
(2012) 09 GAU CK 0050
In the Gauhati High Court
Case No : Writ Petition (C) No. 227 of 2008

Fukan Rabha and Others

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 07-09-2012

Acts Referred:

Constitution of India, 1950 — Article 226
Land Acquisition Act, 1894 — Section 10, 11, 11A, 12, 12
National Highways Act, 1956 — Section 3A(3)
Post Office Act, 1898 — Section 28, 29

Citation : (2012) 5 GLT 482

Hon'ble Judges : Indira Shah, J; Amitava Roy, J

Bench : Division Bench

Advocate : N. Dutta, Mr. S.K. Medhi and Mr. S.R. Rabha, for the Appellant; B. Goyal, GA, Mr. B.C. Das, Mr. K. Paul, U. Dutta and Mr. D.N. Bhattacharjee, for the Respondent

Final Decision : Allowed

Judgement

Amitava Roy, J.—The validity of the proceedings being L.A. Case No. 18/2006 registered under the Land Acquisition Act, 1894 (for short, hereinafter referred to as "the Act") and the consequential orders/notices, amongst others, dated 12.10.2007 and 8.11.2007 addressed to the petitioners to accept compensation for their land along with the zirat standing thereon and hand over possession thereof to the concerned Revenue authority have been collectively impeached seeking annulment thereof in the exercise of this Court's extraordinary writ jurisdiction. This Court by order dated 21.1.2008 had, in the interim, required the parties to maintain status quo with regard to the land involved and as has been submitted at the Bar, the impugned proceedings have not been furthered thereafter. Resultantly, the possession of the land has not been handed over to the acquiring authorities.

2. We have heard Mr. N. Dutta, Senior Advocate for the petitioners; Mrs. B. Goyal, learned Govt. Advocate for the State respondents; Mr. B.C. Das, Senior

Advocate for the respondent No. 4, Border Security Force (for short, hereinafter referred to as "the BSF") and Mr. K. Paul, learned counsel for the respondent No. 5 impleaded subsequent to the institution of the writ petition.

3. An abridged version of the pleaded facts would outline the orientation of the parties. The petitioners asserting to be permanent residents of the District of Kamrup and belonging to the Rabha community, identified as Scheduled Tribe of the State of Assam have claimed along with others possession of the land sought to be acquired. According to them, in the concerned area situated under the Barduar Mouza more than ten thousand indigenous people inhabit. These people mostly belonging to the Rabha Tribe have spread over an area of 250 Bighas which encompasses villages like Jarapata, Koch-para, Hanpara, Deupani, Membasti and Tulsibari. According to them, they own and possess the land in their occupation and have their homestead as well as cultivation thereon. They have asserted that these lands have been inherited by them from their forefathers and that they are possessing the same with their families since about last more than hundred years. According to them, these lands are covered by patta and they are khatian holders some of which are in the name of their predecessors-in-interest. That they are paying revenue to the concerned State department duly and regularly has also been averred.

4. They have pleaded that on 26.6.2005 notices were issued by the Circle Officer, Palashbari Revenue Circle to five persons including one of them directing the notices to be present in a discussion for setting up of a BSF Camp in the area. Though in the said meeting the proposal was vehemently objected to by the inhabitants citing large scale displacement of indigenous people with detrimental consequences, the concerned respondent authorities were found inclined to pursue the matter. Situated thus, various organizations resisting this move submitted a memorandum dated 7.8.2006 representing the cause of the petitioners before the Hon"ble Revenue Minister, Govt. of Assam with a specific request for stopping the eviction of the local people in the name of setting up of BSF Camp. As the memorandum followed by others to the same effect did not evoke any response, another detailed memorandum dated 4.1.2007 was submitted by the Rabha Students' Union with the Hon"ble Chief Minister, Assam demanding, amongst others, shelving of the plan to allot 250 Bighas of land of Jarpara, Kochpara, Hanpara, Deupani, Membasti, Tulsibari and other areas to the BSF by dislodging the indigenous people in occupation thereof.

5. It was in this factual setting that the impugned notice dated 12.10.2007 was issued from the office of the Deputy Commissioner, Kamrup to the petitioners informing that the land mentioned in the schedule thereto had been acquired under the Assam Acquisition of Land Act, 1894 for the BSF and they were thereby directed to submit the documents pertaining thereto for handing over the same to the jurisdictional Sub Deputy Collector on receipt of the compensation therefor. According to the petitioners, though they raised objection and registered protests against the said notices, a fresh set of impugned notices

dated 8.11.2007 were issued by the Deputy Commissioner, Kamrup reiterating the previous directions and requiring them to receive 80% of the amount of compensation fixed and immediately hand over the possession of the land to the Sub Deputy Collector, Palashbari. According to the petitioners, no prior notice about the acquisition of the land had ever been issued to them before the notices dated 12.10.2007 and 8.11.2007.

6. Apart from contending that the area in question was located within the Rabha Hasong Autonomous Council governed by the Rabha Hasong Autonomous Council Act, 1995 for which the provisions of the Act were not applicable thereto, they have pleaded in the alternative that the purported proceedings of acquisition had been in gross violation of the mandatory provisions thereof/ Land Acquisition Act, 1894, They have asserted that no notice u/s 4 of the Act or declaration u/s 6 thereof had been issued and no objection was also called for u/s 5A. Besides contending that no notice u/s 9 had been issued prior to the impugned acquisition, the petitioners have also alleged absence of any public purpose justifying the same. That the State respondents were contemplating to take over the land from them by force has also been hinted at. The petitioners have pleaded that the impugned proceedings purportedly furthered under the Act were non-est in law and, thus, the consequential notices dated 12.10.2007 and 8.11.2007 were invalid.

7. The respondent No. 2, Deputy Commissioner, Kamrup in his affidavit-in-opposition, while endorsing the validity of the actions taken maintained that out of the petitioners only fourteen possess their land as khatian holders under M/s. Barduar Tea & Timber Company Ltd., (respondent No. 5), the actual owner of the acquired land. The answering respondent asserted that the other petitioners have no land in the area proposed to be acquired and that the authorities did not entertain any intention to evict them from their land by show of force. The averment that the area is inhabited by ten thousand people has been denied.

8. Besides contending that the land under the acquisition proceedings had been acquired as per the procedure: prescribed by the Act on the request letter from the Inspector General of BSF Headquarters, Shillong, it has been claimed that the exercise had been undertaken in consultation with the petitioners and other inhabitants of the area. It has been stated further that the proposal for acquisition of the land has been to accommodate the National Disaster Response Force, 128 Bn, BSF at Piyabari No. 1 village, Barduar Bagan, an initiative first of its kind in the North-Eastern region of India for disaster management in the region. According to the answering respondent, this proposal after being entertained by the Government of Assam, Revenue (LR & DM) Department, a Notification u/s 4(1) and, thereafter, a declaration u/s 6(1) of the Act were published in the issues dated 22.8.2006 and 20.8.2007 of the Assam Gazette, whereafter, these were published as well in the local newspapers in circulation in the area inhabited by the petitioners and others in occupation of the land involved. That a detailed report on the memorandum dated 7.8.2006 had been

submitted to the concerned State authorities has been mentioned as well.

9. The answering respondent has further stated that the acquisition proceedings have been undertaken strictly in accordance with the provisions of the Act, in course whereof, notices have been duly served on the persons residing on the land and they were required as well to receive compensation. While dismissing the relevance of the Rabha Hasong Autonomous Council Act, 1995 vis-?-vis the process involved, it has been stated as well that out of 36 Nos. of families affected by the acquisition, 9 are employees of M/s. Barduar Tea & Timber Company Ltd. (respondent No. 5) for whom, it (respondent authority) had already initiated steps for rehabilitation. Moreover, 22 families who have residential houses on the acquired land have been allotted 2 Bighas of land each for homestead as per the rehabilitation scheme of the State Government. According to the said respondent, the remaining 5 families are encroachers. While denying the imputation of contemplated ouster by force, the answering respondent affirmed that 15 families meanwhile have approached the District Administration for release of their compensation and, accordingly, the amount has been paid.

