
(2008) 06 CHH CK 0012
In the Chhattisgarh High Court

Gaukaran Singh and Others	Vs	APPELLANT
State of Chhattisgarh and Others		RESPONDENT

Date of Decision : 17-06-2008

Acts Referred:

Constitution of India, 1950 — Article 166
Land Acquisition Act, 1894 — Section 10, 11, 12, 13, 14
Madhya Pradesh Re-organisation Act, 2000 — Section 4, 79, 80

Citation : (2008) 5 MPHT 47 : (2010) 1 MPJR 136 : (2009) 2 MPJR 82

Hon'ble Judges : Dharendra Mishra, J

Bench : Division Bench

Judgement

Dhirendra Mishra, J.—The above petitions are being disposed of by this common order as the point involved in all these petitions is same.

2. The petitioners in these writ petitions are the owners of agricultural lands situated at Village Sonadih, Gudeliya, Dhabadih and Mopka.

3. Respondent-Lafarge India Pvt. Limited, a Company registered under the Indian Companies Act, 1956, (for short "the respondent-Company") has a cement plant at Village Sonadih, Tehsil Baloda Bazar. The Company submitted an application dated 16-5-2006 to the Additional Chief Secretary-cum-Convener, State Industrial Promotion Board, Government of Chhattisgarh stating therein that they have taken a decision to establish a rail link between their Sonadih Plant & Nipaniya Railway Station at their own expenses. The land required by the Company consists of private land and Government land and therefore, immediate step for acquiring the entire land falling in the alignment of proposed rail link was requested. In all approximately 74 hectares of private land of nine villages situated at Bhatapara and Baloda Bazara Tehsil were required by the Company.

4. The Collector sent a memo to the Sub Divisional Officer (Revenue)-cum-Land Acquisition Officer of Bhatapara & Baloda Bazar for the purpose of above acquisition. The Sub Divisional Officer, Baloda Bazar vide his memo dated 26th/27th April, 2007 addressed to the respondent-General Manager, District

Industries & Trade Centre, Raipur apprised about the cost of acquisition of the lands of Bhatapara & Baloda Bazar and directed to deposit cheque for the necessary amount for acquisition so that further land acquisition proceedings may be commenced. Respondent-Chhattisgarh State Infrastructure Development Corporation, Raipur (for short "CSIDC") in turn requested the respondent-Company vide its memo dated 30-5-2007 to deposit the entire cost of acquisition in nine villages, which was assessed to Rs. 2,55,72,753/- approximately.

5. In response to the above request, the respondent-Company addressed a memo dated 31-5-2007 mentioning therein that cheque for the above sum in favour of the CSIDC against the payment for land acquisition of private lands for railway line under Bhatapara @ Baloda Bazar is being forwarded and it was further requested to release necessary payment to the Sub Divisional Officer, Bhatapara & Baloda Bazar for taking further action in the matter. Respondent-CSIDC vide memo dated 7-6-2007 sent the entire sum deposited by the respondent-Company to the General Manager, District Industries & Trade Centre for transferring the same to the Sub Divisional Officer, Bhatapara & Baloda Bazar. Thereafter, the impugned notification dated 17-8-2007 was issued by the respondent-Collector mentioning therein that the land in dispute is required for the public purpose, Le., for construction of railway line for industrial purposes.

6. The petitioners have impugned the above notification on the grounds that:

the acquisition proceeding is for construction of private railway line for the respondent-Company at their own cost;

the acquisition proceeding has been initiated without following the Land Acquisition (Companies) Rules, 1963 (for short "Rules, 1963");

the purpose for which the land is proposed to be acquired is not a public purpose within the meaning of Section 3(f) of the Land Acquisition Act, 1894 (for short "Act, 1894"), as it is for the construction of rail siding of a private company;

the impugned notification has been issued by the Collector, who is not a Competent Authority to issue notification u/s 4 of the Act, 1894;

notification u/s 4(1) of the Act, 1894 is also illegal and bad in law for want of particulars of the land to be acquired and also for not mentioning the public purpose for which the acquisition is proposed.

7. Respondent Nos. 1 to 4 and 6 in their reply and additional return have taken the objections that the petition is premature, as the same has been filed without filing any objection u/s 5-A of the Act, 1894. The State Government has issued a notification dated 3-9-2003 (Annexure R-1) specifically authorizing the Collector of the District, in his capacity of ex-officiating Deputy Secretary to the Government of Chhattisgarh, to deal with the cases of land acquisition and to exercise powers under Sections 4 and 6 of the Act, 1894. Description of lands proposed to be acquired is mentioned in the impugned notification and the proposal for acquisition was duly notified in two prominent newspapers

(Annexures R-2 and R-3) in which details of lands have also been clearly mentioned. Thus, the provision has been substantially complied with and it does not cause any prejudice to the petitioners.

