

(1976) 03 BOM CK 0056

In the Bombay High Court

Case No : Special Civil Application No's. 1389, 1486, 1766, 1926 and 2065 of 1975 and 200 of 1976

Jamnadas Devsibhai Bhate and Others

APPELLANT

Vs

The Commissioner, Nagpur Division, Nagpur and Another

RESPONDENT

Date of Decision : 02-03-1976

Acts Referred:

Land Acquisition Act, 1894 — Section 3, 4(1), 5

Citation : AIR 1976 Bom 129 : (1976) MhLj 267

Hon'ble Judges : C.S. Dharmadhikari, J;A.R. Shimpi, J

Bench : Division Bench

Advocate : V.M. Kulkarni, B.A. Udhoji, L.Mohta, C.G. Madkholkar, J.N. Chandurkar and A.M. Gorde, for the Appellant; M.M. Qazi, Addl. Govt. Pleader and R.R. Deshpande, for the Respondent

Judgement

Dharmadhikari, J.—In special Civil Application No. 1766 of 1975 as also in the other petitions which were heard along with this Special Civil Application, so far as the common questions of law are concerned, the state Government is acquiring lands belonging to the petitioners as the same are needed or are likely to be needed for the public purposes namely, providing house sites to landless labourers. It further appears from the notifications issued u/s 4 of the Land Acquisition Act. 1894, referred to herein after as the Act, that as the Additional Commissioner , Nagpur was of the opinion that the acquisition of the lands is urgently necessary, he directed under sub-section (4) of Section 17 that the provisions of Section 5-A of the Act shall not apply in respect of the said lands. A schedule is attached to each of the notification issued u/s 4 of the Act giving details about the landed property. Thereafter is some cases notifications u/s 6 of the Act are issued, whereas in Special Civil Application No. 1389 of 1975 a notice u/s 4(1) of the Act is issued to the landholder and it is at that stage he has approached this Court under Articles 226 and 227 of the Constitution of India praying for a writ of certiorari for quashing the notification issued u/s 4 of the Act. In some other Special Civil Application notification u/s 6 of the Act. are

issued directing the land Acquisition Officer to take recourse to the provisions of sub-section (1) of Section 17 of the Act so as to enable him to take possession of the lands needed for public purposes, on expiration of 15 days from the publication of the notice mentioned in sub-section (1) of Section 9 of the Act. Therefore, in some of the petitions, which are pending for hearing, in pursuance of such a direction after issuing a notice u/s 9(1) of the Act, the Land Acquisition Officer was taking necessary steps for taking possession and at this stage the petitioners have approached this Court for a writ of certiorari or mandamus under Articles 226 and 227 of the Constitution of India.

2. As the main questions involved in all these petitions were common, the counsel appearing in all these writ petitions were heard on two main questions namely, (1) As to whether the acquisition of the lands for the purpose of providing house sites to the landless labourers is "a public purpose" as contemplated by Section 4(1) or Section 17(1) of the Act ? and (2) as to whether the Additional Commissioner was right in dispensing with the enquiry contemplated by Section 5-A of the Act.

3. Shri V.M. Kulkarni, the learned counsel for the petitioner in Special Civil Application No. 1389 of 1975 contended before us that giving sites to landless labourers is not a "public purpose" as in substance the land is being acquired by the Government for providing house sites to named individuals. He further contended that the benefit arising out of the present acquisition proceedings is being given to the named individuals, namely the landless labourers as per the list attached to the proposal. The general public as such is neither being benefited, nor providing the house sites to the landless labourers is in the interest of general public or a community as a whole. He further contended that the Additional Commissioner has further committed an error in exercising his power under sub-section (4) of Section 17 of the Act, when in fact there was no real urgency for acquiring the land for providing the house sites to the landless labourers.

4. Shri Udhoji, the learned counsel appearing for the petitioner in Special Civil Application No. 1486 of 1975, adopted the argument advanced by Shri V.M. Kulkarni and contended that the expression "public purpose" as defined by Section 3(f) of the Act was amended by the State Legislature by Maharashtra Act No. XLII of 1973 where by the words "waste or arable" appearing in subsection (1) of Section 17 were deleted. In spite of such an amendment to the act the expression "public Purpose" is not amended, nor the provisions of Bombay Village Panchayats Act and the Rules framed thereunder, which provide for a procedure of extension of Gaothan, are modified or altered by the State. Therefore, according to Shri Udhoji, unless such amendments were introduced in the Legislation, it was not possible for the State to acquire the lands for providing house sites to the landless labourers. So far as application of urgency clause is concerned, Shri Udhoji contended that though the opinion of the authority concerned is subjective, it will have to be examined on the touchstone of

objectivity. According to the learned counsel, the landless labourers for whom the house sites are being provided have already accommodated themselves in the village and are living in the rented houses. If this is so, then there was no urgency for providing the house sites to these landless labourers. He also contended that u/s 5-A of the Act a person interested has a right to raise an objection within a period of 30 days after the issue of notification u/s 4 of the Act. Therefore, unless the need was so urgent that the State could not have waited for a period of 30 days, it was not open to the Additional Commissioner to exercise his powers u/s 17(4) of the Act. IN substance, therefore, it is the contention of the learned counsel that in the case before us, there was no real urgency. He also based this argument on the different phraseologies used in sub-sections (1) and (2) of Section 17 of the Act. According to Shri Udhoji, sub-section (1) of Section 17 deals with special powers in cases of urgency, whereas sub-section (2) of Section 17 deals with the powers to be exercised by the authorities concerned in the matters of sudden change in the channel of any navigable river or other unforeseen emergency. According to Shri Udhoji, the 20 point programme which is the basis to the scheme for providing house sites to the landless labourers is a political programme and could at best be termed as a political urgency and not a real urgency as contemplated by Section 17 of the Act.

5. Shri L. Mohta, the learned counsel appearing for the petitioner in Special Civil Application No. 1766 of 1975, after adopting the arguments advanced by the counsel in other petitions, contended that the definition of the expression "public purpose" in Section 3(f) of the Act clearly indicates that unless it is declared by a notification in the official Gazette that it is customary for the Government to make a provision in this behalf in the village sites, the acquisition of the lands for the purpose of providing house sites to the landless labourers is not contemplated. According to the learned counsel, there is no provision in law which enjoins a customary duty upon the Government to provide house sites to the landless labourers. Therefore, according to the learned counsel, acquisition of the lands for the purpose of providing house sites to the landless labourers being not a customary obligation for which the lands could be acquired, the acquisition is wholly bad. He further contended that so far as the exercise of the power under sub-section (4) of Section 17 is concerned, it is quite clear from the bare reading of the section itself that after applying his mind to all the relevant data before him the Additional Commissioner can issue a direction in that behalf. In the present cases there is no application of mind at all on the part of the Additional Commissioner, and therefore, the direction issued in that behalf is wholly bad.

6. Shri Madkholkar, the learned counsel appearing for the petitioner in Special Civil Application No. 2065 of 1975, has contended before us that the power exercised by the appropriate authority in issuing the notifications for acquiring the lands for the purpose of providing house sites to the landless labourers is ultra vires of the power and the authority conferred by Section 4(1) of the Act. According to the learned counsel, how a village is to be constituted is provided by

the Maharashtra Land Revenue Code. Chap. VIII of the said Code deals with the constitution of village as well as its local area. It also provides as to what provision should be made in a village by the Government. There is no provision in the Maharashtra Land Revenue Code which enjoins a duty upon the Government to provide house sites to the landless labourers. It is neither a customary right of a landless labourer nor it is the duty of the Government to make a provision in that behalf. Therefore, according to the learned counsel, unless a specific provision is made in the Maharashtra Land Revenue Code, or in any other law, it is not possible for the appropriate authority to acquire the land for the said purpose. He has also relied upon the definition of the expression "public purpose" in Section 3(f) of the Act, and contended that unless a notification in that behalf is issued by the Government, the powers u/s 4(1) of the Act cannot be exercised.

7. Shri J. N. Chandurkar, the learned counsel for the petitioner appearing in Special Civil Application No. 1926 of 1975, contended before us that the people, namely landless labourers, are not on the street, but are already accommodated in the rented houses or otherwise in the village itself. They are living either as licences or as tenants in the village. Therefore, it cannot be said that the purpose for which the land is being acquired is so urgent that the appropriate authority could not have followed the procedure prescribed by Section 5-A of the Act. He further contended that once the petitioners make out a prima facie case that there was no urgency in the matter, then the burden shifts upon the Government or the appropriate authority to justify the urgency and this has not been done in the present case.