10. The respondent No. 4 in his counter has questioned the maintainability of the writ proceedings on various grounds. Alleging in addition to malafide on the part of the petitioners to scuttle a valid process of acquisition, it has been asserted that the dispute is of civil nature and beyond the purview of scrutiny under Article 226 of the Constitution of India. That having claimed themselves to be khatian holders they have an alternative forum to espouse their cause has also been insisted upon to be a factor against the maintainability of the challenge before this Court. Qua the process of acquisition, it has been averred that as per the mandate of the Disaster Management Act, 2005, a National Disaster Management Authority has been set up principally in order to address all aspects of disaster management and mitigation and management of the situations arising out of natural disasters. It has been stated that in order to provide high skilled speedy response to such natural calamities for certain areas the National Disaster Response Force (for short, NDRF) had been created and for the North-Eastern part of India 128 Bn. BSF had been entrusted with the said duty being stationed at Guwahati. The answering respondent has averred that with the above assignment in contemplation, a requisition was sent by the Inspector General, BSF, Shillong vide letter No. 504/ 04/05-06/Engg/SHG/BSF/1015-22 dated 27.5.2006 for land measuring 85 acres for setting up the Headquarters of 128 Bn. NDRF with a request to provide a preliminary estimate along with non-encumbrance certificate therefor. Accordingly, a Gazette Notification for acquisition of the land was issued by the Deputy Secretary to the Govt. of Assam, Revenue (LR) Department u/s 4(1) of the Act on 22.8.2006 and the jurisdictional Deputy Commissioner also submitted an estimate of compensation amounting to Rs. 5,76,65,320/- for 85 acres of land at Piyabari (1st Phase) under Barduar Mouza in the district of Kamrup.

11. According to this respondent, on the acceptance of the proposal and on receipt of the estimate and other relevant documents including the No Objection Certificate dated 7.9-2006 issued by the Senior Sub Registrar, Kamrup Guwahati as well as the No Objection Certificate from the owners of the land, the estimate was forwarded to the office of the SHQ, BSF Engg, DTE, New Delhi on 19.12.2006 by the Inspector General, BSF, Shillong. Thereafter, the sanction of the Ministry of Home Affairs, New Delhi for acquisition of land measuring 85 acres was approved vide order No. 127/04/2005-Engg/ BSF/Vol. II/PF1/7907-15 dated 17.8.2007, whereafter, the aforementioned sum of Rs. 5,76,65,320/- was deposited with the Deputy Commissioner, Land Acquisition Branch vide 128 Bn NDRF (BSF) Letter No. Engg/777/128/NDRF/07/12427-31 dated 21.8.2007 through Cheque No. 389003 dated 21.8.2007. That this was preceded by a request for the deposit of this amount by the Deputy Commissioner, Kamrup (R) vide letter No. L.A. 18/2006/37/88-89 dated 20.11.2006 has also been stated. The publication of the declaration u/s 6(1) of the Act in the Assam Gazette on 20.8.2007 and, thereafter, in the local dailies-Agradoot and the Sentinel on 31.8.2007 has been mentioned as well.

12. According to this respondent, though the Deputy Commissioner, Kamrup LA Branch vide letter No. L.A. 18/2006/485 dated 24.9.2007 had directed the territorial Circle Officer to hand over peaceful possession of the acquired land measuring 257 Bighas 0 Katha 13 Lechas of village Barduar Bagan, Mouza Barduar to 128 Bn. NDRF (BSF), citing a possible law and order situation in view of the ensuing Panchayat elections, a decision was taken to hand over encroachment free 164 Bighas 1 Katha 15 Lechas of land to 128 Bn, NDRF. Field verification, however, revealed that the acquired land was not free from encumbrances. The 128 Bn NDRF as the first step installed a taking over party on the vacant portion of the land adjacent to the P.W. D Road awaiting early completion of the acquisition process to facilitate delivery of vacant possession thereof in full. That this party of the BSF has been withdrawn on 21.1.2008 marking absence of any progress in the land acquisition process has been mentioned. Contending that the: answering respondent has meanwhile deposited the entire amount of compensation as estimated by the State authorities for which it is entitled to be delivered vacant possession of the land measuring 257 Bighas 0 Katha 13 Lechas certified to be free from all encumbrances, this respondent has maintained that the present challenge is untenable in law and is liable to be dismissed.

13. The respondent No. 5, M/s. Barduar Tea & Timber Company Ltd. while claiming itself to be the owner of the land involved has reiterated that out of the writ petitioners only 14 are in possession of some portion thereof and that the others, therefore, are bereft of any locus standi to maintain the impugment herein. It has accused the petitioners of suppressing the material fact that they had approached civil Courts on the same issue which have since been dismissed for non-prosecution. The availability of alternative remedy has also been cited as a ground against the maintainability of the instant assailment. While dismissing

any right of the petitioners on the land in question, the answering respondent has admitted those of the petitioners in occupation of the land as its licencees or as share croppers whose occupation was co-terminus with their services with it and has pleaded that no right, title and interest in the land had vested in them by virtue of such occupation. That the petitioners are not covered by the expression "persons interested" under the Act and that they have no right whatsoever to question the acquisition proceedings has been underlined. That the endeavour to stifle a public project is wanting in bonafide has been mentioned as well.

14. According to the answering respondent, the acquisition proceedings having been completed followed by an award of compensation, the impugnement of the process is impermissible in law. That the delay on the part of the petitioners in questioning the validity of the acquisition proceedings dis-entitled them to any relief has been emphasised. The respondent has endorsed as well the publication of the notice u/s 4(1) and the declaration u/s 6(1) of the Act in the State Official Gazette on 22.8.2006 and 20.8.2007 followed by the publication thereof in the local dailies-Agradoot and the Sentinel on 16.9.2006 and 21.8.2007 respectively. According to this respondent, submission of several representations by the petitioners duly demonstrate their notice and awareness of the acquisition proceedings and, hence, the question of eliciting their objections u/s 5A did not arise as they were not included within the meaning of the expression "persons interested" under the Act. That the land had been acquired for setting up of the NDRF Camp, a public purpose of immense significance for the region has been mentioned. This respondent maintained as well that it of its own had taken up the issue of rehabilitation of the persons affected and has initiated the process of rehabilitation of 9 families. It stated as well that excluding the encroachers others who have residential houses on the land acquired have also been allotted 2 Bighas of land each by the State Government for their rehabilitation.

15. The petitioners in their affidavits-in-reply have generally reiterated and reaffirmed their assertions in the writ petition. They, however, have emphatically asserted on oath that the land in their occupation and involved in the acquisition proceedings had been declared to be ceiling surplus and, thus, the impugned process was a sham exploit with the connivance of the respondent No. 5 for wrongful gain posing itself to be the owner thereof. The petitioners have sought to assert that the grant of khatian to some of them was in view of the fact that they were landless and that the plots in their occupation were within ceiling surplus land. They have dismissed the award made in the acquisition proceedings as unsustainable in law having been passed without following the mandatory requirements of the Act. While clarifying that they are not opposed to the project, they have insisted that the respondent No. 5 is not the owner of the land involved and that the representation of their rehabilitation is only an eyewash. That the land being ceiling surplus cannot be available for acquisition in the manner undertaken has been underlined.

16. In the above matrix of the pleadings, the learned senior counsel for the petitioners has emphatically urged that the impugned proceedings purportedly undertaken under the Act being on the face of the record non-est in law, it is liable to be adjudged illegal, null and void and the consequential orders/notices/notifications ought to be annulled as well. Apart from the fact that the Notification dated 22.8.2006 purportedly u/s 4(1) had been issued at a time when the representation dated 7.8.2006 on behalf of the petitioners was awaiting consideration on merits, as admittedly the contents thereof were in English though published in the local dailies-Agradoot and the Sentinel, the same did not conform to the mandatory prescription of that provision of the Act rendering it nonexistent in law. Apart from contending that the Notification u/s 6(1) of the Act also suffers from the same incurable defect, Mr. Dutta has urged that the omission of making a proclamation or a public notice in the locality as enjoined by Sections 4 and 6 of the Act has rendered the acquisition proceedings invalid. The Notifications under Sections 4 and 6 of the Act having been rendered non-est in view of the inexplicable contravention of the mandatory edicts of law, irrefutably all steps taken in furtherance thereof ought to be determined to be unsustainable as well, he urged. Referring to the various provisions of the Act outlining the scheme for acquisition of land commencing from the publication of the notice u/s 4 and the award of compensation, the learned senior counsel has insisted that in the face of series of legal infirmities vitiating the same, no delay in the challenge thereof as alleged can either redeem or save the same.

