, however, natural that in most of these cases, the persons affected challenge the acquisition proceedings in courts. These challenges are generally in the shape of writ petitions filed in High Courts. Invariably, stay of acquisition is asked for and in some cases, orders by way of stay or injunction are also made. Whatever may have been the practices in the past, a time has come where the courts should keep the larger public interest in mind while exercising their power of granting stay/injunction. The power under Article 226 is discretionary. It will be exercised only in furtherance of interests of justice and not merely on the making out of a legal point. And in the matter of land acquisition for public purposes, the interests of justice and the public interest coalesce. They are very often one and the same. Even in a Civil Suit, granting of injunction or other similar orders, more particularly of an interlocutory nature, is equally discretionary. The courts have to weigh the public interest vis-a-vis the private interest while exercising the power under Article 226 indeed any of their discretionary powers. It may even be open to the High Court to direct, in case it finds finally that the

acquisition was vitiated on account of non-compliance with some legal requirement that the persons interested shall also be entitled to a particular amount of damages to be awarded as a lump sum or calculated at a certain percentage of compensation payable. There are many ways of affording appropriate relief and redressing a wrong; quashing the acquisition proceeding is not the only mode of redress. To with, it is ultimately a matter of balancing the competing interests. Beyond this, it is neither possible nor advisable to say. We hope and trust that these considerations will be duly borne in mind by the courts while dealing with challenges to acquisition proceedings."

For the reasons aforesaid, we do not find any merit in the contention urged. In setting up of land fill sites or the garbage treatment plant, there are bound to be objections by parties likely to be affected either on account of the threat of pollution or on account of fact that the land being in proximity of the site, the land value would depreciate. These are hazards which we have to accept. Ultimately it is sustainable development. Sites have to be provided for disposal of the waste, generated by human habitations. A statutory duty is cast on the local bodies for that purpose. An attempt by respondent Corporation to set up modern facilities which it was bound to do, pursuant to Solid Waste Rules by 31-12-2003, it has been unable to meet the target. The respondent Corporation to now proceed to set up the process for a landfill sites and garbage disposal plant as required by the rules.

14. Rule discharged in all the petitions. In the circumstances of the case, there shall be no order as to costs.

15. The learned Counsel for the petitioners seeks stay of the order. In our opinion, considering the fact that the matters are pending in the Court right from 2002 and further as a mandate is cast on respondent Corporation to provide landfill sites and garbage disposal plant, and for the reasons given by us in the judgment, we do not think that this is a fit case where there should be any further stay. Hence, application for stay is rejected.