Section 3(f) of the Act, 1894 wherein "public purpose" has been defined stands amended in the State of Chhattisgarh and it includes the provisions of land for business or industrial purposes or for any purpose incidental to it apart from other purposes. The proposal of the respondent-Company was in the public interest as heavy traffic in the concerned road would get lessened and it would further increase revenue of the railway and also promote industrial activities in the State. The State has entered into a Memo of Understanding (for short "MoU") with the respondent-Company and it is obligatory upon the State to extend all necessary assistance in procuring optimum land in favour of the respondent-Company. The land in question shall be given to the respondent-Company on lease after acquisition. Whether public money is to be invested in the instant acquisition is a question that would arise at the time of actual acquisition. Clause 3.1 of the Industrial Policy (Annexure R-9) stipulates that the State Government would take all serious endeavors to ensure that upcoming industries in the State are provided with the rail facilities. Provisions of Part VII of the Act, 1894 comes into play only at the time of issuance of declaration u/s 6 of the Act, 1894. In view of MoU of Annexure R-7, the State is bound to provide necessary land for construction of railway siding to the respondent-Company. Section 43 of the Act, 1894 clearly stipulates that Sections 39 to 42 of the Act, 1894 shall not apply where the State Government under the agreement is or was bound to provide land to a company.

8. The respondent-Company in its separate reply has also opposed the petition by raising the similar grounds.

9. Learned Senior Counsel Mr. Diwakar with Mr. Sanjay K. Agarwal, Advocate for the petitioners in W.P. (C) Nos. 5942/07, 5925/07 and 6711/07 vehemently argued that from bare perusal of the undisputed documents available on record it would be evident that the acquisition proceeding was commenced on the basis of application by a private company for extending construction of railway siding. The petitioners are bonafide agriculturists and their agricultural lands are proposed to be acquired for a private company. It was obligatory and imperative for the appropriate Government to conduct enquiry through the Collector concerned and to obtain a report whether the company has made its endeavor to find out suitable land for acquisition; whether the company has made reasonable efforts to get such land by negotiation with the persons interested therein on payment of reasonable price and said efforts have failed and that the land proposed to be acquired is suitable for the purpose; the proposed land to be acquired is not excessive; the company is in a position to utilize the land expeditiously and lastly, whether the land proposed to be acquired is agricultural land and no alternative suitable site can be found so as to avoid acquisition. However, in the instant case, no such enquiry was ever made, as the same is to

be made after affording opportunity of hearing to the land owners also. Thus, issuance of notification u/s 4 of the Act, 1894 without any enquiry under Rule 4 of the Rules, 1963 is bad and unsustainable in law.

It was further argued that the acquisition for the private company has been commenced without following Part VII of the Act, 1894, as the compensation to be awarded for the acquisition has been entirely borne and paid by the company and no part of compensation has been paid fully or partly out of public revenue and therefore, the acquisition proceeding and notification u/s 4 of the Act, 1894 is bad in law because the same has been commenced without following the procedure prescribed in Part VII of the Act, 1894 as well as the Rules, 1963.

The "public purpose" as mentioned in the notification u/s 4 of the Act, 1894 is not the public purpose within its meaning u/s 3(f) of the Act, 1894 and so far as the argument advanced by the respondents that Section 3(f) of the Act, 1894 was amended by CP & Berar Act No 20 of 1949, called as Central Province & Berar Resettlement & Rehabilitation of Displaced Persons (Land Acquisition) Act, is concerned, the same was enacted to make provisions for speedy acquisition of land and for resettlement and rehabilitation of the displaced persons. Definition of Section 3(f) of the Act, 1894 was amended as under:

The expression "public purpose" includes the provision of land for agriculture or for residential business or industrial purpose, or for any purpose incidental to any of these with a view to resettlement and rehabilitation of displaced persons.

The M.P. Extension of Laws Act, 1958 was enacted for providing extension to certain laws in force in some of the regions of Madhya Pradesh to other regions thereof as an Act 23 of 1958 and it came into force w.e.f. 12-9-1958. Act No. 20 of 1949 was also made applicable to the State of M.P. by virtue of Act No. 23 of 1958, however, the amended definition u/s 3(f) of the Act, 1894 in the State of M.P. and now in the State of C.G. would not be applicable in the instant case, as the present is not a case of acquisition by the State Government for resettlement and rehabilitation of displaced persons.

It was further argued that argument based on Section 43 of the Act, 1894 is not applicable in the present case because MoU entered into between the State and the respondent-Company is unenforceable under the law and therefore, Section 43 of the Act, 1894 has no application in the present case. MoU is a broad outline of the understanding between the Government and the respondent-Company. Object of MoU is to reduce into writing the broad understanding arrived at between the signatories; there was no legal and enforceable obligation on the part of the State to provide land to the respondent-Company.