8. Shri Gorde, the learned counsel appearing for the petitioner in Special Civil Application NO. 200 of 1976, adopted the arguments advanced by the counsel in other cases and further contended that the provisions of sub-section that the provisions of sub-sections (1), (2) and (4) of Section 17 of the Act should be read harmoniously. These provisions indicate that the need of the people should be so urgent that the procedure prescribed by Section 5-A could not be adhered to in a given case. Therefore, according to the learned counsel, in each case very strong reasons will have to be given by the appropriate authority for applying the urgency clause. Shri Gorde further contended that if sub-sections (1) and (2) of Section 17 are read harmoniously and together, they clearly indicate that the power under sub-section (4) of Section 17 of the Act can be exercised by the appropriate authority in the cases where the land is needed for the purposes specified in sub-section (2) of Section 17 of the Act. The phraseology used in sub-section (1) of Section 17 should be read in the context of sub-section (2) and (3) of that section and the term "public purpose" used in sub-section (1) of Section 17 should be construed accordingly as it takes its colour from sub-section (2). He further contended that the sub-section (1) of Section 17 should be interpreted by applying the rule of ejusdem generis. Read in this context, the learned counsel further contended that the acquisition of the lands for providing house sites to the landless labourers is not covered by the provisions of Section 17 at all, as it

is not a public purpose similar to those mentioned in sub-section (2). In substance, therefore, it is contended by Shri Gorde that the learned Additional Commissioner has exceeded his jurisdiction in exercising his power under sub-section (4) of Section 17 of the Act, and therefore, the notification issued by him u/s 6 of the Act is wholly without jurisdiction and is illegal.

9. In reply to these various contentions it is contended by Shri Qazi , the learned Additional Government Pleader, that provided house sites to the landless labourers is a "public purpose" within the meaning of sub-section (1) of Section 4 and Section 17(1) of the Act. He further contended that the need of the landless labourers to get the house sites or a shelter over their head is so urgent that unless steps are taken by the appropriate authority to complete the acquisition proceedings within a specified time, it is not possible for the Government to provide the house sites or huts to the landless labourers at all. In support of his contention. Shri Qazi has strongly relied upon the scheme framed in this behalf by the Central Government and adopted by the State Government. According to the responsible such a scheme was a part and parcel of the five year plan. However as it was not properly implemented instructions were issued by the Central Government and State Government to complete the scheme within a specified period namely before 31st March 1976. According to the respondents, as the lands for providing house sites to the homeless and landless labourers are urgently required for settlement of these landless labourers, after applying his mind to the facts and circumstances of each case, as well as to the urgency of the matter the urgency of the clause was rightly applied by the Additional Commissioner. He has further relied upon the Government resolutions issued from time to time in this behalf. It was also contended by Shri Qazi that after examining each and every case, submitted by the Sub-Divisional Officer Land Acquisition Officer with a request that urgency clause should be applied, the Additional Commissioner has issued the notification in exercise of the power u/s 17(4) of the act. The additional Commissioner has also started in his affiliate that whenever he found that the material was not sufficient to justify the application of Section 17(4) he has taken every possible care to see that the urgency clause is applied only when it was thought to be absolutely necessary. Before exercising the said power he scrutinized each and every case and only when he has satisfied that the subordinate Revenue Officers have followed all the instructions incorporated in Land Acquisition Manual and the relevant Government resolution, he has exercised the said power, after applying his mind to each and every case.

10. For properly appreciation the controversy involved in these petitions, it is necessary to understand the scheme for which the lands are being acquired. It appears that initially a Circular letter was issued by the Deputy Secretary to Government Revenue and Forest Department, State of Maharashtra, on 1st December 1971. At the time a scheme was under active consideration of the Government by which it wanted to avail of the financial assistance offered by the Government of India for providing house sites to landless workers in rural areas who do not already have a house site or a house or a hut of their own. Then by

another Circular letter dated 19th July 1972. top was meant for providing house sites to the landless worker's families. By this letter the Government decision was communicated to the officers concerned that the government has now decided to provide house sites to all landless workers in the state who have no house sites of their own. It was estimated then that about 10 lakhs of landless worker's families who do not have house sites of their own and would not be covered by the how stead rights that can be extended under tenancy laws, be provided house sites under the scheme. It was also informed to the officers concerned that the Government attach the highest importance to this scheme and would like to ensure that no efforts are spread to provide every family of landless workers a house site within the minimum time possible. The top priority was given to this programme as a part of the celebration of 25th Anniversary of the Independence. The procedure to be followed in this behalf was also indicated in the said circular. With the said Circular the scheme framed by the Central Government was also circulated the scheme was known as a scheme was known as a scheme for making a provision of house sites to the landless workers in the rural areas. From the introduction of the Scheme it appears that it aims at assisting the State Government and administration of Union Territories to provide house sites free of cost to families of landless worker's in the rural areas, who do not already own a house site or a built up house or a hut on the land of their own. With the house sites so provided the workers will have to build houses or huts thereon with their own resources and live in peace without being constantly threatened with eviction by the owner of the land on which they have built their houses or huts. The scheme was introduced as Central Sector Scheme and it was also made clear that the benefit of this scheme will be admissible only to such families of landless workers in rural areas, who cannot be given house sites in terms of Col. (b) of para. 2 of the said scheme. So far as the financial assistance is concerned, the entire cost of quivering the developing land for providing house sites to the families of landless workers in accordance with the approved programme was to be met by the government of India as 100% grant assistance which will be made available to the States and Union Territories outside their plan ceilings. Certain guidelines were then laid down for utilisation of financial assistance and no family was to be allotted more than one house site and the size of the site was not to exceed 100 Sq yards. The scheme further provided that while allotting the house sites there should be no segregation of families belonging to scheduled cases and scheduled tribes. Such families should be suitably interspersed along with other families, being allotted house sites in or adjoining village. Thereafter it seems that with the sole object of removing number of difficulties faced by the Government in taking possession of the private lands, which after needed to be acquired for various public purposes, the State Legislature amended Section 17 of the Act No. XLII of 1973.

11. In furtherance of this very scheme, by Government resolution dated 11th March 1975, the Government of Maharashtra clarified the position that the State

Government has been implementing the Centrally sponsored scheme for providing of house sites to landless workers in rural areas, as a part of the programme of provision of minimum needed to the weaker sections of the society. It further clarified the position that the State Government gives top priority to the above scheme and in order to ensure its speedy implementation has formulated a time bound programme for allotment of house sites to the eligible landless workers in rural areas and construction of houses on the sites allotted under the scheme. With a view to execute the time bound programme, certain directions were issued to the officers concerned. By Government resolution dated 19th July 1975, the Government noticed from the reports received from the Collectors that out of 4.05 lakhs eligible families, only 2.54 lakhs persons have been provided with house sites till the end of June 1975. It was also noticed that 14,000 families were still to be granted house sites from out of the Government land and about 1.37 lakhs families were to be provided with house sites by acquiring or purchasing suitable private lands. Then after considering various matters, the Government took some decisions which are incorporated in the said resolution further makes it clear that the Government has also undertaken a programme of construction of huts on the plots allotted under the "Scheme for provision of house sites to landless workers in rural areas" since March 1975. Under the Pilot Programme of construction of 1000 huts per district sanctioned under Government resolution dated 11th March 1975, simple houses measuring 10'*10' were to be constructed by the Collector at the cost of Rs. 150/- each and the beneficiaries were expected to provide walls of mud/mud stones/ any local material traditionally used and also a thatched roof. Accordingly, 25,000 huts were completed by 31st May 1975. However, considering the utility and urgency of the programme, the Government decided to undertake construction of 1 lakh huts during the period from 1st June 1975 to 31st March 1976 in addition to those that would be constructed by the Co-operative Sugar Factories. Therefore, in partial modification of the previous orders on the subject, the Government issued further orders laying down division wise targets etc. The Government contribution was increased from Rs. 150/- to Rs. 200/- per hut. In addition, it was also provided that the labour under Employment Guarantee Scheme at a rate not exceeding Rs.60/- per hut may be employed for manufacture of unbarred bricks or collection and cutting of local stone etc. Empty tar drums available with the Buildings and Communication Department were also to be used and the Government also observed that taking into account the objectives of the programme viz, to help the weaker sections of the society, the members of social and philanthropic institutions like Rotary Club, Lions Club etc. and organisations like Sugar Factories have expressed their desire to assist the Government in the implementation of the programme. It is further clear from the Government resolution placed on record that initially Talathi was directed to prepare a list of all the landless workers' families in the village with the assistance of Village Panchayat Secretary. He was also asked to prepare a list of the suitable Government and village panchayat lands that are available for