17. Adverting to the pleadings of the respondents as well as the official records, Mr. Dutta has sought to urge, amongst others, that having regard to the dates of deposit of the amount of compensation and that of approval of the award it is obvious that the impugned process was undertaken with a predetermined mind in utter disregard to the obligatory provisions of the Act legislatively designed with utmost care and circumspection for protection of "the persons interested therein. Contending that the land, as is evident from the contemporaneous materials on record, is ceiling surplus and that the same cannot be acquired under the Act without prior compliance of the ordainments of the Assam Fixation of Ceiling on Land Holdings Act, 1956 (as amended) whereunder the same has to be offered first to the occupiers thereof for settlement, the learned senior counsel has contended that the impugned process is in vivid departure therefrom and is, thus, invalid According to Mr. Dutta, the issuance of khatian to the petitioners amply corroborates the fact that they had occupied the ceiling surplus land as Rayats. That this fact is also endorsed by the order dated 31.1.1973 of this Court rendered in Civil Rule No. 153/1970 [M/s. Barduar Tea & Timber Company Ltd. Vs. Sub Divisional Officer (Sadar) Guwahati & Ors.] was also underlined.

18. Mr. Dutta has further argued that the land being ceiling surplus, the respondent No. 5's claim of ownership thereof is not only untenable but informed with malafide as well. According to him, the process purportedly evidenced by the Notifications under Sections 4 and 6 of the Act is a mere

pretension or a cloak as is evident from the fact that the land had been identified by the respondent No. 4 on being offered by the respondent No. 5 which is not the owner thereof. Referring to the official records in details, the learned senior counsel urged that the initiation of the process for payment having commenced even before the publication of the declaration u/s 6(1) of the Act and the release of 50% thereof in favour of the respondent No. 5 in haste without completing the process for computation and payment of compensation as contemplated by the Act demonstrates foul play and fraudulent siphoning of public money on collateral considerations. That in doing so the opinion of the highest Law Officer of the State had been disregarded has been underlined as well. The following decisions were cited to buttress the above contentions:

- (i) Khub Chand and Others Vs. State of Rajasthan and Others,
- (ii) Collector (District Magistrate) Allahabad and Another Vs. Raja Ram Jaiswal,
- (iii) Syed Hasan Rasul Numa and others Vs. Union of India and others,
- (iv) Kunwar Pal Singh (Dead) by L.Rs. Vs. State of U.P. and Others,
- (v) J & K Housing Board & Anr. Vs. Kunwar Sanjay Krishan Kaul & Ors., (2011) 10 SCC 714
- (vi) Greater Noida Indusl. Devt. Auth. Vs. Devendra Kumar and Others,
- (vii) Nalini Kanta Das Vs. The Collector of Cachar & Ors., 1982 (1) GLR 234
- (viii) Sarungbam Joykumar Singh and Others Vs. State of Manipur and Others,
- (ix) Purno Boro Vs. State of Assam & Ors., (2008) 4 GLR 364
- (x) Swastik Agency and Others Vs. State Bank of India, Main Branch and Others, .
- (xi) Judgment and order dated 29.12.2011 of the Gujarat High Court in Mansukh Bhai Kalyan Bhai Chovatiya & Ors. Vs. National Highways Authority of India & Ors.

19. Ms Goyal in reply has dismissed the plea of violation of the provisions of the Act, more particularly, pertaining to the notice/declaration under Sections 4 and 6 thereof contending absence of pleadings in support thereof. According to her, the impugned acquisition proceedings have been undertaken in strict conformity with the prescriptions of the Act and that any imputation contrary thereto is wholly untenable. According to the learned Govt. Advocate, the compensation as due to the petitioners under the law had been offered to them and whereas the petitioner Nos. 14, 15, 22 and 28 when offered the amount of compensation did not receive the same, petitioner Nos. 5, 6, 7, 8, 9, and 23 have already been rehabilitated by the Government and, as such, there is no surviving cause of action in the instant proceeding to be espoused qua the other petitioners who have no locus standi. That the petitioners are estopped from questioning the validity of the acquisition proceedings they having accepted the compensation and the rehabilitation measures has also been urged.

20. According to Ms Goyal, submission of representations by the petitioners is an adequate testament to their full information of the notice/declaration under Sections 4 and 6 of Act and that the plea to the contrary is an afterthought. She has urged that except a few khatian holders amongst the petitioners no other has any semblance of right or interest in the land and, therefore, are not "persons interested". While contending that the land is not ceiling surplus and, thus, the procedure as delineated in the Assam Fixation of Ceiling on Land Holdings Act, 1956 (as amended) (hereinafter also referred to as the Act 1956) is inessential, Ms. Goyal has referred as well to the order dated 31.1.1973 rendered by this Court in Civil Rule No. 153/1970, M/s. Barduar Tea & Timber Company Ltd. (supra) to assert that a process under this enactment initiated at some point of time stood quashed thereby. According to her, having regard to the public purpose for which the land has been acquired, in absence of pleaded malafide, the acquisition proceedings as a whole ought not to be annulled at the instance of a handful of petitioners majority of whom have either accepted the compensation or availed the benefits of rehabilitation endowed by the State Government.

21. The learned senior counsel for the respondent No. 4 referred to the sovereign powers of the State to compulsorily acquire land in accordance with law and on that ground sought to dispel the challenge to the impugned proceedings. According to him, the provisions of the Act have been duly complied with and even assuming without admitting that there had been marginal deviations, no interference at this stage i.e. after finalization of the award and release of compensation, is warranted. Apart from contending that the pleadings of the petitioners are bereft of any assertion regarding want of knowledge or information of the notice of the acquisition proceedings and the continuation thereof or that they had been prejudiced thereby, the pleas based on alleged violation of Section 4 and 6 of the Act is of no avail to them, he urged. That the petitioners are not "persons interested" in absence of adequate pleadings testifying their right in the land was also highlighted. According to Mr. Das, the land involved is not ceiling surplus and, therefore, the Act 1956 is not attracted thereto. He submitted as well on instructions that only the petitioner Nos. 1, 3 and 8 are khatian holders under the Tea Estate and that the others have either received compensation or have been rehabilitated by the Government. The learned senior counsel, has, therefore, argued that the acquisition proceedings ought not to be interfered with at this distant point of time at the instance of persons who have by this time been adequately compensated either on payment of the sum due to them or rehabilitation elsewhere. He reiterated as well that the association of the petitioners from time to time in the process and acceptance of the compensation and rehabilitation measures exhibit their full knowledge and information of the process so much so that their turn around at this belated stage besides being impermissible in law, is wanting in bonafide as well. Without prejudice to this, Mr. Das has pleaded that the respondent No. 4 having paid the entire amount of the compensation as estimated and approved by the concerned

authorities, having regard to the momentous objective sought to be achieved by setting up the NDRF camp in this vulnerable seismic eastern zone of the country, every day's delay is highly prejudicial to the public interest and that free and vacant land adequate enough to accommodate the, project if otherwise available, may be identified and handed over to it (Respondent No. 4) at the earliest. The learned senior counsel also pressed into service the following authorities to endorse his stand:

- (i) State of Rajasthan and Others Vs. D.R. Laxmi and Others,
- (ii) Municipal Corporation of Greater Bombay Vs. The Industrial Development Investment Co. Pvt Ltd., and others,
- (iii) Union of India Vs. K. Balaji Jaya Rama Rao & Ors., (2007) 15 SCC 791
- (iv) Sooraram Pratap Reddy and Others Vs. District Collector, Ranga Reddy Distt. and Others,
- (v) Swaika Properties Pvt. Ltd. and Another Vs. State of Rajasthan and Others,
- (vi) Rajinder Kishan Gupta and Another Vs. Union of India (UOI) and Others,
- (vii) The Special Deputy Collector, Land Acquisition C.M.D.A. Vs. J. Sivaprakasam and Others,