10. Mr. H.B. Agarwal, Sr. Advocate with Mr. Pankaj Agarwal, Advocate for the petitioner in W.P. (C) No. 6787/07 and Mrs. Meena Shastri, Advocate for the petitioners in W.P. (C) No. 6603/07 and 6597/07 also adopted the arguments advanced by Mr. Diwakar and made similar submissions.

11. On the other hand, Mr. Ravishankar Prasad, Senior Advocate with Mrs. Suparna Shrivastava and Mr. Bhaskar Pyasi, Advocates for the respondent-Lafarge India Pvt. Ltd., vehemently argued that the respondent-Company has contributed to the State to a great extent by investing huge amount in establishing two cement plants in Raipur and Janjgir-Champa Districts. The present dispute pertains to their plant located at Raipur District. Industry of the respondent-Company does not have any rail link to a railway siding and manufactured products are being transported by road movements to the siding situated at a distance of 32 kilometers from the plant. Considering this problem, proposal for rail link was submitted, which was duly accepted by the other respondents keeping in view the public purpose involved in it. Paragraph No. 3.1 of the Industrial Policy of the State (Annexure R-9) clearly envisages that the State shall take necessary steps to ensure availability of infrastructure such as railway-road etc. Apart from the above policy of the State, the State Government has also executed a MoU with the respondent-Company (Annexure R-7) which also contemplates that necessary assistance to facilitate in procuring optimum land, free from all encumbrances, as required for implementation of the projects of the respondent-Company including land required to build railway line and railway sidings for present and future plant sites would be provided. Thus, it is obligatory on the part of the State Government to provide land for rail link to rail siding. Since the State stands committed under the policy and MoU, it was obligatory on the part of the State to acquire the necessary land for the purposes of railway siding of the respondent-Company. Even otherwise definition of "public purpose" as given in Section 3(f) of the Act, 1894 is an inclusive definition and it is settled law that the concept of public purpose keeps on changing with the needs and demands of time and it is better left to the State Government to decide as to what is public purpose. Amended definition of Section 3(f) of the Act, 1894 applicable in the erstwhile State of M.P., which has been duly saved under Sections 79 and 80 of the M.P. Reorganization Act, 2000 and clearly shows that industrial purpose is also a "public purpose".

Placing reliance on the various judgments of the Hon"ble Supreme Court it was argued that it is settled law that the Government has sole discretion to lay down the policy. Where the State Government has framed the industrial policy and according to which the land is to be provided for industrial growth of the State, then any action on the part of the State for acquisition of land for the above purpose would be a public purpose. The respondent-Company has submitted a rehabilitation policy for the persons affected by the proposed acquisition according to which ex-gratia amount of Rs. 10,000/- per family and employment in the cement plant of the respondent-Company to one member of such family, which has been rendered landless, is to be provided. This rehabilitation is in addition to the land acquisition compensation to the project affected families.

It was further vehemently argued that the present petitions are premature. Impugned notification u/s 4 of the Act, 1894 covers approximately 74 hectares of private land of 212 land owners. Out of 212 land owners only 8 have approached

this Court with respect to their lands holding of 7.314 and out of 8 land owners, two have already withdrawn their petitions and the present petitions covers an area of 3.83 hectares only. Objections of the petitioners mainly is for enhancement of the compensation and not against the land acquisition proceeding. Since the petitioners have not taken recourse to Section 5-A of the Act, 1894, the instant petitions are not maintainable being premature.

Details of land such as Khasra number, area etc., are required to be given at the stage of issuance of declaration u/s 6 of the Act, 1894 and notification u/s 4 of the Act, 1894 cannot be faulted only because of absence of above details. Even otherwise the details of land alongwith area have already been mentioned in Annexures R-2 and R-3.

So far as the competency of the Collector to issue notification u/s 4 of the Act, 1894 is concerned, the State Government has already issued notification dated 3-9-2003 authorizing the Collector of a district in his capacity as ex-officio Deputy Secretary to the Government of C.G. to deal with the cases of land acquisition and to exercise powers under Sections 4 and 6 of the Act, 1894.

Adverting to Section 43 of the Act, 1894 it was argued that where the Central Government or any State Government under any agreement with such company is or was bound to provide land, Sections 39 to 42, both inclusive, shall not apply to the acquisition proceeding. Since the State has entered into MoU with the respondent-Company and industrial policy of the State also envisages that the Government shall provide optimum land for construction of railway siding, it is obligatory on the part of the Government to provide land for implementation of the projects.

It is not in dispute that the respondent-Company deposited the required amount with the CSIDC, designated nodal agency, for the present land acquisition and this money has been forwarded by the CSIDC to the Ministry of Industries vide Annexure P-6. Referring to Explanation 2 of Section 6 of the Act, 1894 it was argued that the compensation to be awarded for such property is to be paid out of the funds of the CSIDC, owned and controlled by the State, and thus the compensation is to be deemed to be compensation paid out of public revenue.