being assigned for the house sites. If such land were not available for being assigned for the house sites. If such lands were not available then he was directed to prepare a list of lands proposed to be acquired for the said purpose. Government has also directed that a meeting should be convened of the President, Chief Executive officers, Chairman of Panchayat Samities, Block Development Officers and Tahsildar, Chief Executive Officers, Chairman of Panchayat Samities, Block Development Officers and Tahsildar, Chairman of Panchayat Samiti, Block Development Officer and Sarpanch of the Village concerned. who will be co-opt member. It was also made clear that while deciding the suitability of the land proposed for house sites and in preparing layout, the principals of villages sites and regulation of Building Rules May be Adhered expect in regard to the size. In case where Government village panchayat lands are Not available efforts should be made to obtain suitable private land as gifts and private lands as gifts and possession be taken by negotiations It was also made clear that after the list is prepared by the Talath with the assistance of village Panchayat Secretary, the same should be placed before the Taluka Committee for approval and it should also be published in village. For this purpose a meeting of the villagers in the village could be convened and list may be read out along in that meeting. The steps for acquisition of private land should be taken off it was found that suitable Government or village panchayat land is not available. A committee at district level was also formed for supervising the progress of the scheme. It was also realised by the Government that mere providing of house sites to landless workers would not solve his real problem of having a house of his own. The allotment of the house site to a family which has been enforced to remain landless on account of his poor condition would be meaningless unless some other provisions are made for levelling of land, contribution of funds and providing building material. A pilot programme was also prepared.

12. On the basis of these various Government resolutions it is contended on behalf of the respondents that the present scheme has been framed by the Government to provide shelter to the weaker section of the society to achieve the object of the welfare State According to the respondents the said scheme is in the interest of the public as a whole and to acquire land for executing the said scheme is therefore a public purpose within the meaning of the said expression as defined in Section 4(1) and sub-section (4) of Section 17 of the Act.

13. It is not necessary to refer to the various decisions cited at the Bar for finding out the real meaning of the expression "public purposes used in the Act. Suffice it to make a reference of the decisions of the Supreme Court where the Supreme Court has laid down the true scope and import of the said expression. As back as in 1956, in state of The State of Bombay Vs. R.S. Nanji, the Supreme Court had an occasion to consider the true import of the expression "public purpose". After making a reference to the Privy Council decision in Hamabai v. Secretary of State AIR 1914 PC 20, the Supreme Court observed as under:

"The expression "public purpose" has been considered in many cases and it is unnecessary to refer to them except the three cases cited by the Attorney-General. In AIR 1914 PC the observation of Bachelor. J. to the effect "general definition are, I think rather to be avoided where the avoidance is possible, and I make no attempt to define precisely the extent of the phrase "public purposes" in the lease it is enough to say that in my opinion the phrase, what purpose that is an object or aim, in which the general interest of the community as opposed to the particular interest of individualises directly and vitally concerned" received the approval of the Privy Council.

Their Lordships, however, rejected the contention that there cannot be a "public purpose" in taking land if that land when taken is not in some way or other made available to the public at large. This contention has been the subject of a lease and a sand, the terms of which permitted the Government to resume the view to erect thereon dwelling houses for the use of Government officials as their private residence on adequate rent. The concluding portion of the judgment of the Privy Council is important and needs to be quoted, It stated.

"But there, so far from holding them to be wrong the whole of the learned Judges, who are thoroughly conversant with the conditions of Indian Life, say that they are satisfied that the scheme is one which will redound to public benefit by helping the Government to maintain the efficiency of its servant. From such a conclusion their Lordships would be slow to differ and upon its own statement it commends itself to their judgment."

In *The State of Bombay Vs. Bhanji Munji and Another*, the requisition was for housing a person having no housing accommodation. After consideration of the affidavits of the facts and the circumstances of the case, Bose, J. observed-----

"The constitution authorises requisition for a public purpose the purpose here is finding accommodation for the homeless. If, therefore a vacancy is allotted to a person who is infected homeless the purpose is fulfilled."

In *The State of Bombay Vs. Ali Gulshan*, the requisition was for the purpose of housing a member of the staff of a foreign Consulate. This Court held that the requisition was for a State purpose which it is needless to say must be regarded as a public purpose. An examination of these and other cases leads us to the conclusion that it is impossible to precisely define the expression "public purpose". In each case all the facts and circumstances will require to be closely examined in order to determine whether a "public purpose" has been established.

"Prima facie" the Government is the best judge as to whether "public purpose" is served by issuing a requisition order, but it is not the sole judge. The Courts have the jurisdiction and it is their duty to determine the matter whenever a question is raised whether a requisition order is or is not for a public purpose".

14. Then in *Smt. Somavanti and Others Vs. The State of Punjab and Others*, the Supreme Court has on occasion to consider the true import of expression "public

purpose" in the context of the provisions of the Land Acquisition Act. After making a reference to the definition clause where the expression "public purpose" is defined, the Supreme Court observed as under:

"This is an inclusive definition and not a compendious one and therefore, does not assist us very much in ascertaining the ambit as very much in ascertaining the ambit of the expression "public purpose". Broadly speaking the expression "public purpose" would, however, include a purpose in which the general interest of the community, as opposed to the particular interest of individuals, is directly and vitally concerned."

The same view was reiterated by the Supreme Court in *Arnold Rodricks and Another Vs. State of Maharashtra and Others*, and in *Ratilal Shakarabhai and Others Vs. The State of Gujarat and Others*, . In *Arnold Rodric's* case after making a reference to the earlier decisions, the Supreme Court observed as follows:

"The main idea in issuing the impugned notifications was not to thin of the private comfort or advantage of the members of the public but the general public good. At any rate where a very large section of the community is concerned its welfare is a matter of public concern, and when the notifications served to enhance the welfare of this section of the community this is public purpose and the notification are valid and cannot be impugned on the ground that they were not issued for any public purpose."

In *Ratilal's* case the Supreme Court held that a housing scheme for a section of a public may also be for a public purpose. In this context para.7 of the judgment the Supreme Court observed as under:

"We are unable to acceded to the contention of the appellant that a housing scheme for a limited number of persons cannot be considered as a public purpose. It was said that there were hardly about 20 members in the co-operative society in question and therefore the housing scheme for their benefit cannot be considered as a public purpose. It was also urged that there was no need for acquiring any land for the scheme in question. Section 6 (3) of the Land Acquisition Act provides that a declaration u/s 6 shall be conclusive evidence that the land proposed to be acquired is needed for a public purpose. Therefore this Court cannot go into the question whether the need was genuine or not unless we are satisfied that the action taken by the Government was a fraudulent one. We are also unable to concede to the pro-position that the need of a section of the public cannot be considered as a public purpose. Ordinarily, the Government is the best authority to determine whether the purpose in question is a public purpose or not and further the declaration made by it u/s 6 is a conclusive evidence of the fact that the land in question is needed for a public purpose ---See *Smt. Somavanti and Others Vs. The State of Punjab and Others*, . That decision lays down that conclusiveness in Section 6(3) must necessarily attach not merely to a "need" but also to the question whether the purpose was

a public purpose."

15. Therefore, it is obvious from these decisions of the Supreme Court that the expression "public purpose" would include purpose in which the general interest of the community as opposed to the particular interest of the individual is directly or vitally concerned. Whatever furthers the general interest of the community as opposed to the particular interest of the individual must be regarded as public purpose. Thus scope of the expression is obviously not static and must change with varying concept, time, state of society and its needs. Therefore, the proper approach is to consider the scheme as a whole and then examine whether the entire scheme of acquisition is for a public purpose or not. It will be an entirely wrong approach to pick up a stray item or clause out of the scheme and then say that the said clause is not actuated by public purpose. The phrase "public purpose" will have to be construed according to the spirit of the times and the needs of the society. The question will have to be decided in each case on the touchstone as to whether the acquisition is in the interest of community or section of society as distinguished from private interest of an individual.