22. Mr. Paul, has argued empathetically against the allegation of connivance of the respondent No. 5 in the acquisition process for unlawful gain as alleged. This plea, to start with, is wholly untenable as the writ petition had been filed without impleading this respondent at the first instance, he urged. While fully ratifying the acquisition proceedings, the learned counsel has urged that none of the four khatian holders are presently in employment of the Tea Estate. While clarifying that occupation of land by these khatian holders has been in lieu of ration allowance and have thereby no semblance of right in it, Mr. Paul has sought to impress upon us that the land acquired is different from the one referred to in the khatians. According to him, issuance of khatian by the Tea Estate vouch against the plea of ceiling surplus status of the land involved. This is evidenced as well by the order dated 31.1.1973 rendered in M/s. Barduar Tea & Timber Company Ltd. (supra), whereafter, the State Government did not pursue the ceiling proceedings. On instructions, Mr. Paul has urged that out of the 36 families in occupation of the land steps for rehabilitation of 9 have been undertaken by the respondent No. 5 whereas identical steps have been taken up by the State Government for 24 other families. According to him, the rest are encroachers on the land but have been awarded compensation. Mr. Paul emphasized that Section 4 and 6 of the Act do not require publication of the notice/declaration in any vernacular language and the notice/declaration in the instant proceedings are, thus, in full compliance of the prescriptions of the said statutory provisions. The learned counsel maintained that the respondent No. 5 being the owner of the land, no illegality as such is discernible in its offer thereof for acquisition for a public purpose. He clarified that non-encumbrance certificate

acted upon by the respondent No. 4 only signifies absence of lien or charge created by the owner of the land in favour of any third party and did not necessarily imply that it was free from occupation. That even on a substantial compliance of the provisions of the Act no interference with any acquisition proceeding is warranted was sought to be reiterated. Mr. Paul relied on the decision of the Apex Court in *Raza Buland Sugar Co. Ltd. Vs. Municipal Board, Rampur*, .

23. Mr. Dutta in his reply referred to the provisions of the Assam Official Language Act, 1960 (for short, "Act, 1960") to maintain that the regional language as contemplated in Section 4 and 6 of the Act in their application to the State of Assam would connote official language as identified by the Act, 1960. As the land of an agriculturist is sought to be acquired, the notice essentially has to be in a language understood by him and that, therefore, the notice/declaration u/s 4(1)/ 6(1) in the instant case being not in compliance of the legislative mandate to this effect, the acquisition proceedings is non-est, he urged. He dismissed the plea based on doctrine of substantial compliance by contending that submission of representation by persons affected per se cannot save the process. He mentioned further that the notices dated 27.6.2005 issued at the first instance by the Circle Officer, Palashbari Revenue Circle referred to the land as ceiling surplus and, thus, all endeavours to project the same to be not a ceiling surplus land are indefensible. The very fact that the petitioners have been offered compensation and/or rehabilitation signifies that they are "persons interested" was highlighted as well. Mr. Dutta was severely critical of the relevant records so much so that he pleaded unauthorized and deliberate interference therewith to camouflage the real state of affairs. The learned senior counsel referred to the order dated 31.1.1973 passed in *M/s. Barduar Tea & Timber Company Ltd.* (supra) to contend that the land had been declared to be ceiling surplus, a decision still not recalled by the Government. He negated as well the plea against interference with an acquisition proceeding on the finalization of award and release of compensation pleading that the authorities cited at the Bar to that effect are distinguishable in the contextual facts. As in the present proceeding the provisions of the Act have not been complied with at all and the scheme outlined thereby for computation of compensation, finalization of award etc, had not been adhered to, the assertion of substantial compliance is misplaced, he underlined. Mr. Dutta maintained that there being no iota of evidence to establish that after the approval of the purported award dated 31.10.2007 steps as statutorily required by Section 9 to 12 had been complied with, the petitioners cannot be accused of delay in approaching this Court as well.

24. While laying the official records being File No. RLA 126/06 of the Revenue (DM) Department, Govt. of Assam and File No. KRA 2/2006 of the Land Acquisition Branch of the office of the Deputy Commissioner, Kamrup, Guwahati, Ms Goyal has apprised this Court as well of the parawise report submitted by the Circle Officer, Palashbari Revenue Circle, amongst others, in answer to the queries regarding area of encroachment free land and the feasibility of

rehabilitation of the persons affected by the acquisition. The learned Govt. Advocate also submitted on instructions that as on date the possession of the land has not been handed over formally to the respondent No. 4 and that no construction work thereon has commenced in furtherance of the project contemplated.

25. We have traversed the pleadings and the documents on record and have as well extended our anxious consideration to the arguments founded thereon. Noticeably, though the public purpose for which the land involved had been sought to be acquired is not in serious debate, the exercise pertaining thereto as claimed to be undertaken under the Act has been repudiated in utmost critical terms. Apart from contending invalidity of the acquisition proceedings for obvious non conformity with the provisions of the Act, the permissibility thereof in the teeth of the Act 1956 has been stoutly impeached. According to the petitioners, the land is ceiling surplus as per this legislation and they along with others being in occupation thereof as tenants and otherwise, no proceeding under the Act could have been initiated by disregarding the provisions thereof. The bonafide of the process has also been questioned asserting that the land being ceiling surplus, the Tea Estate was not the owner thereof and, thus, the initiative taken by it to offer the same for being acquired under the Act and the manner of conduct of the exercise demonstrates perfidy for undue enrichment on collateral considerations. Having regard to the contentious orientations and noticing, amongst others, the admission of the respondents that at the time of initiation of the acquisition proceedings some of the petitioners had in fact been in possession of the land as rayat holding khatians issued by the competent revenue authority and that the possession thereof (land acquired) has not yet been parted with, we are disinclined to non-suit them (petitioners) on the ground of availability of alternative remedy in law.

26. Insistent endeavours albeit made on behalf of the respondents to evidence that most of the persons affected have either been rehabilitated by the Tea Estate and/or allotted land at the rate of 2 Bighas per family and/or paid compensation, thus, leaving in the fray at the most four of the petitioners and that the entire acquisition proceedings at their instance only ought not to be annulled, we are, being confronted with the nature of the challenges laid, left unpersuaded to forsake the adjudicative pursuit either on the ground of estoppel or want of locus standi. The respondents having proclaimed to have acquired the land under the Act, the precept of Eminent Domain notwithstanding, meticulous and unflinching adherence to the mandates of the enactment involved is an indispensable prerequisite for the validity of the exercise undertaken.

27. It being the persistent plea of the respondents that the land acquired is not ceiling surplus under the Act, 1956 and that the process undertaken had been wholly in terms of the Act, a brief outline of the provisions thereof would appropriately set out the framework for the scrutiny of the essential facts pertaining to the process claimed to have been pursued by the respondents.

28. The expressions "land", "person interested" and "appropriate Government" as defined in Section 3 of the Act as hereunder would lay the preface:

3. (a) the expression "land" includes benefits to arise out of land, and things attached to the earth or permanently fastened to anything attached to the earth;

(b) the expression "person interested" includes all persons claiming an interest in compensation to be made on account of the acquisition of land under this Act; and a person shall be deemed to be interested in land if he is interested in an easement affecting the land;

...

(ee) the expression "appropriate Government" means, in relation to acquisition of land for the purposes of the Union, the Central Government, and, in relation to acquisition of land for any other purposes, the State Government;

29. The Act contemplates "Acquisition" under Part-II thereof and the scheme relating thereto commencing from the publication of the preliminary Notification u/s 4 thereof to actual handing over of possession stretches to Section 17 and it is easily comprehensible from the intermediate stages envisaged and the language applied that the enjoinders encompassed in the entire gamut of activities are to be obligatory adhered to. The relevant excerpts of Section 4 and 6 of the Act which desiderate pointed attention are extracted hereinbelow for ready reference;

4. Publication of preliminary Notification and powers of officers thereupon.-

(1) Whenever it appears to the appropriate Government that land in any locality is needed or is likely to be needed for any public purpose or for a company, a Notification to that effect shall be published in the Official Gazette and in two daily newspapers circulating in that locality of which at least one shall be in the regional language, and the Collector shall cause public notice of the substance of such Notification to be given at convenient places in the said locality (the last of the dates of such publication and the giving of such public notice, being hereinafter referred to as the date of the publication of the Notification).

....

...

6. Declaration that land is required for a public purpose.-

(1) Subject to the provisions of Part VII of this Act, when the appropriate Government is satisfied, after considering the report, if any, made u/s 5A, sub-section (2), that any particular land is needed for a public purpose, or for a company, a declaration shall be made to that effect under the signature of a Secretary to such Government or of some officer duly authorized to certify its orders and different declarations may be made from time to time in respect of different parcels of any land covered by the same Notification u/s 4, sub-section

(1), irrespective of whether one report of different reports has or have been made (wherever required) u/s 5A, sub-section (2):

...