With respect to the ground of the petitioners that no enquiry under Rule 4(1) of the Rules, 1963 has been conducted by the Collector, it was argued that in the instant case the acquisition is for the public purpose and therefore, question of application of Rule 4 read with Section 40 of the Act, 1894 does not arise. Distinguishing the judgment of the Hon'ble Supreme Court in the matter of *Devinder Singh and Ors. v. State of Punjab and Ors.* (2008) 1 SCC 728, it was argued that in the above matter the State Government made categorical admission that project would come u/s 40 of the Act, 1894 and therefore, it was held that it was mandatory to follow Chapter VII procedure including compliance of Rule 4 of the Rules, 1963. However, in the instant case it is the stand of the State in their return that acquisition is for public purpose. In any case, enquiry under Rule 4

need not precede Section 4 notification.

Relying upon the judgment in the matter of Fomento Resorts and Hotels Ltd. Vs. Gustavo Ranato Da Cruz Pinto and Others, , it was argued that enquiry under Rule 4 need not precede Section 4 notification and it is not mandatory to conduct Rule 4 enquiry before Section 4 notification.

12. Mr. Mishra, learned Advocate General with Mr. Bajaj, learned Government Advocate for the State opposing the petitions advanced similar arguments as advanced on behalf of the respondent-Company.

13. The petitioners have impugned the constitutionality of the land acquisition proceeding with particular references to the impugned notification u/s 4 of the Act, 1894. The petitioners have raised number of questions of law to impugn the impugned notification for acquisition. Firstly, it has been urged that the notification has been issued without following the Rules, 1963. Land is being acquired for private company without following the procedure prescribed in Part VII of the Act, 1894, as compensation to be awarded for the alleged acquisition has been borne and paid fully by the respondent-Company and no part of compensation has been paid out of the public revenue. It has also been contended that the "public purpose" mentioned in the notification u/s 4 of the Act, 1894 is not a "public purpose" within the meaning of Section 3(f) of the Act, 1894, as it is an acquisition for construction of railway siding of the respondent-Company, a private company, and thus, a colourable exercise of powers by the State Government. It was further contended that the Collector is not empowered to exercise powers u/s 4 of the Act, 1894, as the Competent Authority to issue notification u/s 4 of the Act, 1894 is the "appropriate Government" as defined u/s 3(ee) of the Act, 1894 and the appropriate Government is not empowered under the Act, 1894 to delegate its power to any other authority. The notification is also illegal and bad in law, as it does not mention the particulars of the land to be acquired and public purpose has also not been specified.

14. To determine the questions raised by the petitioners, I propose to go through briefly the scheme of the Act, 1894. The amending Act was enacted for the purpose of "acquisition of land needed for public purpose and for companies and for determining the amount of such acquisition". Section 3(e) defines the expression "company". The expression "public purpose" is given an inclusive definition in Section 3(f). For application in the State of M.P., in Clause (f) of Section 3 following Clause is substituted:

(f) the expression "public purpose" includes the provisions of land for agriculture or for residential, business or industrial purposes, or for any purpose incidental to any of these with a view to resettlement and rehabilitation of displaced persons.

Substituted definition of Section 3(f) vide M.P. Amendment is duly applicable as it is saved under Sections 79 and 80 of the M.P. Reorganization Act, 2000. Section 4 provides for the issue of a preliminary notification to the effect that land in any

locality is needed or is likely to be needed for any public purpose. On the issue of such notification steps are taken to survey the land and take all other action necessary to decide whether the land is fit for the purpose for which it is needed and in that connection Section 5-A provides for objections by any person interested in the land, and the Collector hears the objector and submits his report to Government for appropriate action. Then comes Section 6, relevant portion of which is reproduced hereinbelow:

(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 5-A, 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 or different reports has or have been made (wherever required) u/s 5-A, Sub-section (2):

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

Explanation 2: Where the compensation to be awarded for such property is to be paid out of the funds of a corporation owned or controlled by the State, such compensation shall be deemed to be compensation paid out of public revenues.

Where the land is to be acquired for a company, no notification u/s 6 can be issued till the provisions of Part VII of the Act, 1894 are complied with, for action u/s 6 for acquiring land for a company is subject to the provisions of Part VII.

Section 39 lays down that "the provisions of Sections 6 to 37 (both inclusive) shall not be put in force in order to acquire land for any company, unless with the previous consent of the appropriate Government, nor unless the company shall have executed the agreement hereinafter mentioned". Section 39 as well as Section 6 make it clear that the operative provisions of the Act for the purpose of acquiring land for a company will only apply when two conditions precedent have been satisfied, namely- (i) the previous consent of the appropriate Government has been given to the acquisition, and (ii) the company has entered into an agreement as provided in the Act. Section 40 lays down when the consent of the appropriate Government can be given, whereas, Section 41 lays down the terms which must be incorporated in the agreement. Section 42 provides that every such agreement shall be published in the Official Gazette and shall thereupon so far as regards the terms on which the public shall be entitled to use the work have the same effect as if it had formed part of the Act.