16. It cannot be forgotten that Section 6(3) of the Act lays down that the declaration made u/s 6 shall be conclusive evidence that the land is needed for a public purpose or for a Company, as the case may be. Therefore, so long as it is not established that the acquisition is sought to be made for some collateral purpose or is ultra vires of the powers of the Government, the declaration of the Government that the acquisition is for a public purpose is normally not open to challenge. In this context a reference could usefully be made to a later decision of the Supreme Court in *Jage Ram and Others Vs. State of Haryana and Others*, where the Supreme Court) has observed as follows:

"There is no denying the fact that starting of a new industry is in public interest. It is stated in the affidavit filed on behalf of the State Government that the new State of Haryana was lacking in industries and consequently it had become difficult to tackle the problem of unemployment. There is also no denying the fact that the industrialisation of an area is in public interest. That apart, the question whether the starting of an industry is in public interest or not is essentially a question that has to be decided by the Government. That is a socio-economic question. This Court is not in a position to go into that question. So long as it is not established that the acquisition is sought to be made for some collateral purpose, the declaration of the Government that it is made for a public purpose is not open to challenge. Section 6(3) says that the declaration of the Government that the acquisition made is for public purpose shall be conclusive evidence that the land is needed for a public purpose. Unless it is shown that there was an unreasonable exercise of power, it is not open to this Court to go behind that declaration and find out whether in a particular case the purpose for which the land was needed was a public purpose or not---see *Smt. Somavanti and Others Vs. The State of Punjab and Others*, and *Raja Anand Brahma Shah Vs. State of Uttar Pradesh and Others*, . On the facts of this case there can be hardly any

doubt that the purpose for which the land was acquired is a public purpose."

In the said case the Supreme Court held that starting of a new industry is in the public interest, because it involves a socio-economic question, and therefore, the industrialisation of an area is in public interest.

17. However, it is contended before us by the learned counsel for the petitioners that in the cases before us the lands are being acquired by the Government for providing house sites to the individual landless labourers. It is an acquisition meant for a particular interest of individuals, namely, the landless labourers and it does not involve the general interest of the community as a whole. It is not possible for us to accept this contention.

18. As already referred to herein before the scheme framed by the Central Government as adopted by the State Government for providing house sites to the landless labourers in the rural areas is a scheme meant for the benefit to the families of the landless-labourers as a class. It seeks to provide benefit to the families of the land-less workers in the rural areas and the entire cost of acquiring and developing of the lands for providing house sites for families of the landless workers is to be borne out by the government is going to contribute Rs. 200/- per hut for the construction of the huts. The objectives of the scheme is to help the poorer section

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19. However it is contended before us by the learned counsel of the petitioners

that in the cases before us the lands are being acquired by the Government for providing house sites to the individual landless labourers and it does not involve the general interest of the community as a whole. It is not possible for us to accept this contention.

20. As already referred to herein before, the scheme framed by the Central Government as adopted by the State Government for providing house sites to the landless labourers in the rural areas is a scheme meant for the benefit of the landless-labourers as a class. It seeks to provide benefit to the families of the landless workers in the rural areas and the entire cost of acquiring and developing of the lands for providing house sets for families of the landless workers is to be borne out by the Government. Not only this, the Government is going to contribute Rs. 200/- per hut for the construction of the huts. The objective of the scheme is to help the wear section of the society, namely, the landless labourers and their families. It cannot be disputed that the scheme framed for providing houses to the landless labourers which ensure a bare shelter to them, and which is one of the basic needs of human being, is in the interest of the general public. By framing such a scheme the State is only making a provision for securing just and humane condition for the landless labourers to live and work. This scheme is obviously in conformity with the directive principles of the State policy. The scheme also contemplates that there will be no segregation of the families belonging to schedule casts or scheduled tribes while allotting the house sites. The personae belonging to the schedule casts and scheduled tribes will be made to live with other families belonging to other castes and classes so as to change the geographical and social map of the village. By providing these house sets to the landless labourers and their families the government wants to check illegal eviction and ejectment of these landless labourers from their abode by the unscrupulous landlords. This is one of the means by which the Government seeks to check the exploitation of the landless labourers. In our opinion the present scheme is framed for the purposes of achieving and object solemnly declared in the Constitution and particularly in Chapter IV relating to directive principles of the State policy. The ideal we have set before us in Article 38 is to evolve a State which must constantly strive to promote the welfare of the people by securing as effectively as it can a social order in which social, economic and political justice will be established in all the spheres of national life. If therefore the State is expected to give effect to these avowed principles then we must regard as a " public purpose " all that which is calculated to promote the welfare of the people or of the wear section of society as envisaged in these directive principles of State policy. In this context reference could usefully be made to the observations of the Supreme Court in Chandra Bhavan Boarding and Lodging, Bangalore Vs. The State of Mysore and Another, which are as under:

"The provision of the Constitution are not erected as the barriers to progress. They provide a plan for orderly progress towards the social order contemplated by the preamble to the Constitution. They do not permit any in of slavery, social

economic or political. It is a fallacy to think that under our Constitution there are only rights and no duties. While rights conferred under Part III are fundamental, the directive principles under Part IV are fundamentals in the governance of the country. We see no conflict on the whole between the provision contained in Part III. and part IV. They are complementary and supplementary to each other. The provision of part IV enable the legislatures and the Government to impose various duties on the citizens. The provision therein are deliberately made elastic because the duties to be imposed on the citizen depend on the extent to which the directive principles are implemented. The main motto of the constitution is to build a welfare society in which justice social, economic and political shall inform all institutions of our national life. The hopes and aspirations aroused by the constitution will be belied if the minimum needs of the lowest of our citizens are not met". Therefore in our opinion, a scheme framed for the purpose of securing an aim declared in the Constitutions to be a matter of state policy is obviously for public purpose.

21. It is not correct to say that in effect the result of the acquisition is merely to transfer the property belonging to certain individuals to certain other individuals. Though ultimately a house site will be allotted to an individual landless labourer and he will be benefited by this acquisition, it cannot be overlooked that they are benefited not as individuals but in furtherance of a scheme of public utility. Scheme for construction of huts for poor landless labourers in the rural areas is for a public purpose as it will tend to promote social welfare and prosperity. Providing housing accommodation to the landless and homeless labour is a social necessity. Social necessity requires that a proper housing accommodation should be made available to this large section of the community. The welfare of this large and unorganised section of community is a matter of public concern. It is one of the duties of the Government in the welfare State that it would promote with special care the economic interests of weaker section of the people and to protect them from social injustice and all forms of exploitation. Though the directive principles of State policy are not enforceable it cannot be forgotten that they are fundamental in the governance of the country. These principles cast a duty upon the State to endeavour to secure, by legislation or economic organisation or in any other way, all workers, agricultural, industries to other wise, work a living wage, condition of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities. In the organised industrial sector the employees are getting these amenities as a result of collective bargaining through their trade Unions. However, in the case of unorganised landless labourers in the rural areas, it is the duty of State as well as of the society to make such a provision. Then alone this weaker section of the community can be protected from social injustice and exploitation. By the present scheme a bare shelter is being provided which is a basic need of all the human beings. This is the minimum a poor man can expect from a free country wedded to the principles of welfare State at least after 25 to 30 years of independence. Earlier it is said,

better is for the society in general. This will have an obvious effect of increasing efficiency of an agricultural labourer and his status in social life. In such a scheme public as a whole is interested. It is no doubt true that in the ultimate analysis it will be the getting the house sites, but he gets the house site because he belongs to the class of landless labourers. The acquisition is, therefore, meant for a class of landless labourers and their families and not for individuals. Therefore, if the scheme framed by the Government for providing house sites to the landless labourers and their families is considered in this context, then it will have to be held that the acquisition of the lands for the said purpose is for the "public purpose" as contemplated by Section 4 as well as Section 17 of the Act.