...

(2) Every declaration shall be published in the Official Gazette, and in two daily newspapers circulating in the locality in which the land is situate of which at least one shall be in the regional language, and the Collector shall cause public notice of the substance of such declaration to be given at convenient places in the said locality (the last of the dates of such publication and the giving of such public notice, being hereinafter referred to as the date of the publication of the declaration), and such declaration shall state the district or other territorial division in which the land is situate, the purpose for which it is needed, its approximate area, and, where a plan shall have been made of the land, the place where such plan may be inspected.

(3) The said declaration shall be conclusive evidence that the land is needed for a public purpose or for a company, as the case may be; and, after making such declaration the appropriate Government may acquire the land in a manner hereinafter appearing.

30. Whereas it is hyaline clear that at the stage of publication of the preliminary Notification u/s 4 the likely need of the land is contemplated by the appropriate Government, the publication of the declaration u/s 6 not only exudes its satisfaction that the same is needed for a public purpose, it (declaration) is construed to be a decisive testimony of such need/exigency, thus, permitting it (appropriate Government) to acquire the land in the manner ordained. Section 6(1) refers to a report, if any, made u/s 5A, the consideration where of is imperative for the appropriate Government to derive its satisfaction about the need of the land for a public purpose as indicated in the preliminary Notification u/s 4 of the Act. As Section 5A would attest, any person interested in any land notified u/s 4 may, within thirty days from the date of the publication of the Notification, object to the acquisition of the land or of any land in the locality, as the case as may be, whereupon, the Collector shall have to accord to the objector an opportunity of being heard either in person or by any person authorized in that behalf etc. and, thereafter, either make a report in respect of the land notified or make different reports in respect of different parcels of such land to the appropriate Government forwarding his recommendations on the objections, together with the record of the proceedings for its (appropriate Government) decision which would then be final qua the objections. The import of Section 5A in view of the purpose thereof as engrafted therein, thus, cannot be overemphasized. A valid Notification u/s 4, as a corollary, is, thus, a sine qua non for a lawful initiation of a acquisition proceedings under the Act.

31. As is comprehensible, the publication of the preliminary notification and the declaration as ordained by Section 4 and 6 is an inviolable legislative mandate.

The modes of publication of the notification/declaration as well as the dissemination of the substance thereof as prescribed by Section 4 and 6 are strikingly the same. The notification has to be mandatorily published in the Official Gazette and in two daily newspapers circulating in the locality concerned of which at least one has to be in the regional language. In addition thereto, the Collector has to cause public notice of the substance of such Notification to be given at the convenient places in the said locality. The apparent significance of the prescribed manner of publication of the Notification as above is that the last of the dates of such publication and the giving of such public notice would be referred to as the date of publication of the Notification. The fact that it is only after the publication of the Notification as enjoined by Section 4 that follow up steps as envisaged in sub-section (2) thereof are permissible and that following the publication of the declaration u/s 6 acquisition of land by the appropriate Government in the manner prescribed is allowable demonstrates in no uncertain terms the peremptory nature of the requirements pertaining to the publication of the preliminary Notification and the declaration, as the case may be.

32. The next step in the scheme after the publication of the declaration contemplated in Section 6 is the direction by the appropriate Government or some officer authorized by it to the Collector to take order for the acquisition of the land, whereupon, the latter would cause the land to be marked out unless already so done and also cause it to be measured and get a plan in relation thereto made. The Collector, as Section 9 enjoins, would then cause public notice to be given at convenient places on or near the land to be taken, stating that the Government intends to take possession thereof, and that claims to compensation for all interests in such land may be made to him. The notice has to state the particulars of the land so needed and require all persons interested therein to appear personally or by agent before him at a time and place therein mentioned, and to state the nature of the respective interests in the land as well as the amount and particulars of their claims to compensation and their objections, if any, to the measurements made. u/s 9(3), it is incumbent on the Collector also to serve notice to the above effect on the occupier, if any, of such land and on all such persons known or believed to be interested therein, or to be entitled to act for persons so interested etc. within the revenue district in which the land is situate. In terms of sub-section (4), in case any person so interested resides elsewhere and has no agent to receive the notice on his behalf, the same would have to be sent to him by post at his last known residence, address or place of business registered under Sections 28 and 29 of the India Post Office Act, 1898.

33. The legislature's concern, the compulsory nature of acquisition notwithstanding, to notify the persons interested in the land and to enable them to claim compensation is amply obvious from the elaborate steps, thus, contemplated to be taken by the Collector to ensure that none genuinely entitled to receive compensation for the land to be acquired is denied the opportunity of partaking in the process in connection therewith. The Collector in pursuit of this process u/s 10 is also empowered to require any person to make or deliver to

him, at a time and place mentioned, a statement containing, so far as may be practicable, the name of every other person possessing any interest in the land or any part thereof as co-proprietor, sub-proprietor, mortgagee, tenant or otherwise of the nature of such interest, and of the rents and profits, if any, received or receivable on account thereof for three years next preceding the date of the statement. The Collector thereafter on the date so fixed would have to proceed with the enquiry into the objection, if any, which any person interested states pursuant to the notice u/s 9 to the measurements and the value of the land and into the respective interest of the persons claiming the compensation and thereafter make an award vis-?-vis (i) the true area of the land; (ii) the compensation which in his opinion should be allowed for the land; and (iii) the apportionment of the said compensation among all the persons known or believed to be interested in the land, of whom, or of whose claims, he has information, whether or not they have respectively appeared before him.

34. Section 11 makes it patent that no award shall be made by the Collector without the previous approval of the appropriate Government or of such officer as it (appropriate Government) may authorize in this behalf. As an exception to this course, a Collector may be permitted to make an award without such approval if the appropriate Government directs him to do so in such class of cases as it may specify. Sub-section (2) of Section 11, however, permits the Collector to make an award without such enquiry, if he is satisfied that all the persons interested in the land had appeared before him and had agreed in writing on the matters to be included in the award in the form prescribed by the Rules made by the appropriate Government. Whereas Section 11A prescribes a period of two years from the date of publication of the declaration for the Collector to make an award, in terms of Section 12 the award so made has to be filed in the Collector's office and would be the final and conclusive evidence as between the Collector and the persons interested of the true area and value of the land and the apportionment of the compensation among the persons interested. As required under sub-Section (2) of Section 12, the Collector would give immediate notice of his award to such of the persons interested as were not present personally or by their representatives when the award was made.

35. Section 16 permits the taking over of the possession of the land after the award has been made u/s 11 in the manner prescribed and thereupon the land would vest absolutely in the Government free from all encumbrances. In cases of urgency, however, as contemplated in Section 17 the Collector, whenever the appropriate Government so directs and though no award has been made, may on the expiration of 15 days from the publication of the notice u/s 9(1), take possession of the land needed for a public purpose whereupon it would vest absolutely in the Government free from all encumbrances. As the text of Section 17 would testify, such a course by way of an exception and in divagation from the one ordained in the aforesaid scheme has to be resorted to only in cases of urgency. Logically it would thus be incumbent on the part of the appropriate Government and for that matter the Collector, as the case may be, to record the

event of urgency justifying a shortcut after the notice u/s 9(1) to take over possession of the land without holding an enquiry and deciding on the compensation payable to the persons interested. Exercise of powers u/s 17, thus, cannot be readily inferred.

36. Before adverting to the contextual facts as well as the relevant official records, it would be apt to visit the legal canvas sketched by the authorities cited at the Bar vis-?-vis the provisions of the Act involved. A brief survey of the judicial pronouncements alluded to by the parties affirms the proposition that the steps in succession for effecting acquisition of land under the Act are mandatory in nature and any violation thereof would render the proceeding void. With particular reference to Section 4 of the Act, the Apex Court in *Khub Chand (supra)* had observed that the provisions of a statute conferring power on the Government to compulsorily acquire land has to be strictly construed and, therefore, the expression "shall" which in its ordinary significance is of mandatory purport accords with the underlying objective of Section 4. Their Lordships were of the view that the legislature had thought that it was absolutely necessary that before an officer authorized by the Government can enter the land of another, the owner thereof should have a clear notice of the intended entry and the fact that he may have notice of the particulars of the intended acquisition does not serve the purpose of Section 4. Referring to Section 4(2) which permit the entry of such officer on the land lawfully only after the publication of the preliminary Notification in accordance with Section 4, their Lordships concluded that non-compliance of the modes of such publication would render such entry unlawful. It was, thus, held in unequivocal terms that the statutory intention of giving public notice was mandatory and that any Notification issued without complying therewith would be void and consequently, the acquisition proceedings would also be rendered non-est.