15. In the matter of Pandit Jhandu Lal and Others Vs. The State of Punjab and Others, , it has been held that acquisition for a company may also be made for a public purpose, within the meaning of the Act, if a part or the whole of the cost

of acquisition is met by public funds. Therefore, it was not necessary to go through the procedure prescribed by Part VII. It is only where the acquisition is for a company and its cost is to be made entirely by the company itself, then the provisions of Part VII apply.

16. In the matter of *Pratibha Nema and Others Vs. State of M.P. and Others*, , drawing the distinction between acquisition under Part II of the Act and acquisition under Part VII it has been held thus:

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

Considering the fact of that case that the amount deposited by the company towards the advance lease premium which was utilized for payment of compensation, it was held that the same satisfies the requirement of second proviso of Section 6(1) read with Explanation 2 of the Act, 1894. The genesis of fund is not the determinative factor, but its ownership in praesenti that matters.

17. In the matter of *Daulat Singh Surana and Ors. v. First Land Acquisition Collector and Ors.* (2007) 1 SCC 641, it has been held that "the public purpose is not static. It also changes with the passage of time, needs and requirements of the community. Public purpose is bound to vary with times and prevailing conditions in the community or locality and, therefore, the Legislature has left it to the State (Government) to decide what is public purpose and also to declare the need of a given land for the purpose. The Legislature has left the discretion to the Government regarding public purpose. The Government has the sole and absolute discretion in the matter".

18. In the matter of *Devender Singh* (supra), the Hon''ble Supreme Court to demonstrate the distinction between acquisition for public purpose under Part II and Part VII for company itself has quoted Para 22 of the judgment in the *Pratibha Nema* (supra).

19. It is not in dispute that the respondent-Company, which is a private company, made an application (Annexure R-4) to the Additional Chief Secretary of the Government of C.G. underlining the necessity to extend its present railway siding near Nipania Railway Station to its plant and communicated its decision to

establish at their own cost a rail link between their plant at Sonadih and Nipaniya Railway siding and further requested to take immediate steps in public interest to acquire entire land falling in the alignment of their proposed rail link under the Act, 1894. The Sub Divisional Officer (Revenue) of Bhatapara & Baloda Bazar determined the cost of acquisition of land for the above purpose at Rs. 2,55,72,573/- and communicated the same to the General Manager, District Industries & Trade Centre, Raipur. Respondent CSIDC requested the respondent-Company to deposit the above cost of acquisition and the respondent-Company deposited the entire cost of Rs. 2,55,72,573/- with the respondent CSIDC towards payment of land acquisition to private land owners for railway link on 31-5-2007. The amount was transferred by the respondent CSIDC, which was again sent to the General Manager, District Industries & Trade Centre, Raipur for transferring the same to the SDO of Bhatapara & Baloda Bazar and only after this exercise was completed, the impugned notification was published. The impugned notification mentions that the disputed land is required for public purpose for construction of railway line for industrial purposes.

20. Definition of "public purpose" u/s 3(f), which is being reproduced herein below, is an inclusive definition but it does not include acquisition of land for companies. Section 3 of the C.P. & Berar Act, 1949 was enacted for the purpose of making provisions for speedy acquisition of land for the resettlement and rehabilitation of the displaced persons and in these circumstances, Clause (f) of Section 3 was substituted to define that the expression "public purpose" includes the provision of land for agriculture or for residential, business or industrial purposes, or for any purpose incidental to any of these with a view to resettlement and rehabilitation of displaced persons.

21. The Act of 1894 was extensively amended vide Land Acquisition (Amendment) Act, 1984. The definition of "public purpose", as it exists today in the Act has been inserted by the Act No. 68 of 1984 and the definition of "public purpose" was never substituted either by the State of M.P. or by the new State of C.G. thereafter. Section 3(f) of the Act, 1894 as under:

(f) the expression "public purpose" includes;-

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

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

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

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

(v) the provision of land for residential purposes to the poor or landless or to persons residing in areas affected by natural calamities, or to persons displaced

or affected by reason of implementation, of any scheme undertaken by the Government, any local authority or a corporation owned or controlled by the State;

(vi) the provision of land for carrying out any educational, housing, health or slum clearance scheme sponsored by Government or by any authority established by Government for carrying out any such scheme, or, with the prior approval of the appropriate Government, by a local authority, or a society registered under the Societies Registration Act, 1860 (21 of 1860), or under any corresponding law for the time being in force in a State, or a Co-operative Society within the meaning of any law relating to co-operative societies for the time being in force in any State;

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

(viii) the provision of any premises or building for locating a public office, but does not include acquisition of land for companies.