22. The argument that unless it is declared by a notification in the official gazette that it is customary for the Government to make provision for providing house sites to landless labourers in the village sites in a district, the land cannot be acquired for the said purpose is obviously a wrong approach to the whole problem. A further argument that unless the provisions of Chapter VIII of the Maharashtra Land Revenue Code which deal with the constitution of village as well as its local area are followed the land cannot be acquired for providing house-sites to the landless labourers is equally fallacious. This is not a case by which authorities concerned with the State are constituting a village. The village is already constituted. The provision which is being made by this scheme is to provide house sites to the landless workers in the village, which is already constituted. The provisions of the village Panchayats Act or the Maharashtra Land Revenue Code dealing with the constitution of the village, therefore, have no application to the present case. By providing house sites to the landless labourers in the village itself neither new village is being constituted nor its boundaries are being altered. Moreover, the provisions of the Land Acquisition Act are independent one and it has nothing to do with the provisions of the Maharashtra Land Revenue Code or the Bombay Village Panchayats Act or the Maharashtra Land Revenue Code. Furthermore the present scheme is already sanctioned by the Government itself. As a matter of fact in pursuance of this sanctioned scheme, the present notifications are issued by the competent authority. These notifications are published in the official gazette. In this view of the matter, in our opinion, the provisions of the Maharashtra Land Revenue Code as well as the Bombay Village Panchayats Act have no application to the facts and circumstances of the present case.

23. As already observed, the expression "public purpose" as defined in the Act is merely illustrative and not exhaustive. The illustration given in the definition clause not being exhaustive, it is not correct to say that unless it is shown that it is customary for the Government to make a provision for house sites for a landless labourer in the already constituted village sites, it will not constitute a "public purpose". In the view which we have already taken, it is obvious that purpose for which the lands are being acquired is a public purpose within the meaning of the Land Acquisition Act. If this is so, then, in our opinion, Act. If this

is so, then, in our opinion, the illustration given in the definition clause has no application to the facts and circumstances of the present case. In this view of the matter it is not possible for us to accept any of these contentions.

24. It is also not correct to say that the present scheme is framed by the State Government in colourable exercise of its power to implement political programme of the party in power, which is known as the 2-Point Programme. It cannot be overlooked that the directive principles set forth in Part IV of the Constitution are not merely the matters of policy of any particular political party but are fundamental in the governance of the country. Whatever political party comes into power is expected to follow these principles. The scheme in this behalf was framed by the Government in the year 1971 itself, which was a part and parcel of Five Year plan. In 1972 itself the instructions in that behalf were issued to the State Government. The circular issued in the behalf also provided the guidelines as to how the scheme is to be implemented. The scheme itself was circulated to the officers concerned with the Government letter dated 19 July 1972. For properly implementing the said scheme, the necessary instructions were also issued in the year 1972 and 1974 and also vied Government resolution dated 11th March 1975. This was all done even before 2-Point Programme was formulated. Obviously, therefore, the present scheme cannot be termed to be a political policy of any particular political party. In this view of the matter, it cannot be said that the present scheme has been framed by the Government in colourable exercise of the power. The Government resolutions provide a date as to how many families of the landless labourers should be provided with house sites. Even from the latest resolution issued by the State Government it is quite clear that above 1.37 lakh of the families of landless workers were still not provided with the house sets by acquiring or purchasing private lands till the Government resolution dated 19-7-1975 was issued, the problem of housing the families of landless labourers was, therefore, under the consideration of the Government since the year 1971 itself. This was as a matter of part and parcel of the Five Year Plan. It not only helped rehabilitation of the families of the landless labourers, but it has also checked their exploitation by the unscrupulous landlords. These landless labourers were under constant threat of eviction by the owners of the land. Therefore, taking an overall view of the matter in our opinion, the scheme framed by the Government for providing house sites to the landless workers in the rural areas is obviously in the public interest and is, therefore a "public purpose" for which the lands can be compulsory acquired by the Government under the provisions of the Act.

25. Once it is held that the purpose for which the lands are being acquired, namely, for providing house sites to the landless labourers and their families is a public purpose, then, in our opinion, it cannot be said that the notification issued by the appropriate authority u/s 4(1) of the Act is ultra vires. Section 4(1) of the Act provides acquisition of the lands, if they are needed or are likely to be needed for any public purpose. Therefore, once it is held that the aforesaid purpose is a public purpose, then, in our opinion, the officer concerned was

within his right is issuing notification u/s 4(1) of the Act, as the said land was needed or was likely to be needed for the public purpose, namely, for providing house sites to the landless labourers and their families.

26. So far as the other part of the argument, namely, that there was no urgency in acquiring these lands for the purpose of the scheme, nor the purpose for which the land is being acquired is a public purpose covered by Section 17 of the Act, is concerned, in our opinion, there is no substance in this contention also. Section 17 of the Act, as amended by the Maharashtra Act No. XLII of 1973, reads as under:

"17 (1) In cases of urgency. whenever the appropriate Government of the Commissioner so direct, the Collector, though no such award has been made, may, on the expiration of fifteen days from the publication of the notice mentioned in Section 9, sub-section (1), take possession of any land needed for public purposes or for a Company. Such land shall thereupon vest absolutely in the Government, free from all encumbrances.

(2) Whenever, owing to any sudden change in the channel of any navigable river or other unforeseen emergency, it becomes necessary for any Railway Administration to acquire the immediate possession of any land for the maintenance of their traffic or for the purpose of making thereon a river-side or hat station, or of providing convenient connection with or access to any such station, or whenever, owing to a like emergency or owing to breaches or other unforeseen events causing damage to roads, rivers canals or tanks, it becomes necessary for the State Government or the Commissioner to acquire the immediate possession of any land for the purpose of maintaining road communication or irrigation or water supply service, as the case may be, or whenever due to failure of the monsoons or otherwise there is acute scarcity of water for drinking or agriculture and failure of crops in the State, it becomes necessary for the State Government or the Commissioner to acquire the immediate possession of any land, for the purpose of providing water for drinking or agriculture and by setting up or continuing relief works for providing employment to persons affected by the conditions referred to above, the Collector may, immediately after the publication of the notice mentioned in sub-section (1) and with the previous sanction of the appropriate Government or as the case may be, of the Commissioner enter upon and take possession of such land, which shall thereupon vest absolutely in the Government free from all encumbrances:

Provided that the Collector shall not take possession of any building or part of a building under this sub-section without giving to the occupier thereof at least forty-eight hours' notice of his intention so to do, or such longer notice as may be reasonably sufficient to enable such occupier to remove his moveable property from such building without unnecessary inconvenience.

(3) In every case under either of the preceding sub-sections of the Collector shall

at the time of taking possession offer to the persons interested compensation for the standing crops and trees (if any) on such land and for any other damage sustained by them caused by such sudden dispossession and not excepted in Section 24. and in case such offer is not accepted. the value of such crops, and trees, and the amount of such other damage shall be allowed for in awarding compensation for the land under the provisions herein contained.

(4) In the case of any land to Shiite, in the opinion of the appropriate Government or, as the case may be, of the Commissioner, the provisions of sub-section (1) or sub-section (2) are applicable, the appropriate Government. or, as the case may be, the Commissioner may direct that the provisions of Section 5-A shall not apply, and, if it or he does so direct, a declaration may be made u/s 6 in respect of the land at any time after the publication of the notification u/s 4, sub-section (1)."

Sub-section (1) of Section 17 of the Act confers special powers on the appropriate Government, or the Commissioner as the case may be, in cases of urgency. Initially such a power could be exercised by the appropriate authorities only in relation to the "waste" or "arable lands", but the said words are deleted by the aforesaid Amending Act, and therefore, now the powers in the behalf could be exercised by the appropriate authority in relation to any land if the said land is urgently needed for a public purpose, Sub-section (1) of Section 17 is independent of sub-section (2).