37. The aforesaid view was reiterated, amongst others, in *Collector (District Magistrate) Allahabad & Anr. Vs. Raja Ram Jaiswal, (supra)* and in *Syed Hasan Rasul Numa & Ors. Vs. Union of India & Ors., (supra)*. In *Collector (District Magistrate) Allahabad & Anr. Vs. Raja Ram Jaiswal (supra)*, their Lordships of the Apex Court while reiterating that the infirmities vis-?-vis Section 4(1) cannot be overlooked and that a valid Notification thereunder is a condition precedent to the making of a declaration u/s 6(1), rejected the plea that the failure to publish the substance of the Notification in the locality ought not to be construed as fatal. It was held with reference to the observations made in *Narendra Bahadur Singh and Another Vs. State of Uttar Pradesh and Others*, that to give an opportunity to the person interested in land to object to the acquisition u/s 5A is not the only purpose behind publication of a notice in the locality and that the failure to comply with the requirement of publication of notice in the locality u/s 4(1) is fatal for the acquisition proceeding.

38. That all the modes of publication of the declaration u/s 6(2) are obligatory and no option is left to anyone to give up or waive any or all such modes was

underlined by the Apex Court in Kunwar Pal Singh (supra). Their Lordships reaffirmed the oft referred proposition that when a statutory provision provides a particular manner for doing a particular act, then that thing or act must be done in accordance with the manner prescribed therefor in the statute.

39. In an emphatic reiteration of the above enunciation, the Apex Court in J & K Housing Board & Anr. (supra) while dealing with Section 4, 5, 5A, 6 and 9 of the J & K Land Acquisition Act, 1990 parimateria with the corresponding provisions of the Act, propounded that merely because the parties concerned were aware of the acquisition proceedings or served with individual notices does not alter the position when the statute makes it very clear that all the procedures/modes have to be strictly complied with in the manner provided therein. It was held that merely because the landowners failed to submit their objections within 15 days after the publication of the Notification u/s 4(1), the authorities could not be permitted to claim that it need not be strictly resorted to. In this reported decision substantial compliance of the provisions had been pleaded to save the acquisition proceedings.

40. In Mansukhbhai Kalyanbhai Chovatia (supra) the principal ground urged before the Gujarat High Court inter alia was with regard to the contravention of Section 3A(3) of the National Highways Act, 1956. It was contended that though the Notification was published in two local newspapers, the language of the said Notification was not in Gujarati but in Hindi which is not the vernacular language of the concerned area. Their Lordships while rejecting the plea that the language of the daily being Gujarati the requirement of Section 3A(3) had been complied with, observed that the language of the Notification ought to be in vernacular otherwise if the description of the land etc. is published in a language other than in the vernacular, the persons whose lands are under acquisition would not understand the same and resultantly their valuable right would be adversely affected. In the facts of the case, their Lordships noticed that the language used by the people of the locality in which "Divya Bhaskar" was in circulation is Gujarati and that Hindi was foreign to them

41. In State of Rajasthan & Ors. Vs. D.R. Laxmi & Ors. (supra), the enquiry u/s 5A was dispensed with in exercise of powers u/s 17(4) of the Act and a declaration was published on 28.4.1976, whereafter, the possession of the land was taken over on 19.5.1977. The award was passed subsequent thereto on 21.3.1978 and a reference application u/s 18 was also made. A writ proceeding was initiated thereafter to quash the Notification u/s 4(1) and the declaration u/s 6. In the contextual facts, the Apex Court noticed that the acquisition proceedings had been completed with the publication of the award and taking over of possession of the land on the date on which the challenge to the validity of Section 4 and 6 had been laid. Given the fact that after the possession of the land had been taken either u/s 17(2) or Section 16 the land stood vested in the State free from all encumbrances and that there was no provision in the Act to divest the title, it was held that no interference with the acquisition proceedings

was called for. In arriving at this conclusion, their Lordships also relied on the earlier observations of the Apex Court in the same lines in *Senjeevanagar Medical and Health Employees Co-operative Housing Society Vs. Mohd. Abdul Wahab and Others*, . The delay on the part of the petitioners to invoke the writ jurisdiction of the High Court in the attendant facts and circumstances did also weigh against the interference sought for.

42. In a similar factual framework the above view was reiterated in *Swaika Properties (P) Ltd. (supra)*. The fact that the appellants meanwhile had filed an application u/s 18 of the Act for enhancement of the amount of compensation thereby disentitling them to any relief sought for in the writ petition was also noticed.

43. In *Sooraram Pratap Reddy & Ors. (supra)*, their Lordships of the Apex Court while adverting to the doctrine of Eminent Domain proclaiming inherent political right or power of a sovereign State to expropriate private property for public use without the owner's consent on payment of just compensation and limiting the extent of judicial review in such matters, however, did not approve of any departure from the peremptory prescriptions of the legislation to that effect.

44. In *Rajinder Kishan Gupta & Anr. (supra)* though the omission on the part of the appellants to plead the details regarding their interest in the land involved in an acquisition proceedings under the Act was construed by the Apex Court to be a factor weighing against them, it was concluded that in the attendant facts and circumstances the mandatory requirements of law had been complied with.

45. In *Union of India-vs.-K. Balaji Jaya Rama Rao & Ors. (supra)*, the essentiality of the public notice by the Collector of the substance of the Notification u/s 4 at convenient places in the locality was underlined.

46. In *Special Duty Collector Vs. Sivaprakasam & Ors. (supra)*, respondent Nos. 5 to 11 who had challenged the acquisition proceedings did admit that they had received the notice from the appellant asking them to appear before him in the Section 5A enquiry. The issue was whether the two regional language newspapers in which the Notification u/s 4(1) had been published did have a reasonable wide circulation in the locality and, if not, whether there was a non-compliance of Section 4(1) warranting interference with the acquisition proceedings. In the facts of the case, having regard to the aforesaid admission of the respondent Nos. 5 to 11, no interference was made but in the concluding remarks their Lordships underlined that to avoid such unnecessary controversies and litigations, the acquiring authorities should ensure that the Notification u/s 4(1) is published in the newspapers having reasonable wide circulation.

47. While dwelling on the doctrine of substantial compliance, a Constitution Bench of the Apex Court in *Commissioner of C.Ex., New Delhi Vs. Hari Chand Shri Gopal (supra)*, enunciated that it in essence signified actual compliance in respect of the substance essential to every reasonable objective of the statute and the court is to determine whether the statute had been followed sufficiently

so as to carry out the intent thereof and accomplish the reasonable objectives for which it had been passed. It was elucidated further that substantial compliance of an enactment is insisted where mandatory and directory requirements are lumped together, for in such a case if mandatory requirements are complied with, it would be proper to say that the enactment has been substantially complied with notwithstanding the noncompliance of directory requirements. It was held that in cases where substantial compliance is found, it would be construed that there has been actual compliance with the statute, albeit procedurally faulty.

47A. A plain reading of the constituents of the scheme for acquisition enumerated in Part-II of the Act does not, in our view, admit of any relaxation in the mandated rigour of compliance of the unambiguous prescriptions therein and the plea of substantial compliance unless is an obvious deduction from the language used and the objectives intended, approving such leeway, is incomprehensible without undermining the supervening legislative intendment lodged therein.