22. In the matter of Ramlal v. State of M.P. M.P. Weekly Notes 1979 Vol. II Note 1, it has been held that C.P. & Berar Act, 1949, which Act is called Central Provinces and Berar Resettlement and Rehabilitation of Displaced Persons (Land Acquisition) Act, 1949 and was made for the purpose of acquiring land for resettlement and rehabilitation of displaced persons, therefore, this amendment will not be applicable to the acquisition proceedings before us. Needless to say that this land is not acquired for resettlement or rehabilitation of displaced persons. Similar view was already expressed by the Division Bench of M.P. High Court in the matter of Shikharchand Laxmichand and Ors. v. State of M.P. and Ors. 1981 MPLJ 389.

23. In the matter of Chaitram Verma and Others Vs. Land Acquisition Officer, Raipur and Others, , considering that acquisition for construction of railway siding for transporting manufactured cement from cement plant of Tata Iron & Steel Company and entire cost of construction of siding and acquisition of land was to be borne by the company, it was held that the purpose was not a public purpose and the notification was issued in the colourable exercise of powers.

24. From the pleadings of the respective parties and documents available on record it is manifestly clear that the land in question is proposed to be acquired for the purpose of extending the railway siding of the respondent-Company. Entire amount towards the cost of acquisition has been deposited by the respondent-Company with the respondent CSIDC, who in turn transferred the same to be handed over to the Land Acquisition Officer for disbursal amongst the affected land owners. Facts of the present case is distinguishable from the facts of Pratibha Nema's case (supra), as in the above judgment the amount was deposited towards lease premium by the private company and the same was utilized by the State instrumentalities for making payment towards land

acquisition.

25. In the matter of Devendra Singh (supra), in Para 35 the Hon^{ble} Supreme Court has referred Paragraph No. 52 of the judgment rendered by the Constitution Bench in the matter of Smt. Somavanti and Others Vs. The State of Punjab and Others, , with approval:

52. We would like to add that the view taken in Senga Naicken case has been followed by the various High Courts in India. On the basis of the correctness of that view the State Governments have been acquiring private properties all over the country by contributing only token amounts towards the cost of acquisition. Titles to many such properties would be unsettled if we were now to take the view that "partly at the public expense" means substantially at public expense. Therefore, on the principle of stare decisis the view taken in Senga Naicken case should not be disturbed. We would, however, guard ourselves against being understood to say that a token contribution by the State towards the cost of acquisition will be sufficient compliance with the law in each and every case. Whether such contribution meets the requirements of the law would depend upon the facts of every case. Indeed the fact that the State's contribution is nominal may well indicate, in particular circumstances, that the action of the State was a colourable exercise of power. In our opinion "part" does not necessarily mean a substantial part and that it will be open to the Court in every case which comes up before it to examine whether the contribution made by the State satisfies the requirement of the law. In this case we are satisfied that it satisfies the requirement of law. What is next to be considered is whether the acquisition was only for a company because the compensation was to come almost entirely out of its coffers and, therefore, it was in reality for a private purpose as opposed to public purpose. In other words, the question is whether there was on the part of the Government a colourable exercise of power. Elaborating the point it is said that the establishment of a factory for manufacturing refrigeration equipment is nothing but an ordinary commercial venture and can by no stretch of imagination fall within the well-accepted meaning of the expression "public purpose", that even if it were to fall within that expression the factory is to be established not by the Government, nor by Government participation but solely by respondent No. 6, a public limited concern and that, therefore, the concern could acquire land for such a purpose only after complying with the provisions of Part VII and that the use of the provisions of Section 6(1) is merely a colourable device to enable respondent No. 6 to do something, which, under terms of Section 6(1), could not be done.

26. In the instant case also construction of rail link from railway siding to the factory premises at the request of a private company at its own expenses can by no stretch of imagination fall within the well accepted meaning of "public purpose". Therefore, in the considered opinion of this Court the acquisition proceeding in the instant case would be governed by Part VII and not by Part II of the Act, 1894.

27. The second limb of argument of the petitioners was that there is no enquiry as contemplated in Rule 4(1) of the Rules, 1963 read with Section 40 of the Act, 1894, which is a condition precedent to commence acquisition proceeding of land required for by a private company. Sub-rule (1) of Rule 4 stipulates that "whenever a company makes an application to the appropriate Government for acquisition of any land, that Government shall direct the Collector to submit a report to it on the following matters, namely:

(1) that the company has made its best endeavour to find out lands in the locality suitable for the purpose of acquisition;

(2) that the company has made all reasonable efforts to get such lands by negotiation with the persons interested therein on payment of reasonable price and such efforts have failed;

(3) that the land proposed to be acquired is suitable for the purpose;

(4) that the area of land proposed to be acquired is not excessive;

(5) that the company is in a position to utilize the land expeditiously; and

(6) where the land proposed to be acquired is good agricultural land, that no alternative suitable site can be found so as to avoid acquisition of that land.