27. However, a contention was raised before us that the provisions of sub-section (1) of Section 17 should be read as ejusdem generis with sub-section (2) and (3) of Section 17 of the Act. In our opinion, this will not be correct reading of the provisions. As already observed, these sub-section stand on independent footing. Sub-section (1) of Section 17 is of general application, whereas sub-section (2) of Section 17 applies to the cases specified therein including the case of unforeseen emergency. Sub-section (3) of Section 17 deals with standing crops and the trees etc. If it was the intention of the legislature that sub-section (2) should control the provisions of sub-section (1), then it was not necessary for the legislature to have enacted an independent sub-section . Sub-section (1) and (2) of Section 17 of the Act cover different and independent areas and are not inter-dependent. Initially Section 17(1), as unamended, applied only to the "Waste and Arable" lands. However. by aforesaid amendment the State Legislature had deleted these words as a result of Shiite now sub-section (1) of Section 17 will obviously apply to all lands which are urgently needed for a public purpose. This is the result of the aforesaid amendment. IN our opinion, the intention of the legislature is made clear by the deletion of these two words from sub-section (1) of Section 17 of the Act. Once it is found that sub-section (1) of Section 17 applies to a particular acquisition proceedings, then, if the appropriate authority forms an opinion in that behalf, it can direct that the provisions of Section 5-A shall not apply to the said proceeding. Similar argument based on the principle of ejusdem generous was rejected by the Supreme Court in Jage Ram and Others

Vs. State of Haryana and Others, (cit. supra). In our opinion the principles laid down in the said decision will aptly apply to the present case also. In the present legislation also, there is no basis for holding that the general words used in subsection(1) of section 17 are any way controlled by particular or specific words used in subsection (2) of Section 17. Both these sub-section being independent of each other none of them constituted a category class or genus. If this is so in our opinion there is no scope for applying the principle of ejusdem generis to sub-section (1) of section 17 of the Act. Hence we are unable to accept the contention that while interpreting sub-section (1) of section 17 we should apply which we have taken, therefore, it is not possible for us to apply rule of ejusdem generis to the said sub-section (1) of section 17 of the Act.

28. However, it was contended before us that there was no urgency in the matter, nor the purpose for which the lands are being acquired by the Government is so urgent that an enquiry contemplated by Section 5-A could not be adhered to. It is contended on behalf of the respondents that the scheme was framed as early as in December, 1971. If this is so and if the Government or the officers were either lethargic or negligent in implementing the said scheme till the year 1975, then it cannot be said that the land was urgently needed for implementing the scheme itself. In this context a reference was made to Section 4 of the Act that the land is being needed or is likely to be needed or is likely to be needed for the public purpose, then any person interested in the land can object to the acquisition of the land within 30 days time for raising an objection. If this is so, unless the matter was so urgent that the authorities could not have waited even for 30 days there is no occasion for exercising the power under sub-section (4) of Section 17 of the Act. In support of these contentions, the learned counsel for the petitioners have relied upon the following decisions of the various High Courts:

(1) Thirumalaiah v. State of Mysore AIR 1963 Mys 225

(2) K. Seshagiri Malar and Others Vs. Special Tehsildar for Land Acquisition, Kozhikode and Another, ; and

(3) Varadaraja Gounder v. The State of Tamil Nadu AIR 1973 Mad 278.

29. In our opinion, the decisions on which reliance is being placed by the learned counsel for the petitioners are clearly distinguishable from facts of these cases. Obviously it cannot be disputed that the question regarding exercise of the power u/s 17(4) of the Act must depend upon the facts and circumstances of each case. It is no doubt true that the scheme was formulated in the year 1971 and was not implemented till the urgency clause was applied by the Additional Commissioner. A contention was also raised before us that the purpose for which the land is being acquired is not relevant for deciding the urgency of the exercise of the power under subsection (4) of Section 17 of the Act. The said information of the opinion in that behalf must depend upon the facts as to whether the Government or the appropriate authority could not have waited till the enquiry contemplated u/s 5-A(2) of the Act. In our opinion the whole approach is

fallacious.

30. If the purpose for which the land is being acquired is urgent and the very purpose of the acquisition of the land will be frustrated, if the land is not urgently acquired, then in our opinion, the said purpose is very much relevant for forming an opinion to exercise the power u/s 17(4).

31. From the affidavits filed before us on behalf of the respondents it is quite clear that initially an enquiry was held to find out as to how many persons belong to the category of landless labourers. A Revenue Officer of the rank of Naib Tahsildar was directed to make an enquiry in that behalf. After making such a survey he was also directed to make a recommendation about suitability of the land and the area of the land which would be required for providing the house sites to the landless labourers and their families. The Grampanchayat were also consulted. The sites found suitable were inspected by the Naib Tahsildar in the presence of the panchas and the patwari. Before such a proposal for acquisition of the land is sent the Revenue officer is also obliged to make efforts to find out as to whether the acquisition of the land is possible by private negotiations. If ultimately he comes to this conclusion that compulsory acquisition of the land is necessary, then he is required to make a proposal. In this proposal he is also required to state as to why he decides that the possession of the land should be immediately taken under sub-section (1) of Section 17 of the Act. This proposal is then scrutinised by the Sub-Divisional Officer or the Land Acquisition officer. If he agrees with the said proposal, then a letter is forwarded to the Additional Commissioner for scrutiny and issuing a notification by applying (urgency clause u/s 17(4) of the Act. If an opinion is formed by the Land Acquisition Officer that it is not necessary to take recourse to the urgency clause then he himself is competent to issue notification u/s 4(1) and then normal procedure of raising objections and holding enquiry u/s 4(1) and then normal procedure of raising objections and holding enquiry u/s 5-A is followed and ultimately the matter is remitted to the Additional Commissioner for issuing of a notification u/s 6 of the Act. However, if the Land Acquisition Officer of the competent authority comes to the conclusion, that unless the urgency clause is applied, the very purpose of the scheme could not be fulfilled, then he makes a recommendation to the Additional Commissioner for issuing a notification in that behalf. Before issuing a notification the Additional Commissioner scrutinises the whole matter and if on the basis of the material placed before him he forms an opinion and he special power under Sections 17(1) and 17(4) should be exercised, then alone he issues the necessary notification. In the present cases, it is the case of the respondents that the scheme now framed by the Government resolution dated 11th July 1975, clearly contemplates that considering the utility and the urgency of the programme huts for the landless labourers should be constructed before 31st March, 1976. It is further clear from the Government resolution that taking into account the objective of the programme, that is to help the weaker section of the Society, a number of social and philanthropic institutions like Rotary Clubs and Lions Clubs have come forward to assist the implementation of the programme.

The necessary expenditure for the acquisitions of the land is borne out by the central Government whereas the Government is contributing Rs 200\\- per hut so that the landless labourers and their families will get huts free of costs. The scheme, therefore envisaged a construction of the hut itself and not merely the acquisition of house sites. It is a time bound programme, and therefore, if in a given case an opinion is formed by the Additional Commissioner that unless urgency clause is applied it will not be possible to implement the programme itself, then in our opinion, he is well justified in taking recourse to the urgency clause or in exercising power u/s 17(4) of the Act.

32. As already observed the financial sanction for acquiring lands and constructing the huts is given upto the end of present financial year, that is 31st March 1976. The provision of Section 17(1) of the Act leave it to the discretion of the appropriate Government or Commissioner in cases of urgency to direct the Collectors to take possession of the land needed for public purpose, even though no award has been made. So the question as to whether there is an urgency or not is left to the discretion and decision of these authorities. Under sub-section (4) of Section 17 in the case of any land to which in the opinion of these appropriate authorities the provision of dispute before us that the provisions of Section 5-A shall not apply. There is no dispute before us that the provision of sub-section (1) of Section 17 applies to the lands in question. Therefore if after applying its mind to the provisions of the Scheme, urgency of its implementation and the period within which it is to be implemented the appropriate authority has u/s 5-A of the Act then in the absence of anything else it cannot be said that the exercise of the power is without any authority of law.

33. It is not correct to say that only 30 days time is required for completing and enquiry u/s 5-A. Section 5-A provides 30 days time for raising objections. If the objections are not raised then an enquiry as contemplated by Section 5-A(2) of the Act is required to be held after giving an opportunity to objector of being heard. According to the Additional Commissioner he was satisfied that if opportunity as required u/s 5-A is given, then the acquisition proceedings will be inordinately long for the Government to get the land over for some years. He has made this statement on affidavit which is based on his experience shows that whenever an opportunity u/s 5-A is given persons come forward with every type of objections and then the proceedings take very long time for deciding these objections. It was not disputed before us by Shri Udhoji, the learned counsel appearing in Special Civil Application No. 1486 of 1975, that many times years are taken to complete the enquiry contemplated by Section 5-A(2) of the Act.