48. The quintessence of the above judicial pronouncements unambiguously propound the imperative attribute of the prescriptions embodied in the provisions contained in Part-II of the Act encompassing the scheme for acquisition of land thereunder so much so that any digression therefrom would be at the pain of invalidation of the process undertaken. The eventualities in which the challenge to the validity of the acquisition proceedings under the Act on the plea of infirmities in the Notifications u/s 4 and/or 6 thereof had been negated were informed with the culmination thereof on the publication of the award and delivery of possession of the land involved. The inexplicable delay in assailment coupled with institution of reference proceedings u/s 18 was also construed to be determinants against entertainment of such impugnments. Axiomatically the desineness of the proceedings with the publication of the award and delivery of possession has to be in rigid compliance of the enjoinments engrafted in the relevant provisions of the Act so as to attach irreversible finality thereto. If the process has been demonstratively in violation of the legal mandates, the award not in accordance with the procedure mandated and possession of land not delivered, the oppugment of the process if not unduly delayed, cannot be readily jettisoned. The notions of Eminent Domain and substantial compliance per se would not save the process, if afflicted by patent violations of the peremptory legislative dicta. Mere knowledge of the acquisition proceedings by the persons interested ipso facto also may not bail out the proceedings if the obligatory modes of publication of the preliminary Notification/declaration and other procedural requirements have not been complied with. That if an act is required to be performed in a particular manner by a statute it has to be done accordingly and that no other mode is allowable, thus, stood reaffirmed in these pronouncements as well.

49. The official records in this backdrop have been traversed to disinter the

relevant facts apart from those disclosed in the pleadings. In response to a letter being F/No. 504/04/05-06/Engg/SHG/BSF/1015-22 dated 27.5.2006 from, the Inspector General, BSF, Shillong addressed to the Deputy Commissioner (R), Land Acquisition Branch, District Kamrup, Guwahati intimating the latter that the BSG Headquarters, New Delhi had accorded permission to acquire 85 Acres of land at Priyabari, District Kamrup Guwahati as offered by M/s. Barduar Tea & Timber Co. Ltd. as the owner thereof for establishment of Battalion HQ for Disaster Management Battalion i.e. 128 Bn. BSF, the concerned State authority, on completion of the preparatory formalities, published the Notification u/s 4 of the Act in L.A. Case No. 18/2006 in the issue dated 22.8.2006 of the Assam Gazette, Extraordinary mentioning that an area of land measuring 257 Bighas, 0 Katha, 13 Lessas in Village No. 1 Barduar Bagaon, Mouza Barduar, Sub-division-Guwahati in the district of Kamrup was likely to be needed for a public purpose viz. for construction of Establishment of Battalion Hq. for Disaster Management Battalion (128 BN BSF). The Notification-mentioned the schedule of the land and the boundaries thereof vide Dag numbers. A copy of this Notification was also published in the issue dated 16.9.2006 of the local daily "Sentinel". By both these Notifications, it was stated that objections to the acquisition of land u/s 5A of the Act if filed on or before 30 days would be considered. A declaration u/s 6 of the Act was thereafter published in the issue dated 20.8.2007 of the Assam Gazette and also in the issues dated 31.8.2007 of the local dailies "Sentinel" and "Dainik Agradoot" disclosing that it appeared to the Government of Assam that the land mentioned therein was required to be taken for a public purpose as aforementioned. The Notifications u/s 4 and 6 as above were admittedly in English while circulating the same in the local dailies which were in Assamese language. In the meantime, the Tea Estate by its letter dated 1.11.2006 addressed to the Deputy Commissioner, Kamrup District (R), Guwahati had informed the latter that it had no objection to the acquisition of the above mentioned land subject to proper payment of the compensation therefor as well as for the zirat thereon.

50. The records reveal that the BSF on 21.8.2007 had deposited an amount of Rs. 5,76,65,320/- as the estimated amount of the cost/compensation for the land and the zirat standing thereon. The undated award in original in Form-15 in the hand of the Deputy Commissioner and Collector, Kamrup, Guwahati as available in the records reveals that that the compensation was computed at Rs. 5,23,13,446/- indicating M/s. Barduar Tea & Timber Company Ltd. to be the only claimant thereof. The letter No. L.A. 18/06 dated 8.11.2007 of the Deputy Commissioners, Kamrup, Guwahati (LA Branch) addressed to the Principal Secretary, Govt. of Assam Revenue & Disaster Management Department reveals that this award was approved by the Government of Assam on 31.10.2007 and that in anticipation of such approval a notice had been issued on 12.10.2007 to the pattadars as well as to the occupants of the land measuring 92 Bighas, 3 Kathas, 18 Lechas to receive compensation. The records further reveal that in response to this letter, M/s. Barduar Tea & Timber Company Ltd. through its

authorized representative collected 50% of the land and zirat value on 20.11.2007. However, according to this letter, none of the occupants of the land did turn up to receive the compensation. The relevant chitha pertaining to the land involved disclosed M/s. Barduar Tea & Timber Company Ltd. to be the pattadar thereof with the petitioner No. 1 and others as the rayats in occupation thereof holding khatians issued to them. Reference of M/s. Barduar Tea & Timber Company Ltd. to be the only claimant vis-?-vis the award in the face of this revelation from the contemporaneous relevant records is, thus, intriguing. An order dated 31.8.2007 of the Deputy Commissioner, Kamrup, Guwahati (Settlement Branch) approving the allotment of land at the rate of 2 Bighas per family as recommended by the Sub-Divisional Land Advisory Committee, Kamrup (Sadar) Sub-Division to 24 persons named therein is, however, available on record. A document containing signatures of 21 persons supposed to be the representatives of Barduar villagers who had attended a meeting on 2.1.2008 is also traceable suggesting that they had no objection for establishment of the BSF Camp in the area subject, however, to protection of the people of the locality.

51. Be that as it may, the letter dated 8.8.2008 of the learned Additional Advocate General, Assam strongly disapproving the initiation and continuance of the acquisition proceedings in the manner done also forms a part of the records. The letter inter alia indicates the concerned query of the highest Law Officer of the State with reference to a note of the Circle Officer, Palashbari Revenue Circle pertaining to the 1 and as to why the provisions of the Assam Fixation of Ceiling on Land Holdings Act, 1956 had not been invoked by the District Administration qua the excess land in possession of the Tea Estate as contemplated by Section 4 of the enactment and instead had been diverted for "Non Tea Purposes". It was opined as well that if the land offered for acquisition was excess land within the meaning of Act, 1956, the Tea Estate would not be entitled to any Compensation and that if the same is in occupation of tenants, it is they who would be entitled to the same. A letter of the same date of the Joint Secretary, Govt. of Assam, Revenue & Disaster Management Department to the Deputy Commissioner, Kamrup, Guwahati conveying the direction of the Hon"ble Chief Minister of the State to ascertain the availability of alternative land for the proposed project is also a part of the records.

52. Adverting to the pleadings, the documents annexed to the writ petition prima facie establish that at least some of the petitioners had been issued rayati khatian by the concerned revenue authority being a tenant in respect of their holdings under the Tea Estate as the pattadars thereof. Incidentally, even before the publication of the Notification u/s 4 of the Act, by a notice dated 27.6.20.05 issued by the Circle Officer, Palashbari Revenue Circle some of the petitioners had been requested to appear in his office to discuss the issue of setting up of a BSF Camp in the "ceiling land" under Barduar Tea Estate. The representations that followed between 7.8.2006 and 4.1.2007 by and on behalf of the persons likely to be affected by the proposed acquisition are not only a testament to their claim of being rayats holding khatians, but also to the assertion that the land in

their occupation was ceiling surplus as contemplated by the Act/1956 and that, therefore, the occupants/rayats were entitled to periodic patta therefor. They were instead served with the notices dated 12.10.2007 from the office of the Deputy Commissioner, Kamrup, Guwahati (L.A. Branch) asking them to appear personally or through their representatives with documents relating to their land, accept compensation therefor and for the zirat standing thereon and hand over possession of their plots. Similarly, notices dated 8.11.2007 were also issued thereafter in continuance of those dated 12.10.2007.

53. As adverted to hereinabove, the undated award in original of the Collector, Kamrup had been approved by the Government of Assam on 31.10.2007 but prior thereto, the notices dated 12.10.2007 had been issued. Evidently, therefore, on 12.10.2007 the award had not been approved by the Government of Assam.