It further stipulates that where the land proposed to be acquired is an agricultural land, he should consult the Senior Agricultural Officer of the district whether or not such land is good agricultural land. After conducting the enquiry, the Collector has to submit report to the appropriate Government and a copy of the same shall be forwarded by the Government to the Committee. No declaration shall be made by the appropriate Government u/s 6 of the Act, 1894 unless the appropriate Government has consulted the Committee and considered the report submitted under Rule 4(1) and the agreement u/s 41 of the Act, 1894 has been executed by the company. Section 40 of the Act, 1894 also envisages that consent shall not be given unless the appropriate Government is satisfied either on the report of the Collector u/s 5-A, Sub-section (2) or by an enquiry held, as provided under that section.

28. In the matter of Fomento Resorts (supra), the question before the Hon''ble Supreme Court was whether compliance with Rule 4 of Rules, 1963 is necessary before issuing notification u/s 4 of the Act, 1894 and the Hon''ble Supreme Court rejecting the conclusions of the Bombay High Court that enquiry under Rule 4 was necessary for initiation of acquisition proceedings to be satisfied that acquisition is necessary for the company held thus:

13. To complete the acquisition proceedings, notification u/s 6 of the Act is required Section 6 of the Act enjoins that the Government has to be satisfied that the land is needed for public purpose or for a company and after declaration is made the acquisition is complete after the award is made and possession of the land is taken when the land vests u/s 16 in the Government free from

encumbrances. Section 4 does not require as such this satisfaction of the Government. The Government might initiate acquisition proceedings "if it appears" to the Government that land is needed either for public purpose or for a company. That might appear to the Government by enquiry aliunde or on a petition or application made by any company. Whether the need is proper or genuine that can be found by the Government subsequently after notice u/s 4 of the Act. An enquiry under Rule 4 might be made before issuance of the notification u/s 4 of the Act but it is not a sine qua non for the issuance of the notification u/s 4 to have an enquiry under Rule 4 of the Rules. The scheme and the language of the Act and the Rules do not indicate that. As noted before, Section 4 does not require Government to be satisfied, it is sufficient if it appears to the Government that land is needed either for public purpose or for a company. It may so appear to the Government either by independent enquiry or from reports and information received by the Government or even from an application by the company concerned.

14. Section 6 undoubtedly requires satisfaction of the Government and enquiry contemplated under Rule 4 must precede publication of the notification u/s 6 of the Act. So also there must be, before Section 6 notification an enquiry u/s 5-A. The significant pointer to the scheme is provided in Sub-rule (4) of Rule 4, the material portion of which reads as follows:

(4) No declaration shall be made by the appropriate Government u/s 6 of the Act unless-

(i) the appropriate Government has consulted the Committee and has considered the report submitted under this rule and the report, if any, submitted u/s 5-A of the Act; and

(ii) the agreement u/s 41 of the Act has been executed by the company.

17. Reading the Act and the Rules and keeping in view the scheme of the Act, it is apparent, in our opinion, that before the issuance of Section 4 notification, there is no requirement as such of compliance with the procedure contemplated by Rule 4 of the Rules. We are therefore, unable to subscribe to the view that enquiry by Rule 4 must precede the issuance of notification u/s 4(1) of the Act. Furthermore as indicated before certain matters, which are required to be done under Rule 4 cannot be done because the officer or the person authorised by him would have no authority unless notification u/s 4 is issued.

29. In Para 25 of the above judgment, it has been further held that "it is not necessary that enquiry under Rule 4 must in all cases precede issuance of the notification u/s 4 of the Act. In an appropriate case if it is possible, enquiry under Rule 4(1) may be held before the issuance of the notification u/s 4. But it is not mandatory requirement that it must precede before the issuance of the notification u/s 4".

30. In the matter of Devendra Singh (supra), the Hon''ble Apex Court while

dealing with the compliance of Rule 4 of Rules, 1963 and considering various judgments of the Hon''ble Supreme Court has held in Para 55 thus:

55. The approach of the High Court in this behalf, in our opinion, is totally erroneous. A provision of a statute is either mandatory or directory. Even if a provision is directory, the same should be substantially complied with. It cannot be ignored in its entirety only because the provision is held to be directory and not an imperative one.

However, in the matter of Smt. Somawanti (supra), it has been held that the stage at which Rule 4 is required to be complied with is not the stage prior to issuance of notification u/s 4 but declaration u/s 6 of the Act, 1894.

31. Therefore, relying upon the judgments in the matter of Fomento Resorts and Hotels Ltd. Vs. Gustavo Ranato Da Cruz Pinto and Others, and Smt. Somavanti and Others Vs. The State of Punjab and Others, , I am of the opinion that the impugned notification u/s 4 of the Act, 1894 cannot be quashed at this stage on the ground that enquiry and report, as contemplated under Rule of the Rules, 1963 read with Section 40 of the Act, 1894 was not obtained from the Collector. However, enquiry and report, as envisaged in the aforesaid provision, would be necessary before issuance of notification u/s 6 of the Act, 1894.