34. The Gujarat High Court had an occasion to consider this aspect of the matter in *Ishwarlal Girdharlal Joshi Vs. The State of Gujarat and Another*, After making a reference to the decision of Kerala High Court, namely, *Seshagiri v Special Tahsildar for Land Acquisition* AIR 1965 Ker 92, on which reliance is placed by the learned counsel for the petitioners, the Gujarat High Court observed as under:-

"In that case a Single Judge of the said High Court observed that since Section 5-A

gives only 30 days" time to a person affected or interested to file his objections to the proposed acquisition under the notification u/s 4, any urgency that demands dispensation with Section 5-A must necessarily be an urgency which will not brook a delay of 30 days. This observation, in our view, does not represent the correct law and there are two very good reasons why we find ourselves unable to accept the validity of this observation. The first is that the observation seems to determine the urgency by reference only to the time likely to be taken up by the inquiry u/s 5-A which, as we have pointed out above, is not the correct test for determining the question of urgency and secondly the observation seems to proceed on the assumption that the only time which is likely to be taken up in the inquiry u/s 5-A is merely the period given by the Section for filing objections against the proposed acquisition. This period can, under the Rules made by the Government u/s 55, be extended by the Collector, if proper cause is shown. After the objections are filed date has to be fixed for hearing the objector in person or by pleader. The hearing then takes place and if the Collector permits, oral as well as documentary evidence can be led and where evidence is led by one party, the opposite party has to be given an opportunity to cross-examine the witness of the first party as also to rebut the case by means of other evidence. The Collector then has to consider the objection and to make his report to the Government and the Government has to decide the objections after taking into account the report of the Collector. This elaborate procedure is bound to take a considerable amount of time and it is difficult to see how the learned Judge of the Kerala High Court has limited the determination of the existence of urgency by saying that the urgency must be of such a nature as cannot brook a delay of 3 days."

We respectfully agree with these observations of the Gujarat High Court, and therefore, it is not necessary to discuss in detail the decisions of the Mysore or Madras High Courts on which reliance is placed by the counsel for the petitioners.

35. As already observed, it is not even disputed by the counsel for the petitioners in the cases before us that sometimes an enquiry contemplated by Section 5-A of the Act takes years. To the same effect is the experience of the Additional Commissioner as stated by him on an affidavit. Therefore, it is not possible for us too to accept the contention raised in this behalf by the learned counsel for the petitioners. It is not necessary to deal with this aspect of the matter in detail as the same has been fully discussed by the Gujarat High Court in the aforesaid decision with which we respectfully agree. It is pertinent to note that it is this very decision of the Gujarat High Court in *Ishwarlal Girdharlal Joshi Vs. The State of Gujarat and Another*, which was approved by the Supreme Court in *Ishwarlal Girdharlal Joshi etc. Vs. State of Gujarat and Another*, in an appeal against the said decision. Therefore, in view of the experience of the responsible officer, like the Additional Commissioner, in this behalf, which is not disputed even by the counsel for the petitioners, in our opinion, it cannot be said that recourse to the urgency clause cannot be taken unless it is demonstrated that the delay of 30 days could not be tolerated.

36. It is no doubt true that the scheme in this behalf was first framed in the year 1971 and was not implemented till the urgency clause was applied by the Additional Commissioner. A neglect, default or omission, if any, could also be attributed to the Governmental machinery. However, That in itself is not enough to negative the exercise of the power by the competent authority under. Section 17(4) of the Act. As observed by the Gujarat High Court in Ishwarlal's case, (1967) 8 Guj LR 729----

"..... an earlier neglect or default or omission of the Government can not by itself negative the existence of urgency at a given point of time. It may happen sometimes that by reason of such neglect, default or omission itself, urgency may arise. The cause for the urgency would be irrelevant in considering whether urgency in fact exists or not. So also subsequent delay in implementation cannot necessarily of itself lead to the inference that there was no urgency at a given point of time for it is possible that despite existence of urgency, delay might be caused in the implementation owing to various factors and circumstances. Merely from subsequent delay therefore an inference would not necessarily follow that there was no urgency and the satisfaction of the Government on the question of urgency was arbitrary, unless of course the delay is of such a nature, as for example, is so gross that, unexplained, it must irresistibly lead to the conclusion that there could not be urgency. if there was urgency, such delay could not possibly have occurred."

Similar view seems to have been taken by the Supreme Court in *Jage Ram v. State of Haryana* AIR 1971 SC 133 (cit. supra). While deciding the question of urgency While deciding the question of urgency in that case, in para. 10 of the judgment the Supreme Court observed as under:

"Now coming to the question of urgency, it is clear from the facts set out earlier that there was urgency. The Government of India was persuaded to extend time for the completion of the project upto April 3, 1969. Therefore, urgent steps had to be taken for pushing through the project. The fact that the State Government or the party concerned was lethargic at an earlier stage is not very relevant for deciding the question whether on the date on which the notification was issued, there was urgency or not. The conclusion of the Government in a given case that there was urgency is entitled to weight, if not conclusive."

As already indicated, in the present case it being a time bound programme which was required to be completed before 31st March 1976, in our opinion it cannot be said that there was no urgency in the matter. We fail to understand if there is no urgency of such a scheme even after a period of 25 to 30 year of Independence, then when such an urgency will be felt. To us it appears that this should have been done long back. whatever be the reason for not making such a provision at the earlier point of time, in our opinion, the landless labourers is so urgent that any delay in implementing the said scheme might frustrate the whole object of the scheme itself.

37. Further what is the scope of Review-ability of the opinion formed by the Government in this behalf is also well settled. In *Raja Anand Brahma Shah Vs. State of Uttar Pradesh and Others*, the Supreme Court had an occasion to consider this aspect of the matter. After making a reference to the earlier decisions on the provisions of Section 17(4) of the Act, the Supreme Court observed as under:

"But even though the power of the State Government has been formulated u/s 17(4) of the Act, on subjective terms the expression of opinion of the State Government can be challenged as ultra vires in a Court of law if it could be shown that the State Government never applied its mind to the matter of that the action of the State Government is mala fide."

This Court had also an occasion to consider the scope of section 17(4) of the Act in *Narayan Govind Gavate Vs. The State of Maharashtra*, . In this context this Court observed as under:-

"When the formation of an opinion or the satisfaction of an authority is subjective but is a condition precedent to the exercise of a power the challenge to the formation of such opinion or to such satisfaction is limited in law, to three points only. It can be challenged, firstly on the ground of mala fides, secondly on the ground that the authority which formed that opinion or which arrived at such satisfaction did not apply its mind to the material on which it formed the opinion or reached the satisfaction was so insufficient that no man could reasonably reach that conclusion." Thereafter this Court considered the question as to whether it is the petitioner who has to bring material before the Court to support the contention that no urgency existed, or whether it was incumbent upon the respondent to satisfy the Court that there was material upon which the State could have reached the opinion as mentioned in Section 17(4) of the Act. In this context, after making a reference to the earlier decisions of the Supreme Court, Ultimately this Court came to the conclusion as under:

"In our opinion, these observations clearly mean that when the existence of the circumstances on which an opinion is to be formed or has been arrived at the question of the existence of circumstance has to be proved at least prima facie and that it would not be sufficient for the authority which arrived at that opinion to assert that circumstances existed by give no clue whatever as to what circumstances were, We have held that the burden of proving such circumstances atleast prima facie, is on the respondents. As the respondents have brought no relevant material on the record, the respondents have failed to discharge that burden."

38. In view of the decision of this Court as well as of the Supreme Court , it is not necessary to make a reference other decisions on which reliance is placed by both the parties. Therefore, the scope of reliability of the opinion formed by the Additional Commissioner while exercising his power u/s 17(4) of the Act is very limited. In this view of the matter it is not possible for us to accept the

conditions raised by the learned counsel for the petitioner that the purpose for which the land is being acquired is not at all relevant for deciding the question of urgency as already indicated in the present cases the purpose for which the land is being acquired is urgent. Moreover the programme for implementing the scheme meant for providing house sites to the landless labourers and their families is also a time bound programme which is intended to be completed within a specified period. This itself is a relevant factor which could have been taken into consideration by the Additional Commissioner. while exercising his power u/s 17(4) of the Act. Further, the earlier lethargy or negligence if any , of the governmental machinery is also not relevant for deciding the urgency as it existed on try date on which the power was exercised by the Additional Commissioner. In the affidavits fled before us it is contented by the respondent that such an urgency clause is not applied in each and every case. It is applied only in such cases where the Additional Commissioner was satisfied that all the procedure prescribed by the Government resolutions and the instruction laid down in that behalf are followed by the Revenue officers and that the Additional Commissioner was of the opinion that unless the urgency clause was applied it was not possible to implement the scheme. According to the respondents, in such matters only after taking into consideration all the facts and circumstances of each case a power has been exercised by the Additional Commissioner under sub-section (4) of Section 17 of the Act.