54. The above disclosures from the records, we are constrained to hold, demonstrate obvious violation of the statutory precepts contained in Part-II of the Act dealing with the acquisition of the land involved on more than one counts. The Notification u/s 4 and the declaration u/s 6 at the first instance do not conform to the requirement of circulation thereof in a daily newspaper in the regional language having circulation in the concerned locality. Having regard to the fact that in terms of the Assam Official Language Act, 1960, Assamese is the official language vis-?-vis the locality in which the land is situated as well as the purpose of such circulation, we are of the unhesitant opinion that the publication of the notice/declaration in English language, though in the local dailies, was not in harmony with the mandate to that effect and the objective as legislatively intended. The petitioners and other occupants of the land involved are dominantly tillers of the soil and, therefore, to most of them the Notification/declaration in English would be wholly unintelligible.

55. Though the petitioners have not in specific terms questioned this mode of publication, they in general have insistently asserted want of knowledge of the acquisition proceedings as well as non-compliance of the relevant provisions of the Act. The underlying objective of publication of the preliminary Notification and the declaration in a local daily of regional language is not only to inform the persons interested about the initiation of the acquisition process so as to enable them to raise objections thereto, if any, under Section 5A, but also to constantly monitor the same by participating in it and offer their representations securing their interest as guaranteed by the enactment. Moreover, the language applied to this effect does not admit of any relaxation to construe the same to be directory in nature. Admittedly, as well the jurisdictional Collector in the case in hand did not cause public notice of the substance of the Notification/declaration to be given at convenient places in the locality. This is an obvious omission to pursue one of the prescribed modes of publication amounting to an incurable vitiation of the process.

55A. Section 9(1), to reiterate, requires the Collector to cause public notice to be

given on or near the land disclosing that the Government intends to take possession thereof and inviting claims for compensation from all interested therein. The records, however, do not reveal any such public notice. The notice dated 12.10.2007 at best can be construed to be one u/s 9(3). This, however, as the language of sub-Section (3) of Section 9 would reveal, is essentially in addition to the one u/s 9(1) and, thus, cannot be contemplated to be a permissible substitute thereof. No endeavour, as the records would reveal, had been made as well to cause notice to be sent u/s 9(4). Though Section 11 contemplates an enquiry to be made by the Collector into the objection, if any, made by any person interested pursuant to a notice given u/s 9, no such attempt is discernible from the records. The mere fact that the undated award of the Collector which ultimately was approved by the Government on 21.10.2007 mentioned the Tea Estate to be the only claimant, though on the basis of the revenue records the land was in occupation of rayats holding khatian would unimpeachably exhibit the failings of the concerned authority in conforming to the statutory provisions pertaining to the scrutiny for computation of the quantum of compensation and the apportionment thereof. As the records would divulge, even before the approval of this award by the Government of Assam, the decision to release payments in favour of the Tea Estate had been taken. The records do not disclose as well that the power u/s 17 of the Act had been invoked in the facts and circumstances of the case.

56. The aforementioned exposures demonstrate palpable infirmities in the acquisition process having the potential of invalidating the same. The significance and indispensability of the three modes of publication as obligated by Section 4 and 6 is apparent as well from the fact that whereas vis-?-vis the preliminary Notification the last of the dates of such publication and the giving of the public notice is to be referred to as the date of the publication of the Notification, qua Section 6 the declaration if made in the manner enjoined would be the conclusive evidence that the land is required for a public purpose facilitating thereby the acquisition thereof by the Government in the manner thereafter prescribed.

57. The above revelations, according to us, also leads to the inescapable conclusion that the post declaration proceedings have been furthered in total non-compliance of the requisites of Section 9 and 11 of the Act and, thus, we are constrained to hold that the acquisition process had not been completed in the manner as envisaged by the Act on the date on which the State Government had accorded its approval to the award.

58. Admittedly, the possession of the land sought to be acquired has not been delivered to the Government till date. In this view of the matter, we are constrained to conclude that the acquisition proceedings being L.A. 18/2006 initiated by the preliminary Notification dated 22.8.2006 is vitiated by violation of several provisions of the Act, thus, rendering it non-est, null and void. The importance and preeminence of the project per se, in our estimate, cannot trivialize the enjoinders of law and purge the violations. The process being for

compulsory acquisition, the legislatively mandated pre-conditions for the validity thereof would have to be stringently construed. The writ petition filed on 21.1.2008 in the above factual conspectus thus cannot be spurned on the ground of delay as well.

59. Though it had been emphatically asserted on behalf of the petitioners that the land involved is ceiling surplus as envisaged under the 1956 Act and that they had been vociferous to this effect in their representations, the records do not conclusively testify in support thereof. The judgment and order dated 31.1.1973 of a Division Bench of this Court in *M/s. Barduar Tea & Timber Company-vs.-Sub Divisional Officer (Sadar) Guwahati & Ors.* though discloses that a ceiling case had been initiated vis-?-vis the land of the Tea Estate as involved therein and that an appeal was preferred by it (Tea Estate) to the State Government against the order of the Collector u/s 7(2) of the Act, 1956, it is not established thereby that the ceiling proceedings had thereafter been furthered and completed as enjoined by the aforesaid Act. The Division Bench of this Court while interfering with the decision of the State Government in the appeal preferred by the Tea Estate, remitted the matter back to it (State Government) for fresh disposal with a direction to it to consider as to whether the subject matter of acquisition was land as defined in Section 3(5) of the enactment. Not only the State respondents in their pleadings have maintained that the land involved is not ceiling surplus, in course of the arguments it has been insisted that the proceedings referred to in the judgment of the Division Bench had not been taken thereafter to its logical end. In the face of the contentious stands of the parties on this issue, we do not wish, in absence of adequate materials on record, to dilate further in this regard and leave it at that.

60. This Court in *Nalina Kanta. Das (supra)* while dwelling on the notion of "person interested" as defined in Section 3(b) relying on the decision of the Apex Court in *Sunder Lal Vs. Paramsukhdas*, , held that it was an inclusive definition and that it was not necessary that in order to fall within the purview thereof a person should claim interest in the land. It was enunciated that a "person interested" is one if he claims an interest in the compensation to be awarded. In the contextual facts, while responding to the plea of the State that the appellant was only a licensee, their Lordships while construing him to be a "person interested" in the compensation awarded for the acquisition of the land in his occupation, observed that it was not necessary to determine his status as to whether he was a tenant or an under-rayat.

61. As indicated hereto before, the respondents in their endeavour to save the acquisition proceedings have contended in unison that some of the petitioners have been rehabilitated by the Tea Estate as well as the Government and that compensation has also been apportioned to be paid to them and others and that only four of the writ petitioners not having availed the benefit of the above initiatives are left in the fray. We are left unconvinced, in the face of the palpable violations detailed hereinabove. An identical plea had been taken in Greater

Noida Industrial Development Authority (*supra*) that out of 211 land holders, 114 had voluntarily accepted the compensation and that, therefore, the challenge to the acquisition qua those who had not accepted the same only ought to have been entertained.

61A. Their Lordships of the Apex Court observed that as the acquisition of land was vitiated due to want of good faith and the provisions of the Act had been invoked for a private purpose, there cannot be any justification for partially sustaining the acquisition on the ground that some of the land holders or their transferees had accepted compensation by entering into an agreement with the Greater Noida Industrial Development Authority. That acquisition of land was a serious matter and that before initiating a proceeding therefore, the Government concerned must seriously ponder over the consequences of depriving the tenure-holder of his property was underlined. In the face of the deep pervasive afflictions in the process in hand, the same analogy from this decision is permissible.

62. In the present factual setting, having regard to the import of the expression "person interested", the petitioners by no means can be construed beyond the ambit thereof and, thus, the plea of want of locus standi does not appeal to us. This view, amongst others, finds support from the elaborate steps to notify the persons interested as predicated by Section 9. The steps for rehabilitation and for payment of compensation, as sought to be portrayed by the respondents, in our view, do not efface the nullifying transgressions rendering the acquisition proceedings ab initio void.

63. The petition is, thus, allowed and the acquisition proceedings being L.A. 18/2006 of the office of the Deputy Commissioner-cum-Collector (Land Acquisition Branch), Kamrup, Guwahati is hereby quashed. The impugned notices/ orders are also set aside. The above determination notwithstanding, it would be open for the respondents to initiate a fresh process for acquisition of the land strictly in accordance with law, if so advised. It is made clear that in case it is so done, the respondents would be at liberty, after affording opportunity of hearing to the petitioners and other occupants of the land involved, to adjust the amount of compensation if already paid as well as square off the benefit of rehabilitation, if extended to them against their entitlements as prescribed by the Act.