32. So far as the submission of the respondents based on Section 43 of the Act, 1894 that in view of MoU entered into between the officials of the State and the respondent-Company and industrial policy of the State, the State is obliged to provide land for the purpose of railway siding of the respondent-Company is concerned, Section 43 of the Act, 1894 is applicable only where the Central Government or State Government is bound to provide land. However, in the instant case there is no enforceable agreement between the private respondent and the State for providing land and MoU signed by the parties cannot be considered to be an agreement within the meaning of Section 43 of the Act, 1894, as there is no reciprocal enforceable agreement between the parties.

33. Now coming to the contention of the petitioners that the impugned notification u/s 4 of the Act, 1894 has been issued by the Collector, who is not a Competent Authority to issue notification as the Competent Authority is the appropriate Government as defined in Section 3(ee) of the Act, 1894. Learned Advocate General for the State contended that the State Government has issued notification dated 3-9-2003 (Annexure R-1) in the exercise of powers conferred by Clauses (2) and (3) of Article 166 of the Constitution of India and authorized the Collectors of the districts as Ex-Officio Deputy Secretary to the Government of C.G. in Revenue Department to dispose of the cases concerning land acquisition by exercising the powers under Sections 4 and 6 of the Act, 1894.

34. In the matter of Gajanand and Others Vs. State of M.P. and Others, , it has been held that execution cannot be challenged on the ground that satisfaction was not arrived at by the appropriate Government. Though the business of the Government is required to be transacted in the name of Governor, it is not

possible or practicable that all such business was dealt with by him or by the Council of Ministers or for that matter an individual Minister. Article 166 of the Constitution empowers to make rules of business for more convenient transaction of business and for allocation of such business among Ministers and also officials. When Ministers and officials discharge functions allotted to them, they are doing so as limbs of the Government and their decisions become the decisions of the Government. Power to deal with land acquisition subject flowed down to Secretary/Deputy Secretary of the Revenue Department or any other official who was declared/appointed/designated so ex-officio for the purpose and once such appointed ex-officio Secretary (Revenue Commissioner) was asked to dispose of land acquisition matters by the Minister-in-charge under Rule 2-A of supplementary instructions, he assumed the jurisdiction to deal with such matters and all his actions and decisions become that of the Government. It could not be said in such a case that power could be delegated only to Secretary.

35. In the matter of *Samsher Singh Vs. State of Punjab and Another*, , also this aspect has been dealt with in Para 31 and it has been held that functions entrusted to a Minister are performed by an official employed in the Minister's Department, there is in law no delegation because constitutionally the act or decision of the official is that of the Minister. The official is merely the machinery for the discharge of the functioning entrusted to a Minister. Thus, in view of the notification dated 3-9-2003, I am of the opinion that the objection of the petitioners in this regard is unfounded.

36. The petitioner has also impugned the notification u/s 4 on the ground of vagueness. It is vehemently argued that impugned notification does not bear the details of land, which is proposed to be acquired and specific public purpose.

37. On the other hand, the State Government in its reply as categorically submitted that the public purpose has been elaborately described as for the purpose of construction of railway line for industrial purpose. Apart from issuing public notification in the official gazette, the Collector also gave public notice through publication in the newspapers (Annexures R-2 & R-3) and in the said notice the details of the land along with area has been mentioned. The purpose of notification u/s 4 is to give pre-intimation to the concerned land holders who in turn submit their objections as contemplated u/s 5-A of the Act, 1894 and therefore, in the considered opinion of this Court simply non-mentioning the details of the land with area in the impugned notification would not vitiate the notification particularly when the details are given in the public notice issued simultaneously by the Collector.

38. Therefore, the impugned notification u/s 4 of the Act, 1894 cannot be quashed on the above grounds.

39. On the basis of the above discussion, the conclusions are as under:

(i) That the proposed acquisition of land is for a private company, i.e., respondent-Lafarge India, and not for a "public purpose", as defined in Section

3(f) of the Act, 1894. Acquisition proceeding was initiated on the request of the respondent-Company. Entire cost of acquisition was to be borne by the respondent-Company and in these circumstances the acquisition is to be commenced under Part VII and not under Part II of the Act, 1894.

(ii) Non-compliance of Rule 4(1) of the Rules, 1963 would not vitiate the impugned notification u/s 4 of the Act, 1894, as it is not mandatory that the enquiry under Rule 4(1) is to precede notification u/s 4 of the Act, 1894. However, compliance of Rule 4 of the Rules, 1963 read with Section 40 of the Act, 1894 is a condition precedent before issuance of notification u/s 6 of the Act, 1894.

(iii) The respondents shall proceed further in the matter of acquisition keeping in view of above conclusions.

40. We The petitions are accordingly disposed of with the aforesaid directions.

41. There shall be no order as to costs.