39. In the present cases, the scheme itself contemplates following of certain procedure. it further contemplates that the lands belonging to certain persons will not be acquired or the land of small landholders should not be acquired if as a result of the acquisition they become landless, these guidelines incorporated in the Government resolution are not disputed before us by the Additional Government pleader appearing for the State. He has further admitted that the said guidelines are building of the Government though breach of these guidelines cannot give rise to a cause of action to an aggrieved person to enforce the same. He further stated that these guidelines are being followed as far as possible. Therefore in a given case if it could be shown that these guidelines were not at all considered by the Additional Commissioner and the Acquisition is in breach of the Government instructions or by exercising the powers u/s 17(4) of the Act, the very purpose of the scheme is being defeated, then in that case it is open to the petitioners to challenge the formation of the opinion of the exercise of the power of the Commissioner u/s 17(4) of the Act, obviously on the ground of non-application of mind. This position is also not disputed by the learned Additional Government pleader. Therefore in the light of these observations, it will be necessary to scrutinise each and every case on its own merit after taking into consideration the allegations made and the contentions raised in that behalf. Therefore in the view which we have taken, it is not possible for us to quash the notification issued by the Additional Commissioner at the threshold without going into the merits of each case.

Special Civil Application No. 1766 of 1975.

40. So far as this petition is concerned, it is contend by the learned counsel for the petitioner, who is the owner of survey number 3/2 from which 0.80.94 hectares of land is being acquired for providing house sites for landless workers of Sutala Kd., in taluq Khamgoan. Distract Buldhana, that there are other lands available which could have been acquired for the said purpose. In para. 3 of the petition the petitioner has stated that some survey number belonging to other landlords are available, who are having more land than the petitioner. He further stated that according to his information certain landlords are willing to sell their lands. There in para. 5 of the petition it is allied by him that in pursuance of the resolution passed by the Gram Panchayat on 22-7-1975 his land is being acquired by the Government. He further alleged that the Gram Panchayat has passed the said resolution mala fide with a view to harass the petitioner and to deprive him of his valuable land. The petitioner also alleged in the petition that there are about 20 plots still vacant out of 43 plots of the newly formed Gaothem and the lands from the said vacant plots could be allotted to the landless labourers for construction of huts. According to the petitioner, the respondents have decided to acquired his field survey number 3/2 of Sutala arbitrarily, without any application of mind. He also contended that he owns only about 11 acres of land and has t maintain a family of about 20 members. Who are solely dependent on agriculture income of this land.

41. The contentions raised in the petition are denied by the respondents denied that the petitioner holds land which is less than economic holding. So far as the lands proposed by the petitioner are concerned, the respondents in para. 3 of the return have explained as to why these lands are not being acquired. According to the respondents, either those lands belong to very small landholders or are under irrigation. The respondents further contended that after inspecting all the available lands, the authorities found that survey number 3/2 was most suitable for the purpose of providing house sites to the landless labourers. This was done after the spot inspection and on verification and consideration of the relevant factors. The respondents further contended that the plots are not available from the land which was initially acquired for the purpose of extension of Gaothem n the year 1970. All the plots were distributed. Only 2 plots remained to be allotted but these plots were specifically kept vacant for the public and community purposes to be used by public in general. Moreover, two reserved plots are close-by to the school. It was also clarified in the return that the petitioner personally owns land measuring 11 acres 27 gunthas, excluding the land owned by his son which is about 4 acres 4 gunthas. There fore even if the present land is acquired for survey number 3/2, the petitioner will not become landless but will be holding land more than one-third of the family holding. The respondents further stated that near about 40 to 50 persons required the house sites and considering their need the minimum possible land is being acquired. Before the proposal for acquisition was made the Sub-Divisional Officer and the Land Acquisition Officer, Khamgaon had enquired into the matter throughout his subordinate officer. He also consulted the village panchayat and had inspected the spot on 16-5-1975.

Before cling to the conclusion regarding the suitability of the land, be considered the suitability of the land, he considered the suitability the Government and the Panchayat land and also other lands around the present village Gaothem and ultimately came to the conclusion that the land from survey number 3/2 belonging to the petitioner is the only satiable land for the purpose. The allegations of mala fides made in the petition were also denied by the respondents.

42. A statement was also made at the Bar on behalf of the respondents that normally the authorities are following the instruction incorporated in the Manual of Land Acquisition of the State of Maharashtra meant of the purpose of extension of existing Gaothan. These instruction Ns. 1 (c), (iv) and (vii) are only relevant for deciding the controversy involved in this petition The said instruction read as under:-

"1 (c) ----- The Tahsildar should defies a programme of visits to as many village in their charge as possible for as certaining on the spot needs of the villagers for extension of goathan. The following points should be taken into consideration.

.....

(vi) The site selected should be suitability from Public Health point of view and sufficient for a well planned layout providing for all kinds of rural amenities like approach and internal roads, wells, hospital, schools, community halls, play grounds, parks, burial ground etc.

(vii) As far as possible irrigated land should be acquired and the person from whom land is acquired should not be left with land less than one-third of an economic holding, i.e., one third of (a) 7 acres of seasonably irrigated land or paddy or rice land, or (b) 16 acres of dry crop land or (c) four acres of perennially irrigated land." It is contended on behalf of the respondent that in the present case these instruction were scrupulously followed. Therefore in our opinion, there is no substance in any of the contentions raised on behalf of the petitioner in this writ petition.

43. It is well settled that so far as the suitability of the land is concerned t is the appropriate authority, who is the best Judge of the matter. It is for the Government to decide which land is most suited for the acquisition and the decision of the State Government in this behalf would be final. (See Mukhtar Begum Vs. The Commissioner, Nagpur Division, Nagpur and Others,

44. In the present case after taking into consideration all the adjoining lands and the relevant instructions, the appropriate authorities have come to the conclusion that the land belonging to the petitioner was the most suited land for the purpose of housing the landless labourers. It is not open for this Court to sit in appeal over the said decision more so having regard to the facts and circumstances of the present case.

45. So far as allegation of mala fides are concerned, the petitioner has alleged

that the village Panchayat has passed a resolution recommending his land for acquisition mala fide with a view to harass the petitioner and to deprive him of his valuable land. The allegations of Panchayat as a whole, which is a statutory and Corporate Body. The Gram Panchayat. Moreover, the allegations regarding mala fides are beautifully vague.

46. It is well Settled that mere allegation that the power is exercised mala field would not be enough, but in support of the said allegation specific material should be placed before the Court. The burden of establishing mala fides is very heavy on the person who alleges. The allegations of mala fides are often made very easily and light heardly, without placing any material in support of such a plea. Normally the very seriousness of the allegations demands a credible proof of high order in support of such allegation, more so when the allegation are made against the Government or a statutory body. It cannot be forgotten that the village Panchayat was merely consulted in the matter, but the ultimate decision was taken by the Land Acquisition Officer and the Sub-Divisional Officer who, in his turn, made a recommendation in that behalf. After such a recommendation was made, ultimate decision was taken by the Additional Commissioner after scratching the material placed before him. The village Panchayat was not an authority to take the decision in the matter. No material has been placed before us to indicate the mala fides of any of these superior officers, including the Additional Commissioner. Moreover, the allegations made in the petition are denied by the respondents. In this view of the matter, it is not possible for us to hold that the resolution was passed by the Village Panchayat mala fide with the view to harass the petitioner. As already observed, the Members of the Village Panchayat have no hold in the matter of the acquisition of lands. The land is n being acquired either for or at the instance of the Village Panchayat. The notification was issued by the Additional Commissioner and the opinion regarding the urgency was also formed by him. In none of these matters the members of the Village Panchayat had any say, or hold. Moreover, no material has also been placed before us as to why all the members of the Village Panchayat should harass the petitioner. The allegations themselves are so vague that in our opinion they do not call of any enquiry or scrutiny.

47. In the result therefore, there is no substance in Special Civil Application No: 1766 of 1975 and the petition fails and is dismissed. However, in the circumstances of the case there will be no order as to costs.